



**Cleveland-Cuyahoga Port Authority, Department of the Army Permit Processing
(1999-01471[4])**

Section 10 of the Rivers & Harbors Act
Regulatory

Location

- Cleveland Harbor, City of Cleveland, Cuyahoga County, Ohio

Project Description

- Proposed dredging of 15,000 cubic yards of material for access to the Cleveland Bulk Terminal

Congressional Interests

- Representative Marcia Fudge D OH-11
- Senator Rob Portman R OH
- Senator Sherrod Brown D OH

Project Sponsor/Customer

- Cleveland-Cuyahoga Port Authority

Project Manager

- Mark Scalabrino, (716) 879-4327

Current Status

The Cleveland-Cuyahoga County Port Authority (CCPA) and Corps have reengaged efforts to finalize a memorandum of agreement (MOA) to resolve impacts to historic properties (i.e. dismantling of historically significant Hulett ore loaders). A final MOA was sent to the consulting parties for signature on December 7, 2017, with signatures requested by December 18. The CCPA stated it cannot make a decision to sign the MOA until its board meeting scheduled for February 8, 2018; CCPA approved signature of the MOA at the board meeting and sent the signed MOA to the Corps on February 16. Canalway Partners signed the MOA on January 4. The Ohio Historic Preservation Office (OHPO) stated that it will sign the MOA if CCPA and Canalway Partners, both required signatories, sign the MOA.

Issues

The CCPA repeatedly objected to the terms of numerous versions of the draft MOA, particularly due to the lack of a financial cap on the cost to administer the stipulations of the MOA. The CCPA, Corps, and consulting parties agreed to limit the CCPA's contribution to the eventual public display of the Hulett, or pieces of the Hulett, to \$500K, while a "working group" comprising the consulting parties would be responsible for determining a location and implementing the public display. This concept was incorporated in an MOA and sent to the consulting parties for signature on December 7.

Path Forward

If the CCPA, Canalway Partners, OHPO, and Advisory Council for Historic Preservation sign the MOA, the Corps can complete its environmental assessment and make a final permit decision. The MOA will be made part of any permit that the Corps may issue to the Port Authority for the proposed dredging. If any of the aforementioned parties decline the MOA, the Corps will terminate the historic properties consultation and send the permit application to Headquarters U.S. Army Corps of Engineers for final action.

Background

The CCPA submitted an application to dredge approximately 15,000 cubic yards of material from an area adjacent to the Cleveland Bulk Terminal dock face in Cleveland Harbor. The Cleveland Bulk Terminal is a property listed in the National Register of Historic Places. The Buffalo District issued a permit for this project in 1999; however, the permit was subsequently revoked as a result of the U.S. District Court's decision that found procedural errors in the evaluation of impacts to historic properties. Historic properties include the Hulett cargo unloaders, the power house, the machine shop, and the shunt

engines. All items were destroyed or removed from the property except for two of the four Hulettts, which were dismantled and stored.

The "Save the Hulettts" organization is dedicated to preserving and reassembling the Hulett cargo unloaders and has been very active in this matter. The current application is a resubmittal of the previous dredging proposal. A public notice for this application was published on 3 March 2006, and expired on 1 April 2006.

The Buffalo District determined that the proposed dredging is part of a larger expansion project at the Cleveland Bulk Terminal and expansion has had an adverse effect on historic properties.

Several historic preservation societies responded to the public notice and requested consulting party status pursuant to Section 106 of the National Historic Preservation Act (NHPA). As a result, the project is being coordinated with the consulting parties to resolve adverse effects before a final permit decision is made.

The Advisory Council on Historic Preservation (ACHP) determined it will participate in the consultation process and recommended the Corps determine if Section 110(k) NHPA applies to this undertaking. Section 110(k) prohibits a federal agency from granting a permit to an applicant who has significantly adversely affected a historic property with the intent to avoid Section 106 NHPA consultation.

The Corps held a meeting with the applicant on December 18, 2006, to discuss the consultation process and possible mitigation measures for the historic properties. Another meeting was held on February 21, 2007. On June 8, 2007, the Corps determined that Section 110(k) applies to this undertaking; however, the Corps recommended that Section 106 consultation continue with the development of a MOA to resolve adverse effects to the historic properties. This determination was sent to the ACHP for its concurrence.

In a letter dated August 6, 2007, ACHP responded that it concurs with the Corps' 110(k) NHPA determination; however, the ACHP did not necessarily agree with, but respected, the Corps' decision to continue with the historic properties consultation process. An additional consulting party meeting was held on October 12, 2007, to further discuss mitigation measures for the historic properties and several proposed memoranda of agreement.

The applicant did not submit the draft MOA, which it had agreed to do during an October 12, 2007, meeting until June 15, 2010. The Corps forwarded the draft MOA to consulting parties on July 15, 2010, and requested comments by August 20, 2010. The Corps conducted a consulting parties meeting on November 4, 2010, to discuss the historic properties mitigation options outlined in the CCPA's June 15, 2010, submittal.

Of the options discussed, the CCPA's proposal to permanently display the leg and bucket from one Hulett in the cargo hold of the Great Lakes Science Center's steamship, *William G. Mather*, appears to hold the greatest potential for implementation. The Corps completed a draft Section 106 consultation summary document and distributed it to the consulting parties on July 22, 2011. The summary document recommended that the proposal to incorporate a "bucket" and "leg" from one of the Hulettts ore unloaders at the Great Lakes Science Center be included in the MOA. The Corps circulated a draft MOA on February 8, 2012; conducted a consulting party meeting on March 22, 2012; and circulated additional draft MOA on April 27, 2012, August 3, 2012, November 16, 2012, and July 12, 2013, to further evaluate this option.

The Corps circulated a final Memorandum of Agreement (MOA) to the consulting parties on August 21, 2013, for signature. The CCPA and several consulting parties objected to the terms of the MOA and refused to sign. As a result of these concerns, the Ohio Historic Preservation Office and the ACHP also declined to sign.

The CCPA resubmitted its application on March 6, 2017, with a draft MOA that proposed to implement public displays of the bucket arm of the Hulettts to resolve adverse impacts to historic properties. The Corps issued a public notice on April 11 that expired on May 17 seeking public comment on the proposed dredging and draft MOA.

The majority of the public comments received stated that the draft MOA was inadequate. The Corps held a meeting with the CCPA and consulting parties on May 25, 2017. The consulting parties agreed that the CCPA should be allowed to move the disassembled Hulett's from the port facility to another storage facility, which would allow the consulting parties additional time to implement a public display.

The CCPA submitted a draft MOA on June 6, 2017, based on the discussions and ideas set forth in the consulting parties' meeting. The Corps and consulting parties reviewed the MOA and provided comments to the CCPA on July 14. The Corps and CCPA held a conference call on July 20, 2017. The CCPA will obtain updated estimates for moving the Hulett's to a temporary storage location and revise the MOA to address the concerns identified by the consulting parties.

A draft final MOA proposing to remove the disassembled Hulett's from the CCPA facility and relocate them to a temporary storage location was sent by the Corps to the consulting parties on October 2, 2017. Many of the consulting parties submitted comments to illustrate that this concept would likely not be successful in achieving the long-term goal of a public display of the Hulett's elements. The consulting parties proposed to allow a working group comprising representatives from the consulting parties to implement a public display within three years of signature of the MOA, while the CCPA would contribute \$500K to this effort. This concept was incorporated into the final MOA and sent the consulting parties for signature on December 7, 2017.



Hulett Ore Unloaders
Photo Credit: Jerry Mann



Cleveland Bulk Terminal