

**Advisory
Council On
Historic
Preservation**

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The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

January 31, 2001

By Facsimile

Rod Warner
Director
Environmental Engineering Division
Northern Division Naval Facilities Engineering Command
10 Industrial Highway
Mail Stop- 82
Lester, Pennsylvania 19113-2090

REF: Draft Phase II Comprehensive Site Assessment Report for Noman's Land Island
RTN #4-13390
Massachusetts

Dear Mr. Warner:

Along with other Federal agencies, we would like to offer our comments on the referenced draft report. This comprehensive assessment has been prepared so that the Navy may implement environmental remediation measures on Noman's Land Island. We note that the referenced environmental document does not address impacts to cultural resources; an omission which is probably directly related to the Navy's position, as stated in an August 29, 2000 letter to the Council, that the proposed environmental remediation does not constitute an undertaking and, thus, is not an action requiring compliance with Section 106 of the National Historic Preservation Act (NHPA) and the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800). The Council disagrees with this determination.

It appears that the Navy has based this determination on presumptions about the presence and condition of archeological resources on the island. As we have stated before, an agency finding that an activity is the type of action that should be considered under Section 106 is made without regard to assumptions of whether historic properties may be present and affected by the action. It is a prospective judgement that should consider all the possible effects of the proposed activity as well as the widest possible range of historic properties. It is a determination which is not dependent on any information about historic properties, but considers only the type of action in question.

Under the Council's regulations, questions regarding the presence and condition of historic properties are addressed following a conclusion that the action in question is an undertaking for the purposes of Section 106. Then, the Navy would test its assumptions regarding the presence and condition of archeological resources at Noman's Land Island.

If the referenced assessment is any indication, the Navy has yet to conduct the necessary study or investigation to evaluate the likely presence of archeological or other cultural resources, and their condition and significance. Accordingly, we urge the Navy to address its responsibilities under Section 106 of the NHPA and the Council's regulations before proceeding with any proposed environmental remediation on Noman's Island.

Should you have any questions or wish to discuss this matter, please contact Laura Henley Dean, Ph.D., by telephone at 202-606-8503 or by e-mail at ldean@achp.gov. We appreciate your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom L. Klima". The signature is stylized with a large loop at the beginning and a horizontal line extending to the right.

Tom L. Klima
Director
Office of Planning and Review

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From: Laura Dean (202-606-8505)

Pages: 3, including this cover sheet

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