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SITE LEGACY SUBCOMMITTEE

MONDAY, DECEMBER 10, 2012 @ 6:30 P.M.

AGENDA

THE PURPOSE OF THIS MEETING IS TO PROVIDE THE SSAB SUBCOMMITTEE WITH AN OVERVIEW OF THE CONSULTING PARTY PROCESS AND HOW FEDERAL MANDATE PROCESSES DETERMINE PRESERVATION AND FUTURE SITE LEGACY AND FUTURE USES OF THE SITE

- REVIEW OF THE OCTOBER MEETING
- HOW THE CONSULTING PARTY PROCESS WORKS – LESLEY CUSICK, RSI
- DISCUSSION

ADJOURN

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SITE LEGACY SUBCOMMITTEE

MEETING SUMMARY

DECEMBER 10, 2012 • 6:30 P.M.

THE OHIO STATE UNIVERSITY ENDEAVOR CENTER
1862 SHYVILLE ROAD, PIKETON, OH 45661

Subcommittee Members Present: Ervin Craft, subcommittee vice chair; Carl Hartley, Brian Huber

SSAB Subcommittee Members Absent: Sharon Manson, subcommittee chair; Connie Yeager

Other SSAB Members Present: Shirley Bandy, Will Henderson, Board Chair

U.S. Department of Energy (DOE) and contractors: Greg Simonton, Amy Lawson, DOE; Rick Greene, Lesley Cusick, Restoration Services, Inc. (RSI); Dennis Carr, Jeff Wagner, Fluor-B&W Portsmouth (FBP)

Liaisons: None

Support Staff: Eric Roberts, Julie Galloway, Cindy Lewis, EHI Consultants (EHI)

Public: None

Craft opened the meeting:

- 1. Review of the September Meeting:**
- 2. Presentation-How the Consulting Party Process Works-Lesley Cusick, RSI:**

CERCLA Document “Reader’s Guide” for National Historic Preservation Act Reviews at the PORTS Site

- Some consultation basics
- Consultation and Consulting Parties
- Who Can Be Consulting Parties?
- More On Public Involvement
- PORTS Projects and CERCLA
- The ARARs Process and §106 of the National Historic Preservation Act

- CERCLA Document “Reader’s Guide” for National Historic Preservation Act Reviews at the PORTS Site
- What is different in a CERCLA review?
- Where do I find what I am used to seeing under §106 in a CERCLA document?

Discussion:

Question/Comment:	Answer:
<p>Roberts: Under Consultation, it says “where possible, seeking agreement.” Does the lead agency make the decisions? Do I have a course of action I can take if they do not side with me?</p>	<p>Cusick: The lead agency is the decision maker. They are interested in your opinions. Even if you have never asked to be a consulting party, you are still the public and can be a consulting party. Your views count as a member of the public. Yes, you can take other actions there as an administrative record of all decisions. You may see your suggestion in that record.</p> <p>The important thing for DOE is to know where the contaminants are. The results are in the Remedial Investigation/Feasibility Study (RI/FS)</p>
<p>Huber: In your opinion what is the technical definition of a historical property.</p> <p>In your opinion, because this site has significant historical significance in regard to the Cold War, wouldn’t you consider the entire site technically under that definition of historical property?</p> <p>I understand why they are taking the buildings down. They are contaminated. I would love to see the domed building saved. Does it have all the controls for the entire site?</p>	<p>Cusick: It is not my opinion, it is law. Any prehistoric, historic district, site, building, structure, or object included or is eligible to be in the National Registry of Historic Places (NRHP).</p> <p>Not necessarily, PORTS and Paducah is a duplicate of something in Oak Ridge. Does it mean it is not important, no it does not? Everything in the entire nation was part of the cold war whether you want to think that so or not. However, just because you have a historical property does not mean you can’t take action. You do have to go through the CERCLA process.</p> <p>Henderson: Does the subcommittee want to write a recommendation to save the domed building? Do we have a site marker? Maybe we want a listing of the items that are being saved.</p>

<p>Simonton: Sharon would still like to have a place to house some of the saved items. Maybe we should have a listing.</p>	<p>Lawson: We have a running inventory already.</p> <p>Galloway: Mark Hill did a presentation on the items that they are saving a few months ago.</p>
<p>Henderson: If you want to save a whole building by itself that is worth making a recommendation. That is different from making a listing of interesting things.</p>	

Mason: Meeting adjourned

Next meeting: To Be Announced (TBA)

Action Items: None at this time.

Some consultation basics

LT Cusick
10 December 2012

Some Basics – Consultation and Consulting Parties

- ▶ **Consultation:** “the process of seeking, discussing and considering the views of other participants, and where possible, seeking agreement with them regarding matters arising in the §106 process.”
- ▶ **Participants:** agency official (DOE), Council, (Advisory Council on Historic Preservation), consulting parties

Who Can Be Consulting Parties?

- ▶ **Consulting parties** with consultative roles:
 - ▶ State historic preservation officer (SHPO)
 - ▶ Indian tribes and Native Hawaiian organizations
 - ▶ Representatives of local governments
 - ▶ Applicants for federal assistance, permits, licenses and other approvals
 - ▶ Additional consulting parties, and
 - ▶ The public – The views of the public are essential to informed Federal decision-making... the agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects to historic properties...

More On Public Involvement

- ▶ Consulting parties and the public are involved at many junctures throughout the review of an agency action :
 - ▶ When the agency provides notice and information about a project
 - ▶ When an undertaking is established
 - ▶ In the identification of historic properties
 - ▶ In the assessment of adverse effects
 - ▶ In the resolution of adverse effects
- ▶ Note, too, that members of the public and consulting parties may also provide views on their own initiative for the agency official to consider in decision-making

PORTS Projects and CERCLA

- ▶ The decontamination and demolition project (“D&D”) and the waste disposition project at PORTS are being conducted under CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
- ▶ CERCLA is a law that streamlines the regulatory review process
- ▶ Streamlined reviews enable risks and hazards to human health and the environment to be cleaned-up in an expedited manner

The ARARs Process and § 106 of the National Historic Preservation Act

- ▶ The CERCLA ARARs (applicable or relevant and appropriate requirements) method means that the **§106 process is carried out differently** than the standard § 106 process
- ▶ DOE works with its consulting parties and interested citizens ***throughout the CERCLA process***
- ▶ **The elements of § 106 are the same** – identification of an undertaking (a project), identification of historic properties, assessment of adverse effects, analysis of alternatives, resolution of adverse effects by avoidance, minimization, and/or mitigation – but they are carried out within the CERCLA process, instead of separately

The ARARs process and § 106 of the National Historic Preservation Act (continued)

- ▶ **Measures** needed to avoid, minimize or mitigate impacts to historic properties are identified in the CERCLA documents, and
- ▶ **Commitments** DOE makes to take these avoidance, minimization or mitigation actions are included in the decision documents and are binding on the Department

CERCLA Document “Reader’s Guide” for National Historic Preservation Act Reviews at the PORTS Site

A guide on where to find NHPA review information
in standard CERCLA documents

What's different in a CERCLA review?

1. Why are things different from a usual §106 review?

- ▶ The DOE decision-making about the process buildings, other buildings and structures, and waste disposition are being conducted under CERCLA at PORTS. CERCLA actions use a different method to conduct reviews required by other laws, such as NHPA.

2. Do my comments count?

- ▶ Yes. DOE will seek input from the public, including consulting parties, during the CERCLA review process. Your comments will be reviewed, documented in the Administrative Record, and considered prior to agency decision-making.

What's different in a CERCLA review?

3. Will I see specific responses to my comments?

- ▶ DOE will prepare a responsiveness summary of all of the comments received. Your comments may be addressed individually or as a part of a consolidated group of comments. In some instances you will see direct changes in documents that reflect your input.

4. Do cultural resources get the same protection under CERCLA reviews?

- ▶ Yes. Even though the review process is different from the standard §106 process, it provides for public review and comment and consideration of comments.

Where do I find what I'm used to seeing under §106 in a CERCLA document?

§ 106 element	CERCLA document
800.3 initiation of the §106 process	▶ The overall document, Appendix B, Section B.3.3 “cultural resources” & Section 1.3 “community participation”
800.4 identification of historic properties	▶ Appendix B, Section B.3.3, which also uses and references all PORTS’ archaeological and architectural surveys
800.5 assessment of adverse effects	▶ Appendix B, Section 3.3. ▶ Consultation occurs as a part of the overall CERCLA process including document reviews

Where do I find what I'm used to seeing under §106 in a CERCLA document?

§ 106 element	CERCLA document
800.6 resolution of adverse effects	<ul style="list-style-type: none">▶ Consultation occurs as a part of the overall process including community involvement, document reviews, public meetings, comment consideration, and comment resolution▶ Comments become part of the Administrative Record (AR).▶ Comments are addressed in a responsiveness summary which is also a part of the AR.▶ If there are historic properties identified and they will be adversely affected by the proposed agency action, mitigation measures will be developed. They are found in Appendix B, Section B.3.3.▶ The final signatures on a decision document make all mitigation measures binding on the agency and in the case of PORTS, on OEPA as well.