

OHIO

Project: Ongoing Case: Mitigation of Adverse Effects to Pennsylvania Railway Ore Dock, Cleveland

Agencies: U.S. Army Corps of Engineers

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A contentious and longstanding Section 106 review of a project that involved removal of historic ore-loading structures along the Cleveland waterfront has been revived by renewed attempts to reach a consensus on ways to resolve adverse effects.

In July 2010, after more than two years of inactivity in the Section 106 consultation process, the Corps of Engineers, Buffalo District (Corps) sent letters to the ACHP and other consulting parties requesting their input on proposed measures for the mitigation of adverse effects to the Pennsylvania Railway Ore Dock in Cleveland, Ohio. The Corps is reviewing a re-application by the Cleveland-Cuyahoga County Port Authority (Port) for a permit under Section 10 of the Rivers and Harbors Act for dredging in Cleveland Harbor associated with the proposed expansion of the Ore Dock, which is now referred to as the Cleveland Bulk Terminal (CBT).

Consulting parties in the consultation have included the Port, the Ohio State Historic Preservation Officer (SHPO), U.S. Rep. Dennis Kucinich, the National Trust for Historic Preservation (NTHP), the Ohio Canal Corridor, the Cleveland Restoration Society, the Committee to Save Cleveland's Hulett's, Cleveland City Councilman Matt Zone, Oglebay Norton Company (now Carmeuse Lime and Stone, a subsidiary of the Belgian-owned Carmeuse Group, the property owner), and several individuals. At the last consultation meeting in October 2007, various mitigation measures had been suggested and discussed by consulting parties. However, there had been no follow-up communication with consulting parties regarding the analysis of, or further consideration of, alternatives for the mitigation of adverse effects.

Controversy regarding the expansion of the CBT and its effects on the Ore Dock has been ongoing since 1997.



Massive Hulett Ore Unloaders are contributing elements to the historic Pennsylvania Railway Ore Dock. (Photo courtesy Library of Congress)

In 1999, the Corps advised the Port that it would have no jurisdiction, under Appendix C of 33 CFR part 325, over the broader expansion of the CBT and its effects on components of the Ore Dock if an application for dredging along the dock face was reduced from a proposed 2,000 feet to 600 feet. The 2,000-foot length was necessary to enable access by larger ships that could utilize the proposed expanded capacity of the CBT. The 600-foot length could be considered maintenance of the existing facility. It should be noted that Appendix C has never been approved by the ACHP as an alternative to the Section 106 regulations (36 CFR part 800) from which it differs in a number of important ways. The Port reduced the dredge area in the permit application. Then, despite protests from the SHPO and others, the Port proceeded to demolish components of the Ore Dock, including two Hulett Ore Unloaders, following approval of the demolition in a local preservation review process. The Hulett's were contributing elements of the Ore Dock, which was listed on the National Register of Historic Places in 1997. In 2001, the U.S. District Court in Ohio, Eastern Division, found, in a law suit brought by the Committee to Save the Hulett's, that the Corps had violated the National Historic Preservation Act (NHPA) by issuing a permit without awaiting comment from the SHPO and the ACHP. The Court ordered the Corps to revoke the permit and, when considering any new permit application, comply with all requirements of the NHPA.

In 2005, the Port submitted a new permit application to the Corps with a request to dredge along 2,000 feet of the CBT dock face. In response to an Adverse Effect

notice from the Corps, the Ohio SHPO suggested that the adverse effect from the initial demolition of the Hulett's and associated buildings was not adequately resolved after the Corps revoked the previously issued permit in 2001. The ACHP requested that the Corps make a determination of the applicability of Section 110k of the NHPA, which applies when an applicant for a federal permit or assistance intentionally adversely affects a historic property with the intent to avoid the requirements of Section 106. In June 2007 the Corps determined that Section 110k applied because the permit applicant segmented its application to conduct dredging at the CBT with the intent to avoid the Section 106 review and proceed to demolish components of the ore dock. The Corps also concluded that there were "mitigating" circumstances that justified continuing the Section 106 consultation process and that might justify granting a permit once appropriate steps to resolve adverse effects were agreed on and formalized in a Memorandum of Agreement (MOA). In its response, the ACHP suggested that it did not completely agree with the Corps' determination that there were mitigating circumstances but that it respected its intention to proceed with the Section 106 review.

In its communication of July 2010, the Corps provided a draft MOA developed by the applicant, which focuses on mitigation for adverse effects involving: the historic documentation that has already been completed under the local preservation review process; the previous donation of two of the Ore Dock shunt engines to museums; and the potential donation of "significant elements" of two Hulett's (a bucket and leg) to one or two recipients (the Great Lakes Science Center and the Willis B. Boyer Maritime Museum) to display at their locations. However, these mitigation proposals are essentially the same as those proposed by the Port back in 2007.

A number of consulting parties, including the SHPO and the ACHP, believe that given the protracted delay, the Corps needs to reengage the consulting parties and update all on the range of options to mitigate adverse effects. Consulting parties feel that the truncated consultation process did not exhaust the possibilities for resolution of adverse effects and that there has not been sufficient public involvement in the development of the draft MOA and ideas for resolution of adverse effects. Many believe that creative and alternative mitigation

measures can still be put forth to address the broader preservation goals of the community. The ACHP has suggested that the Corps reinitiate the Section 106 process, invite the consulting parties back to the table for dialogue, and use the draft MOA as a starting point for renewed consultation. A consulting party meeting was held on November 4, 2010, to discuss the path forward. The Corps is continuing to explore options for resolving adverse effects.