



## United States Department of the Interior

National Park Service

Midwest Region  
601 Riverfront Drive  
Omaha, Nebraska 68102-4226



January 5, 2010

H42(MWR-CR/HNRP)

### Memorandum

To: Director, National Park Service (WASO, 001)  
Attention: Associate Director, Cultural Resources (WASO, 2201)

From: Regional Director, Midwest Region

Subject: Effigy Mounds National Monument, Iowa, and the National Historic Preservation Act of 1966, as Amended

We are currently dealing with a serious situation at Effigy Mounds National Monument (EFMO), Iowa, involving noncompliance with Section 106 of the National Historic Preservation Act (NHPA) on a number of development projects. Should you receive any inquiries regarding this matter, the following information provides details on what has occurred and what we are doing to resolve the issues.

In late April, a team of Midwest Region professionals conducted a "Towards Excellence" Operations Evaluation (OE) at EFMO. The OE discovered major violations of the NHPA during a number of years. Specifically, the OE found EFMO did not follow compliance procedures of Section 106 of the NHPA in building new trails, replacing trail bridges, building a maintenance structure, and constructing an interpretive exhibit. These violations were exacerbated by the fact that they had major, adverse impacts to cultural landscapes and to aboriginal American Indian structures that EFMO was established to protect.

In the OE analysis of EFMO's cultural resources management (CRM) program, it became apparent that the Superintendent neglected her obligation for section 106 compliance by sometimes eliminating the internal agency review process and subsequent section 106 consultation with the Iowa State Historic Preservation Office (SHPO) and 12 affiliated American Indian Tribes. Effigy Mounds failed to properly document undertakings and to provide "Assessment of Actions Having an Effect on Cultural Resources" to its established list of cultural resources advisors for review.

Of particular concern is a project first proposed in 1999 to construct an accessible boardwalk trail and highway underpass in EFMO's South Unit, connecting to the visitor center, and passing underneath a State highway in the direction of the Yellow River (including a bridge crossing the river). Tribes were informed of the project, but the consultation letter focused primarily on the bridge crossing, not a system of elevated boardwalks that were to be connected to it or its relationship to the prehistoric earthworks. The SHPO responded with a two-page letter dated

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August 13, 1999, saying it required more information on location of architectural and archeological resources before it could make a determination of effect. The SHPO concluded by stating, "When you have determined what types of historical properties are located within the project property and the significance of the properties in consideration of the National Register of Historic Places criteria, our office will be able to provide further comments on the proposed project."

It was the finding of the OE report that the SHPO's letter was relegated to EFMO files without a response. In 1999, there was an archeological survey in the immediate boardwalk path (Scott Stadler and Bob Nichol, Midwest Archeological Center, 2000). Shovel tests were performed at 10 meter intervals. The tests produced evidence for three concentrations of artifacts within the proposed boardwalk alignment. A trip report by Scott Stadler, dated October 29, 1999, recommends that construction be monitored by an Archeologist. The trip report was distributed to the Superintendent. The construction project, however, proceeded to completion without section 106 clearance. Further, in the fall of 2008 and early spring of 2009, EFMO began constructing a new boardwalk link from the existing boardwalk to the nearby culturally sensitive Lewis Mound area. Again, this was done without preparation of an Assessment of Effects form, consultation with EFMO's CRM Team, or any subsequent standard consultation with either the SHPO or Tribes. In addition, the boardwalk construction in 2008-2009 deviated from the route surveyed by Stadler and Nichol in 2000. While construction literally took place at the time of the OE team's visit, once the determination was made that no NHPA review had taken place, the park Superintendent was advised by the OE team leader to issue a stop-work order halting all contract-related construction activity of the new boardwalk segment.

Among other section 106-related deficiencies discovered by the OE team was a "Temporary Maintenance Structure" measuring 26 by 36 feet in EFMO's North Unit. Survey results by EFMO paraprofessional archeologists were prepared only after construction took place. The area of impact was adjacent to and highly visible from mounds in an area that had experienced prior disturbance by crop and livestock farming and where EFMO had added 8 to 10 inches of gravel to accommodate a maintenance yard. Twenty-two posts were installed at a 4-foot depth and a rounded corrugated metal building was erected, tied to a concrete foundation sill. Again, this undertaking took place without benefit of NHPA review, including consultation with its CRM Team. It resulted in construction of a modern building within a National Register-eligible landscape with no evaluation of its impact to that cultural landscape.

Notwithstanding violations of section 106 compliance review, EFMO has been seriously at odds with the intent of the National Environmental Policy Act (NEPA) and National Park Service policies pertaining to conservation planning and decisionmaking (DO-12). Actions have proceeded without appropriate analysis of environmental impacts or the consideration of an interdisciplinary team review of the projects prior to proceeding. In order to correct both NHPA and NEPA deficiencies, a team of planning, cultural and natural resources professionals conducted training June 8 through 10 at EFMO for the entire park management team.

In the ensuing months, the following has occurred:

1. Delegation of authority for section 106 to the Superintendent has been rescinded, and regional CRM specialists are overseeing all NHPA-related activities.

2. Effigy Mounds was directed to reassign collateral-duty Park Section 106 Coordinator responsibilities from the Chief of Maintenance to another staff member to avoid the inherent conflict of interest (EFMO selected the term-appointment Curator).
3. Effigy Mounds established an interdisciplinary team which meets regularly to review projects and ensure all NHPA and NEPA requirements are met.
4. Reinstated the in-house Agency review for section 106 by utilizing the "Assessment of Actions Having an Effect on Cultural Resources" and circulating it for CRM Team review and comment. A form will be prepared for every undertaking performed in EFMO in sufficient time prior to project implementation and circulated for review. All undertakings will be forwarded to the SHPO and affiliated Tribes for standard section 106 review.
5. All actions requiring documented NEPA categorical exclusions or higher need to be reviewed by the *Regional Environmental Coordinator before proceeding, to confirm the documentation is complete and the decision is in line with policy.* This directive will remain in effect until such time as EFMO can consistently demonstrate an understanding and adherence to DO-12.
6. A General Management Plan planning process is being reconstituted to ensure alternatives reassess the level of desired development at EFMO and fully disclose potential impacts of the alternatives.
7. Removal of the above-grade "Temporary Maintenance Structure" and associated equipment in the North Unit.

*In a July 20 meeting in Omaha, regional managers informed the Iowa SHPO of the OE findings; and in subsequent weeks, site visits were made to EFMO to observe onsite conditions. On November 17, regional CRM specialists held an onsite consultation meeting with both the Tribes and the SHPO, explained the above chain of events, and toured the areas of concern. Manager Mark Lynott, Midwest Archeological Center (MWAC) proposed a 2-year archeological assessment of the area and invited comment. The goal of this research is to identify areas where intact archeological resources may still be present, and areas that either lack archeological resources or areas which have been sufficiently disturbed that they no longer have archeological significance. This assessment will help determine impacts of existing facilities to the prehistoric landscape, including from boardwalk construction at Lewis Mounds. Tribal representatives did not object to the plan for geophysical surveys, but several expressed concern about soil coring and testing. Iowa SHPO Jerome Thompson said he felt archeology needed to be a central component of long-range planning for EFMO and not simply a response to individual developments. The SHPO Archeologist Dan Higginbottom said that regardless of the impacts of the boardwalks to archeological resources, the boardwalks are an intrusion on the cultural landscape and represent an adverse affect. Further, the SHPO stated that until EFMO can demonstrate NHPA adherence, they want to review all section 106 actions, and we agreed to*

perform standard section 106 review for actions that otherwise would be eligible for the streamlined process as provided by the 2008 Programmatic Agreement.

The archeological assessment will commence next spring. Tribal representatives have been invited to observe and participate, and a late May 2010 meeting is proposed to share some results of the geophysical studies with the Tribes and the SHPO. We are preparing section 106 compliance review on the proposed 2-year archeological survey. The SHPO, State Archeologist, and Mark Lynott have expressed concern about further damage to resources through removal of subsurface components of the boardwalks and maintenance structure. There is consensus that a decision on how to mitigate subsurface components would be postponed until MWAC can study the problem and recommend a solution. We are also preparing an Assessment of Effects (AOE) form for removal of the above-ground portions of the new boardwalk alongside the Lewis Mound Group. This is necessary to provide clear space for the use of remote sensing equipment by the archeological survey crew. The AOE form will be sent to affiliated Tribes for consultation. The MWR Associate Regional Director for Cultural Resources will consult directly with the Iowa SHPO on this AOE.

I can assure you that the problems at EFMO are now being addressed, and that I, along with my regional cultural resources professionals, will be actively involved in decisionmaking to solve these serious deficiencies and return the park to compliance with policy and law.



cc:

WASO—Deputy Director, National Park Service