

November 2, 2010

Ms. Pat Boddy, Interim Director
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, 50319

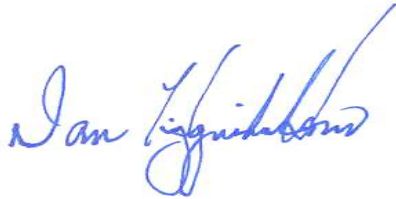
RE: COE – DELWARE COUNTY – LAKE DELHI – LAKE DELHI RESTORATION INITIATIVE – IOWA SHPO
RECOMMENDATIONS TO THE GOVERNOR’S TASK FORCE ON REBUILDING LAKE DELHI

Dear Ms. Boddy,

The State Historic Preservation Office has prepared the following for the consideration of the Environment Committee of the Lake Delhi Recover & Rebuild Task Force. It is our sincere hope that the Task Force will incorporate some or all of its content into its final report to the Governor.

Please feel free to contact Ms. Barbara Mitchell, Deputy State Historic Preservation Officer, at (515) 281-4013 or me at (515) 281-8744 if you have any questions or if you would care to discuss this further.

Sincerely,



Daniel K. Higginbottom, Archaeologist
Iowa State Historic Preservation Office

NATIONAL HISTORIC PRESERVATION ACT

There is every indication that implementation of the Lake Delhi restoration initiative will require some level of Federal involvement in order to accomplish its objectives. The infusion of Federal funds, the issuance of Federal permits or licenses, or the acceptance of Federal assistance will invoke agency compliance with Federal environmental and preservation laws including section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*)

Section 106 of the National Historic Preservation Act directs all Federal agencies to take into account the effects of their undertakings on historic properties. According to the Advisory Council on Historic Preservation’s rules implementing section 106, an undertaking means “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency” [36 CFR Part 800.16(y)].

In accordance with the Act, Federal agencies are obligated to complete the Section 106 compliance process *prior to* the approval of the expenditure of any Federal funds on an undertaking or *prior to* the issuance of any license or permit [36 CFR Part 800.1(c)]. With this in mind, the section 106 process requires consideration early in the planning process in order to be completed in a timely, efficient, and cost effective manner. In this respect, section 106 is much like the compliance processes established for other Federal environmental rules and regulations. Many Federal agencies have internal policies and

procedures outlining how they approach Section 106 compliance and some maintain professional staff to deal specifically with historic preservation matters. Others do not.

The Maquoketa River drainage has a deep, rich, cultural past spanning a period of around 12,000 years. The area surrounding modern-day Lake Delhi would have been particularly attractive to prehistoric people owing to its plentiful riverine resources including local bedrock outcrops that yield a particularly high-grade of chert used prehistorically in the manufacture of stone tools. Systematic professional archaeological survey of the Lake Delhi basin and surrounding shoreline was not conducted prior to original construction so unfortunately no baseline information on local cultural resources is available. However, nodules of raw and quarried chert, along with the byproducts of stone tool manufacture, have been observed in rock bars along the floor of the drained lake. Of more recent historic interest are the abandoned town of Hartwick, features of which - including building foundations and associated artifact deposits - were inundated by the impoundment of Lake Delhi, and the Lake Delhi Dam and Powerhouse Historic District, which has been evaluated as eligible for listing in the National Register of Historic Places.

The Iowa State Historic Preservation Office (SHPO) offers the following recommendations in anticipation of a federal action(s) that would invoke Section 106 compliance.

Designation of a Lead Federal Agency. As project planning proceeds and federal sponsors are identified, it would be in the project's best interest to designate a lead federal agency in order to eliminate redundancy, improve efficiency and reduce the cost of project compliance. The Council's rules allow for the designation of a lead federal agency to serve on behalf of all agencies involved in fulfilling their collective responsibilities under section 106 [36 CFR Part 800.2(a)(1)]. The SHPO encourages this type of arrangement. However, it is ultimately the agencies' decision on whether or not they will participate in a lead or subordinate capacity.

Coordinate with other Reviews. The agency should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act of NEPA, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, and the Archeological Resource Protection Act. This too will eliminate redundancy, improve efficiency and reduce costs associated with project compliance.

Early Consultation. The National Historic Preservation Act, along with other applicable federal authorities, require consultation with federally recognized Indian tribes in order to identify any concerns that they may have with respect to project impacts upon sites or objects of cultural patrimony. As recognized sovereign Nations, Tribes enjoy a unique status in the Federal review and compliance process. Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian Tribes. The Act also requires the involvement of the State Historic Preservation Office in the consultation process and further directs the federal agency to identify and invite the consultation of other parties that may have a valid interest in historic properties affected by an undertaking. One such party is the University of Iowa, Office of the State Archaeologist (OSA), which has jurisdictional oversight of the Iowa Burial Laws and has statutory authority over Iowa's archaeological site records. The OSA frequently participates as consulting party on federal undertakings. Consultation is most successfully and expeditiously accomplished through early coordination and under the auspices of a lead agency that has procedures already in place and experienced staff to oversee their execution.

Identification and Evaluation of Historic Properties. 'Historic property' is defined as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places.' The term also includes artifacts, records and remains that are related to and located with such properties and properties of traditional religious and cultural importance to an Indian tribe. The federal agency is obligated to make a reasonable and good faith effort to identify and evaluate historic properties within a project's area of potential effects (APE), assess the magnitude of project effects, and to consult on ways to avoid, minimize, or mitigate those effects found to be adverse. Some federal funding programs include historic properties investigations as an allowable expense, others do not. When selecting a cultural resource service consultant, it is advisable (but not required) to select a vendor with regional historical expertise, one that employs a multi-disciplinary staff with expertise in archaeology, history, architectural history, and geomorphology, possesses an understanding of applicable state and federal preservation law, and that has a demonstrated history of assisting their clients through the compliance process.

Programmatic agreement. The rules implementing section 106 are found at 36 CFR Part 800. However, agencies are permitted to develop alternative procedures to accommodate the special circumstances and needs of a project provided that

those procedures are consistent with the Council's rules (36 CFR Part 800.14, Subpart C). Under its terms, a Programmatic agreement (PA), among other things, outlines roles and responsibilities of the signatories in meeting section 106 compliance, establishes procedures for consultation and action protocols in the event of unanticipated discovery, establishes procedures for historic property identification and evaluation; and outlines mutually-agreed upon mitigation measures. The advantages of a PA over the 36 CFR Part 800 rules - particularly for a complex projects such as Lake Delhi restoration, are numerous. A PA allows its parties to address multiple steps in the process at once and allows for a seamless transition from one step to the next. Coordination of the section 106 process with other federal authorities such as NEPA, can also be facilitated under the terms of a programmatic agreement. One of the principal advantages of a PA is the definition of types of activities for which all parties agree that no further consultation is necessary.