



Nazekaw Terrace Boardwalk, constructed without completing SHPO or tribal consultation in 2008-09 (construction terminated by the NPS in 2009, boardwalk removed in 2010). NPS Photo.

## **SERIOUS MISMANAGEMENT REPORT EFFIGY MOUNDS NATIONAL MONUMENT 1999-2010**

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The team members of this Serious Mismanagement Report were originally assembled as subject matter experts by the investigating Special Agent during the criminal investigation. The criminal investigation used portions of the findings of a 2009 Operations Evaluation of EFMO created by the Midwest Regional Office as a starting point. Methodical searches of available EFMO records were eventually carried out by Midwest Region Cultural Resources staff and the Superintendent who replaced the Principal.



Hanging Rock Bridge under construction (2004). A simple hiking trail footbridge was replaced with a five ton vehicle bridge. A quarter-mile long access road was blazed through mature forest to accommodate construction equipment used at the site. Despite the fact that extensive ground disturbance would be taking place in an archeological park, this work was done in the absence of any NHPA, ARPA, or NEPA compliance. NPS Photo.



The purpose of this Serious Mismanagement Report (SMR) is to present pertinent data and facts related to violations of the National Historic Preservation Act, the Archeological Resources Protection Act, and the National Environmental Policy Act by employees of Effigy Mounds National Monument (EFMO).

The SMR Team respectfully presents these facts in an effort to inform concerned National Park Service employees of the causes and contributing factors of these incidents so they may assist the agency in preventing similar occurrences. **As with a Serious Accident Report, the intent is not to defame individuals or assign blame, but rather to provide an opportunity for employees across the NPS to reflect on the lessons learned from these unfortunate actions.**

Consequently, this SMR avoids the use of names and avoids any discussion of administrative actions that may or may not have resulted from these events.

This SMR includes numerous position titles. It is important to note current NPS employees in those positions are most likely not associated with the events of this report.



#### **Effigy Mounds National Monument – Est. October 25, 1949**

Effigy Mounds National Monument was established in 1949 by Presidential Proclamation (President Truman) to preserve excellent examples of nationally significant archeological resources which include earthen American Indian mound groups. At least 206 visible mounds are within the monument. Of these, 31 are in the shape of animals or birds, representing a cultural phenomenon unique to the Upper Midwest. Some of these mounds were built as early as 500 BCE. The monument is sacred to the descendants of the mound builders. Currently, there are nearly twenty tribes who have either a cultural or treaty association with EFMO.

The 2,526 acres of the monument are located in northeast Iowa adjacent to the Mississippi River. EFMO is one of two NPS units in Iowa.



**Incident Overview**

Nazekaw Terrace Boardwalk construction terminus (linear mounds visible in left background). NPS Photo.

**Background**

In 1999 the Principal became Superintendent of Effigy Mounds National Monument after successfully completing the Midwest Region's Superintendent Development Program. Prior to becoming Superintendent at EFMO, the Principal had been on a relatively fast track within the NPS, having accepted their first permanent position in 1991. Only three years after becoming a permanent employee, the Principal was appointed as Acting Superintendent at Martin Van Buren National Historic Site (in 1994), and only three years after that became Superintendent at Perry's Victory and International Peace Memorial (in 1997). Throughout the Principal's career, they attended multiple training events focusing on the Section 106 review process. Additionally, the Principal served as the Section 106 Coordinator at Martin Van Buren NHS, and through the years had numerous cultural resource professionals providing – often at the Principal's request - detailed written summaries of the steps involved in the Section 106 review process.

Despite all this, during the Principal's tenure (1999–2010), park staff failed to comply with the National Historic Preservation Act (NHPA) and/or the National Environmental Policy Act (NEPA) on at least 78 projects using \$3,368,704 in federal funds. In 2009, during an Operations Evaluation at the park, a Midwest Regional Office team of subject matter experts learned of a boardwalk under construction to a mound group that had been rerouted and extended without proper NHPA and NEPA compliance. Many other non-compliant projects were also discovered.

In August of 2010, the Department of the Interior Office of Inspector General (OIG) received a complaint from a concerned citizen. The citizen alleged incidents of waste, fraud, and abuse by EFMO employees related to the non-compliant projects and an alleged cover-up by regional officials.

At the direction of the OIG, a criminal investigation was conducted by the Investigative Services Branch (ISB) of the National Park Service. At the conclusion of the investigation, ISB requested

**Incident Overview**

consideration for prosecution by the U.S. Attorney's Office of the Principal and the EFMO Chief of Maintenance for violations of the Archeological Resources Protection Act (ARPA). Due to the constraints imposed by the statute of limitations the investigation focused on two construction projects; the Nazekaw Terrace Boardwalk (2009) and the North Unit Maintenance Shed (2007). An archeological damage assessment revealed the two projects resulted in \$188,128 of damage (Archeological Value + Cost of Restoration and Repair) to park resources.



Storage shed constructed in 2007 without NHPA and NEPA compliance and without archeological clearance. Later studies revealed that it may have disturbed a remnant mound. NPS Photo.

In October of 2012, after intense review, the U.S. Attorney's Office reluctantly declined to prosecute primarily due to a belief that it would be difficult to overcome potential jury sympathy for the defendants. Prosecutors perceived an inability on the part of senior NPS officials to recognize that violations of NHPA may in fact be violations of ARPA in a park such as EFMO. In the opinion of the U.S. Attorney's Office, this led to a weak and inappropriate initial response by the Agency, which treated it as an administrative matter rather than a criminal matter. Prosecutors felt the Agency's failure to take swift, appropriate action fatally encumbered the criminal case, creating a threshold of doubt that the U.S. Attorney's Office did not believe could be overcome in a jury trial.

The declination enabled the NPS to perform an internal investigation.



Reservoir waterline project (2005). Although an Assessment of Effects form was completed and approved by regional office officials, it was based on the premise that disturbance would be limited to the original trench. The majority of the lawn area in this photo was severely impacted during later stages of this project. NPS Photo.

Although the criminal investigation focused on two projects, dozens of projects requiring extensive ground disturbances occurred at EFMO from 1999-2009. Associated with these projects were major project review deficiencies and in many cases a complete lack of compliance. Photos and descriptions of some of these projects are included within this report in an effort to broaden the reader's perspective of the totality of circumstances.

#### **The National Historic Preservation Act (NHPA - 1966) – 16 U.S.C. § 470 *et seq.***

This act is considered the most comprehensive preservation legislation in the United States. The act created the State Historic Preservation Offices, the National Register of Historic Places and National Historic Landmarks. The act requires all federal agencies to evaluate the impacts of federally funded or permitted projects on historic properties. This evaluation process is known as *Section 106 Review*, named for the section in the NHPA that outlines how this process is to occur. In addition to the requirement to evaluate the impacts of federal actions, NHPA further stipulates that federal agencies are to actively preserve historic properties (Section 110).

#### **Programmatic Agreement Among the National Park Service (U.S. Department of the Interior), The Advisory Council On Historic Preservation, and the National Conference of State Historic Preservation Officers (July 17, 1995 and November 14, 2008).**

These programmatic agreements specify how the NPS established and formalized policies and operating procedures (NPS/DO-28) designed to ensure compliance with the NHPA.

Both the 1995 and 2008 programmatic agreements delegate Superintendents as the responsible agency officials as defined in 36 CFR Part 800.1(c)(1)(i) for the purposes of Section 106 compliance. Superintendents are to assign Section 106 Coordinators, and are further responsible for ensuring staff are adequately trained to carry out their responsibilities.



**The Archeological Resources Protection Act (ARPA – 1979) – 16 U.S.C. §§ 470aa.**

ARPA prohibits the unauthorized excavation, removal, damage, alteration, or defacement of archeological resources. In addition to other segments of the public, ARPA explicitly specifies that “...any officer, employee, agent, department, or instrumentality of the United States...” is subject to the prohibitions of the Act.

**The National Environmental Policy Act (NEPA – 1969) - 42 U.S.C. § 4321**

Just as NHPA requires federal agencies to carefully consider the potential effects of federal undertakings on historic properties, NEPA requires federal managers to take the potential environmental impacts of undertakings into consideration as well – again, in advance of initiating work on those undertakings.

**The National Park Service Organic Act (1916)**

*The Service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*



Reservoir waterline project (2005). The lower portions of this project took place on the Nazekaw Terrace, a site known to have had more than 60 burial and ceremonial mounds in the past. NPS Photo.



Three Mounds repatriation/reburial preparation (2004). Archeologists and SHPO were not properly consulted about the use of this location; an existing burial mound adjacent to the visitor center. Excavation of the mound was performed by maintenance personnel. NPS Photo.

## FINDINGS

This section presents the Investigation Team's findings. The most rudimentary elements that contributed to this period of serious mismanagement are identified. These findings are supported by discussions with co-workers, supervisors, witnesses and subject matter experts. Motivational determinations for these activities are inferred based upon the available witness and subject testimony which may have been impacted by minimized levels of cooperation or appreciation of potential culpability.

## DIRECT CAUSE

Permanent archeological damage was caused by NPS employees within Effigy Mounds National Monument as a result of ground disturbing projects affecting historic properties and archeological sites in violation of the National Historic Preservation Act, The Archeological Resources Protection Act, The NPS Organic Act, NPS Directors Orders, policies, and programmatic agreements.

## CONTRIBUTING FACTORS

**1. Willful Blindness:** The Principal has asserted a lack of understanding of the level of wrong doing related to these actions. Statements made by the Principal clearly illustrate a lack of basic knowledge related to Section 106 Compliance and ARPA despite years of training and professional exposure. Statements made also describe a complete reliance upon the assumed expertise of a selected few, despite blatant contrary indicators, coupled with a willful lack of associated oversight. As the federal land manager, the Principal was the legal approving authority of all actions and was expected to have, and should have had knowledge of the laws





established to protect those resources. The Principal failed to learn or become aware of the laws designed to protect places like EFMO, and approved projects that damaged and/or destroyed cultural resources without taking those resources into consideration. In 2003, EFMO's Senior Law Enforcement Officer carefully outlined his concerns about non-compliant projects in a detailed 5-page memo, which the Principal chose to ignore. Remaining "blind" to the requirements of the law, despite repeated training and repeated warnings from staff, can lead to behavior that results in criminal recklessness and negligence.

## 2. Lack of Oversight:

### EFMO:

- **Marginalization of EFMO employees by the Principal removed internal program oversight:**
  - **Cultural Resource Specialist/Archeologist:** Prior to the arrival of the Principal, EFMO's Cultural Resources Specialist/Archeologist began accepting Section 106 compliance duties. This was reversed shortly after the Principal's arrival and the employee's skills and abilities were devalued and restricted to curatorial duties. Terminating funding of this position and transferring it to other divisions was openly discussed with the employee. Citing a poor work environment enhanced by these factors the employee left EFMO for another NPS assignment. The position was not refilled, despite the dominance of cultural resources within the park.
  - **Chief of Natural Resources:** The contributions of this position and division were systematically reduced in importance by the Principal regarding the operation of EFMO and meaningful management team inclusion. Differing opinions were treated like acts of insubordination by the Principal.
  - **Chief Ranger (non-commissioned):** The contributions of this position and division were systematically reduced in importance by the Principal regarding the operation of EFMO and meaningful management team inclusion. Subsequent declining morale affected proper work/life balance forcing this talented and committed employee, at great personal cost, to leave the NPS while seeking a better quality of family/work life.
  - **Senior Law Enforcement Ranger:** This position was systematically devalued by the Principal. Furloughs were maximized, employee expertise was ignored, necessary equipment was not provided, "security patrols" of EFMO were performed by maintenance employees, and at times defensive equipment was not permitted to be worn. The Principal stated to a colleague a fear of this employee's authority to confront friends, family, neighbors, acquaintances and employees if/when they violated laws within EFMO. This employee was trapped within a corrupt chain of command and was forced to seek out-of-park assignments, greatly disrupting normal family life, to remain professionally and financially viable. Ironically, this employee's education



## Findings

(MA in Archeology) and expertise related to cultural resources are highly valued by the Department of the Interior as a nationwide educator/trainer, scholar, and Native American Graves Protection and Repatriation Act civil penalties investigator.

- **Administrative Officer:** Perspective and expertise from this employee related to budget allocation, proper project development, and the requirement to maintain an administrative record were ignored by the Principal.
- **Chief of Maintenance/Section 106 Compliance Coordinator:** An inherent conflict of interest emerges when responsibility for both project compliance and project completion is vested in one employee.
- **Management misalignment from the mission of the NPS and the purpose of EFMO:** Despite long NPS careers, excellent training, and a professed desire to be stewards of EFMO, management team contributors were unable or unwilling to recognize the divergence of their personal goals from the mission of the NPS and the rule of law. The management team contributors also had an inexcusable lack of understanding of the fundamental importance of the archeological resource they were assigned to protect, along with its complexity, pervasiveness, landscape qualities, and history, which enabled them to discount concerns and justify gross physical and ethical violations of a site held sacred by many.

### Regional Office:

- **Supporting unit operations without adequate oversight:** The Midwest Regional Office has an infrastructure designed to provide support services to sixty NPS units with little emphasis on oversight in some program areas. Land managers are trusted to lawfully perform their duties and are often directed to create their own performance standards and draft their own performance reviews. There was no meaningful mechanism to detect violations of policy or law. In this instance Regional program managers were routinely misinformed by EFMO with cavalier confidence. Sometimes the regional office was even *informed* of non-compliance, as occurred when the Principal wrote in a 2005 Operations Formulation System (OFS) request that the park needed a base increase for cultural resource management purposes because Section 106 compliance "...has been ignored at EFMO due to lack of staff." When oversight was finally provided, a decade of dysfunction was uncovered.
- **Cultural Resource Section 106 Reviewers:** These employees perform this critical function as a collateral duty and are often removed from each other and the NPS units they serve. Regional Cultural Resource Section 106 reviewers were slow to adopt the Planning, Environment, and Public Comment System (PEPC) to facilitate their reviews. This enabled potentially deceptive NPS managers to avoid transparency, since no one at the regional level could see the sum total of a park's Section 106 efforts (or lack thereof). The end result was sharply reduced opportunities for



objective and informed perspectives on the potential impacts of projects upon historic resources.

- **Inability to react appropriately to mismanagement warning signs:** Numerous EFMO employees on multiple occasions, both formally and informally, attempted to find a sympathetic reception from regional officials to evidence of mismanagement by the Principal – all without success. When efforts with immediate supervisors failed, employees resorted to parallel chains of command without success. Blatant clues of mismanagement presented to regional officials by the Principal and EFMO employees were not noticed, misinterpreted, or inappropriately reacted to.
- **Rewarding progress instead of preservation:** Projects and alleged improvements to NPS infrastructure are tangible and easily reference an obtained goal. Choosing to *not* build within NPS units in order to preserve the qualities articulated within the unit's enabling legislation are often unnoticed, unappreciated and unrewarded by NPS officials.

### 3. Perceived Conflicting Priorities:

- **Budget Allocation:** From 1999 to 2009 the annual operational budget for EFMO steadily increased from \$588,000 to \$1,117,000 (the latter figure is \$864,413 in constant 1999 dollars). Allocations increased for the maintenance division in unison with base funding increases (1999 - \$121,000, 2009 - \$366,000 (\$284,220 in constant 1999 dollars)). Allocation for the cultural resources division dramatically decreased, peaking in 2001 at \$29,000 and reducing to an annual average of just under \$3,000 for the remaining eight years. EFMO also received generous (\$4,366,000) specific project funds during this period. It is clear that while the cultural resources program was being dismantled due to a professed lack of funding, the maintenance program was rapidly growing, acquiring approximately 60% of EFMO's base funding increases.
- **Project Completion vs. Compliance:** Seasonal work forces, the federal fiscal cycle and special project funds availability may encourage managers to seek shortcuts related to compliance. Excess year-end funds can contribute to non-compliance as they did with EFMO's North Unit Storage Shed, because by definition they need to be spent quickly. EFMO repeatedly received project funds for "shovel-ready" projects that had not been reviewed by the compliance system.
- **Americans with Disabilities Act (ADA) vs. Cultural Resource Preservation:** One of the Principal's personal goals was to dramatically increase access to mound groups for wheelchair-bound visitors. This resulted in several projects including weaving a boardwalk, requiring 216 excavations, onto the landscape of an archeological site



**Findings**

- (13AM82) and dominating an ancient sacred location with a modern structure. Tens of thousands of additional linear feet of boardwalk were referred to as preferred alternatives within the unit's 2009 Draft General Management Plan. Section 106 consultation is an excellent tool designed to assist managers with overcoming potential legislative and user group conflicts. Tribal members associated with EFMO stated the Principal led them to believe the ADA *requires* the NPS to provide accessibility via boardwalks at the expense of cultural resource integrity.
- **Protection of Equipment vs. Protection of the Resource:** EFMO purchased several pieces of expensive equipment including backhoes, tractors, and riding lawnmowers but lacked sufficient facilities to protect them from inclement weather. Their solution was to build a shed within an archeological site (13AM189) which required 22 excavations. This shed structure dominated a sacred landscape in view of linear mounds and an associated hiking trail. The location of this project site was justified by claiming it was "previously disturbed." Ground penetrating radar later revealed the shed was built upon a remnant mound. Proper consultation could have steered EFMO toward a more suitable location for this structure, or a better space utilization plan for existing facilities.
  - **Employee Efficiency vs. Resource Preservation and Visitor Experience:** Despite a long history of maintaining the park with very little use of motorized vehicles, park staff became increasingly reliant on the use of tractors, ATV's and UTV's to get to work sites they formerly would have walked to. Over time, simple hiking trails widened to the width of roads, and rustic footbridges were replaced with 5 ton vehicle bridges. Gradually, the park's charming and rustic hiking trails were converted to maintenance roads that visitors were allowed to hike along. While employee efficiency increased as a result of this effort, resources were damaged and the visitor experience of the park was seriously degraded.



## MATTERS FOR CONSIDERATION

**Span of Control:** The Midwest Region Deputy Regional Director is responsible for the supervision of over fifty Superintendents. A sign of this overwhelming burden is the routine use of what amounts to self-evaluations for Superintendents. While this is the only way it can reasonably be accomplished given the magnitude of the task, it nonetheless forces senior regional management to believe what they are being told by the Superintendent is true. The end result is a lack of objective oversight, meaningless performance benchmarks, and a skewed vision of park conditions that may sharply diverge from reality.

**Warning Signs:** As expressed by the U.S. Attorney, regional officials lacked the ability or willingness to comprehensively analyze incidents warning of endemic mismanagement during the Principal's tenure at the park. Some of the signs missed include: valued employees leaving the NPS for other agencies or leaving the park/region for new positions; complaints and evidence of division marginalization; signs of extreme cronyism; a Chief of Maintenance assigned as a Section 106 Coordinator; a cultural resources management review team that rarely hears from a park despite \$4.3 million in project funding; concerns expressed from an alienated State Historic Preservation Office; memorandums detailing incidents of violations; OFS requests with *admissions* of non-compliance; and language within a Draft General Management Plan concerning nebulous and ill-advised future boardwalk construction projects that would dominate sacred landscapes. Regional law enforcement officials and cultural resource experts were also unable to recognize a connection between violations of the NHPA and ARPA.

**Checks and Balances:** Regional funding approval of EFMO projects required no assurances related to the proper completion of compliance.

**Use of Inappropriate Administrative Tools:** The use of the Operations Evaluation by the Midwest Regional Office was too broad for fully investigating the alleged violations. The most germane component of the evaluation is buried (pg. 40 of 52) within analysis of *all* of EFMO's operational and administrative functions. Although the Regional Chief Ranger was an Operations Evaluation Team Member, inexplicably the need for a NPS instigated criminal investigation never materialized which resulted in an under-informed and weak response. An objective fact finding cadre of law enforcement professionals and subject matter experts should have followed in the wake of the Operations Evaluation.

**Advisory Council on Historic Preservation (ACHP):** Continued Section 106 compliance failures by the NPS could result in the termination of the nationwide programmatic agreement by the ACHP, which would devastate current project development and completion procedures service-wide.

**Paraprofessional Archeologists:** The Midwest Archeological Center developed this innovative program with the intention of educating field employees so they could assist with the oversight of projects affecting historic properties. This program was abused by EFMO employees, who

**Matters For Consideration**

used the paraprofessional designation as a means of circumventing proper archeological site investigations.

**Misapplication of the “previously disturbed” concept:** The EFMO management team consistently self-proclaimed compliance exemption due to previous disturbances caused by historic farming practices or the construction of the monument’s infrastructure. For instance, multiple projects adjacent to EFMO’s headquarters were completed without Section 106 review because the area had been farmed. It was common knowledge amongst the management team and general park staff that the headquarters location was the site of a mound group of approximately 60 burial and ceremonial mounds. Geophysical studies later determined that while the mounds were not visible on the surface, they still exist and are in need of preservation and protection. Although the above-ground manifestations of these mounds had been mostly obliterated by 20<sup>th</sup> century agricultural and landscaping practices, geophysical studies have proven recognizable remnants of many of these mounds remain intact below the plow zone, potentially including burials. The protection of these mounds is the primary reason for the monument’s existence. A history of previous disturbance at any given site cannot and should not be used to justify further disturbance without careful consideration and consultation.



Maintenance road constructed in the absence of any Section 106 review. An unused and reforested historic farming trail was converted into an access road which connected the maintenance facilities with hiking trails in the North Unit. An over-reliance on the use of vehicles led to the road’s construction and the widening of “hiking trails,” which in effect became roads for park staff. NPS Photo.



### Conclusion



**Conclusion:** The explication of events, actions, and decisions contained in this report are not, we believe, unique to EFMO in that time and place, or with that constellation of actors. The challenges of effective use of Section 106 review for its intended purpose exist in many parks for many reasons, not all of them by intent or design. We understand improvements are being made for more critical review of parks' participation in the compliance process at all levels. For instance, the awarding of project money is now linked to compliance completion, and accountability for overseeing proper compliance is more strongly articulated in supervisory performance standards. While these are positive and appropriate steps, it is still possible to subvert the process in the interest of “economizing” and “streamlining”.

The wake-up call this SMR provides should be the impetus for critical evaluation by all employees at all levels involved with the compliance review process. Traditionally viewed as an obstacle or bottleneck, Section 106 offers the opportunity (legal requirement notwithstanding) to take stock of the potential impacts of a proposed project, and to carefully consider whether or not it meets the needs of the park, the stakeholders, and the public in a manner most suited to the agency mission and principles.



Park headquarters drainage improvements (2000) performed without completing Section 106 review. Geophysical evidence now shows many mound remnants – potentially with intact burials – in the headquarters vicinity. NPS photo.