

PROGRAMMATIC AGREEMENT
AMONG
NATIONAL PARK SERVICE,
THE NEW JERSEY HISTORIC PRESERVATION OFFICER,
THE SANDY HOOK PARTNERS, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE REHABILITATION OF PORTIONS OF FORT HANCOCK
AND THE SANDY HOOK PROVING GROUND
NATIONAL HISTORIC LANDMARK DISTRICT,
SANDY HOOK, NEW JERSEY

WHEREAS Sandy Hook including Fort Hancock and the Sandy Hook Proving Ground is listed on the National Register of Historic Places as a National Historic Landmark, a historic property of national significance; and

WHEREAS The National Park Service recognizes its responsibilities for the preservation of cultural resources at Sandy Hook and the Fort Hancock and Sandy Hook Proving Ground National Historic Landmark District and will enter into an agreement with Sandy Hook Partners LLC (Partners) for the purpose of preserving these resources for the benefit of the public; and

WHEREAS in keeping with Presidential Executive Order 13287 “Preserve America” which articulates the federal policy to “foster public–private initiatives and investment in the use, reuse and rehabilitation of historic properties”, this agreement represents the value and spirit of partnership, the tangible results of which will celebrate the memory of those who bravely served their country and the central role Fort Hancock has played in that service; and

WHEREAS the 1979 General Management Plan (GMP) proposed rehabilitation as the preferred treatment of the buildings of Fort Hancock, and the 1990 Amendment to the GMP identified utilizing the historic lease program at the Fort Hancock portion of Sandy Hook as the preferred NPS treatment; and

WHEREAS the Sandy Hook Unit, Gateway National Recreation Area of the National Park Service (NPS Sandy Hook Unit) proposes to lease certain buildings within the Fort Hancock and the Sandy Hook Proving Ground through the National Park Service Leasing Program for the purpose of rehabilitating and reusing currently vacant and deteriorating historic buildings; and

WHEREAS the NPS Sandy Hook Unit, in preparation for the project, prepared guides for the treatment of Fort Hancock including: Fort Hancock Rehabilitation Guidelines, March 1999; Sandy Hook Historic Structures Paint Plan, August 2000; Fort Hancock Sign Plan, March 2002; and proposes to complete a Cultural Landscape Treatment Plan in the summer of 2004; and

WHEREAS 36 CFR 800.2(d)(3) states, “The agency official may use the agency’s procedures for public involvement under the National Environmental Policy Act...if they provide adequate opportunities for public involvement consistent with this subpart;” and

WHEREAS the NPS Sandy Hook Unit prepared an Environmental Assessment (EA) pursuant to the National Environmental Policy Act for the Adaptive Use of Fort Hancock and the Sandy Hook Proving Ground Historic District, and identified the Rehabilitation Alternative as the preferred alternative to the No Action Alternative; and

WHEREAS the EA specifically included reference to the effect of the project on historic properties, and solicited public comment, pursuant to Section 106 of the National Historic Preservation Act; and

WHEREAS the NPS Sandy Hook Unit held three public meetings concerning the Environmental Assessment, maintaining an open comment period of 150 days from the date of publication, and one on a Traffic Study, with a comment period of 30 days from the date of publication, each including discussion and soliciting comment on the effect of the project on historic properties; and

WHEREAS the NPS Sandy Hook Unit has issued a Finding of No Significant Impact (FONSI), signed by the NPS Northeast Regional Director on July 8, 2003, based on the Environmental Assessment and incorporating response to public comment; and

WHEREAS the Partners have been competitively selected by the NPS as the developer for a number of structures at the Fort Hancock and Sandy Hook Proving Grounds sites and will enter into a lease agreement which is attached hereto and incorporated by reference herein; and

WHEREAS The Partners propose to pursue Historic Preservation Tax Credits for all or part of the rehabilitation; and

WHEREAS Historic Preservation Tax Credits are available for rehabilitation of income producing historic property where the lease period is at least 39 years and where the rehabilitation is in conformance with the Secretary of the Interior's Standards for Rehabilitation (Standards); and

WHEREAS Final certification that projects meet the Standards and qualify for the Tax Credits is made by the National Park Service, Heritage Preservation Services in Washington DC. (NPS HPS); and

Whereas the NPS has consulted with the New Jersey State Historic Preservation Officer (NJSHPO), the Advisory Council on Historic Preservation (the Council), and the interested public pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and Sections 110(f) and 110(k) of the same Act (16 U.S.C. 470h2(f));

NOW THEREFORE, the NPS, NJSHPO, ACHP, and the Partners agree that the project shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

NPS Sandy Hook Unit will ensure that the following measures are carried out. Failure to meet these stipulations will constitute a violation of this agreement.

1. Responsibilities of the Sandy Hook Partners

- a. Prior to any work on the site, the Partners will engage a qualified project manager to develop all plans for and oversee execution of site clearing, archeology, hazardous materials abatement, stabilization and preparation for construction covered by this PA; the project manager will also oversee the construction covered by this PA. The work must be carried out by, or be under the direct supervision of, a person or persons meeting at a minimum the Secretary of the Interior's "Professional Qualifications - Standards for Historic Architect" and/or "Standards for Historian" (48 CFR 44738-9). The project manager must be on site for the entire duration of the project.
- b. All activities having the potential to affect archeological resources pursuant to this PA must be carried out by, or under the direct supervision of, a person or persons meeting at a minimum the Secretary of the Interior's "Professional Qualifications - Standards for Archeology" (48 CFR 44738-9), with at least 5 years experience in historical archeology. The archeologist must be on site during all ground disturbing activities.
- c. All persons specified in this responsibility must be engaged by the Partners prior to the final approval by the NPS and SHPO of designs for the site.
- d. Prior to undertaking work on the site, the Partners will provide to the NPS a written plan for the implementation of the rehabilitation of the leased historic buildings at Fort Hancock and the Sandy Hook Proving Ground. The plan will include the anticipated sequence(s) or phasing of actions, a description of all anticipated tasks, a list of responsible individuals identified by name and/or position, and intermediate completion points. This agreement must be included as an attachment to all professional service contracts and must be incorporated by reference in the contracts. The work plan shall detail procedures, to be provided by NPS, for:
 - i. direct communication on technical issues between the NPS Sandy Hook Unit and NPS Historic Preservation Services (Washington), and those providing historic architectural and archaeological expertise for the project as determined necessary by the architectural and archeological professionals.
 - ii. direct involvement by these professionals in the development of plans and specifications for all aspects of work on the site to ensure appropriate steps to safeguard historic material are incorporated into these documents at the project development stage.
 - iii. the conduct of archeological monitoring during construction activities. This work will be conducted under contract with the Partners.

- iv. the NPS Sandy Hook Unit to halt work on the site if any activity conflicts with the Secretary of the Interior's "Standards for the Treatment of Historic Properties" or may cause loss of contributing resources or damage to archaeological resources.
 - e. The plan of work will include the development of drawings indicating all known or anticipated historic fabric on the site, and detailing its treatment and protection during demolition and preparation for construction. These will include, but are not limited to, provisions to ensure that:
 - i. significant features needed to guide later construction will be identified, marked, and protected.
 - ii. the grading on the site is done under the observation of a qualified archaeological monitor.
 - iii. reasonable measures including, but not limited to, vibration monitoring will be taken to avoid damage to historic properties scheduled for treatment as any part of the development. These measures will be taken before, during and after the applicable treatment measures are implemented.
- 2. The design and specifications for the project, including site design, stabilization, hazardous material abatement, and new construction, will:
 - a. meet all applicable national or local building codes as identified by the NPS;
 - b. responsive to the recommended approaches to rehabilitation and new construction set forth in the Secretary of the Interior's "Standards for the Treatment of Historic Properties;"
 - c. be developed in consultation with NPS and the SHPO;
 - d. include schematic design and construction documents for building design, topography and changes to topography, and site planning (including all public spaces) to be submitted by the Partners for review and approval to the SHPO through the NPS.
- 3. Approvals
 - a. The NPS must review and approved the engagement of the project manager and archeologist specified in Stipulation 1.
 - b. The NPS must approve parts I, II and III of all "Historic Preservation Certification" applications, including plans and specifications, prior to submission by the Partners to the NJ SHPO.

- c. Approved plan(s) may require revisions based upon the outcome of the procedures described in section 7. for archeological resources discovered during construction.
 - d. The Partners intend to seek the Rehabilitation Tax Credit for some or all leased buildings, and will submit and obtain approvals for Parts I, II, and III of the Historic Preservation Certification Application for all leased buildings, regardless of whether or not the credits will be sought. Approval of Parts I, II, and III is conferred by the NPS Historic Preservation Services in NPS Headquarters, Washington DC.
 - e. The review and approval process of Part II and Part III of the Historic Preservation Certification Application shall satisfy the requirements for NPS S106 Review under the National Historic Preservation Act.
 - f. If the Part III, request for Certificate of Completed Work is not submitted or denied by either the SHPO or the NPS, then 36 CFR Part 800.6 shall be implemented by the NPS.
 - g. For the purposes of the Tax Credit Program, all rehabilitation work on leased buildings will continue to be subject to review for a period of five years after the date of final certification. Violations of the Standards made during that period may cause credits taken to be recaptured. NPS Sandy Hook Unit will employ its Standard Operating Procedures for Section 106 review for this purpose.
4. Documentation
- a. All documentation for the project will conform to Tax Credit certification requirements as determined by the NPS HPS in consultation with New Jersey SHPO. Copies of all project documentation will be provided to both NPS Sandy Hook Unit and NPS HPS in reproducible hard copy and in electronic format, as appropriate, and in a timely manner, as the project proceeds.
5. Requirements to Ensure Completion of the Project
- a. Completed forms “Part III Request for Certification of Completed Work” are required for all structures regardless of whether or not the Rehabilitation Tax Credit is sought. Final approval of tax credits will be dependent upon the completion of the entire project.
 - b. No work will be considered complete until the Part III document has been certified by the authorized NPS official in the Washington Office.
6. Review and Comment on Submittals
- a. All documents prepared for review and approval pursuant to the terms of this agreement shall be sent to the NPS and SHPO.

- b. SHPO review and approval of documents shall be consistent with the New Jersey Register of Historic Places Act.
7. Alterations to Project Documents
- a. The Partners shall not alter any plan, scope of services, or other documents that have been reviewed and approved pursuant to this agreement, except to finalize documents commented on in draft, without first affording NPS and the SHPO the opportunity to review and approve the proposed changes.
8. Archeological Sites
- a. The NPS Sandy Hook shall ensure that archaeological surveys within any uninvestigated and under-investigation portions of the Area of Potential Effect (APE) are conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23) and take into account the NPS publication The Archaeological Survey: Methods and Uses (1978) and the state guidelines for conducting archaeological surveys. The survey shall be conducted following consultation with the SHPO and a report of the survey, consistent with the SHPO's Guidelines for Preparing Cultural Resource Management Archaeological Reports Submitted to the SHPO (December 1994) shall be submitted to the SHPO for review and consultation.
 - b. For areas that have been previously surveyed to the depth of the proposed impact or otherwise examined by archaeological investigations, monitoring during construction should be done provided that:
 - i. Background investigation or pertinent historical documents show no cultural or archaeological resources in the APE; and
 - ii. The results of the archaeological survey or previous archaeological investigation showed no significant archaeological remains.
 - c. If potentially significant archaeological resources are discovered during monitoring, ground-disturbing activities in the area of the resource shall cease. Consultation between the NPS Sandy Hook and the SHPO shall begin at the time of discovery. Attempts should be made to avoid impacting the resource, preserving it in place. If avoidance is impossible, data recovery will be implemented as described below:
 - i. The NPS Sandy Hook Unit shall develop a data recovery plan for archaeological remains that the NPS Sandy Hook Unit and SHPO agree cannot be avoided or appropriately preserved in place. The data recovery plan to retrieve significant archaeological information, will be developed and implemented by the NPS Sand Hook Unit and The Partners, following

approval from the SHPO and prior to the mitigation of project-related activities within or in the vicinity of the archaeological sites.

- ii. The NPS Sandy Hook Unit shall ensure that the data recovery plan for each eligible site addresses substantive research questions developed in consultation with the SHPO. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation [as amended and annotated by the NOPS] (48 FR 44734-37) and take into account the Advisory Council on Historic Preservation's publication, Treatment of Archaeological Properties. Each plan shall specify, at a minimum, the following:
 1. The property, properties, or portions of properties where data recovery is to be carried out; and
 2. The research questions to be addressed through the data recovery, with an explanation of their relevance and importance; and
 3. The methods to be used, with an explanation of their relevance to and effectiveness in addressing the research questions; and
 4. A discussion of the potential research value of any human remains that may be encountered, as well as a process for consultation with the SHPO, the ACHP, any descendent communities, and any persons or groups that have expressed an interest, to develop a treatment plan for human remains; and
 5. A proposed schedule for the submission of progress reports and the draft data recovery report to the SHPO.
- iii. The NPS shall submit the data recovery plans to the SHPO for review and approval. They will consult to resolve any objections to the data recovery plan as proposed. The data recovery plan shall be implemented by the NPS once approved by the SHPO. If no response is received from the SHPO after 30 days of receipt of adequate documentation, the NPS may assume the SHPO's concurrence and proceed to implementation of the plan submitted.
- iv. The NPS shall ensure that the data recovery plan(s) will be carried out by or under the direct supervision of an archaeologist(s) who meets, at minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9).
- v. The NPS, in consultation with the SHPO, shall develop adequate provisions for site security during data recovery to avoid vandalism.

- vi. The NPS or its designee, in consultation with the SHPO shall ensure that all materials and records resulting from the survey, evaluation, and data recovery conducted for the project will be curated in accordance with Curation of Federally-Owned and Administered Archeological Collections (36 CFR Part 79).
- vii. The NPS shall ensure that all final reports resulting from actions pursuant to this PA will be provided, to the SHPO, and upon request, to other interested parties. All such plans shall be responsive to contemporary standards. Final plans shall be submitted to SHPO for review and approval. The NPS shall implement approved final plans.

9. Disposition of Historic Materials

- a. All historic materials including but not limited to building components, fixtures and furnishings, archaeological artifacts and data are the property of the Federal Government. As they are recovered, disposition of these resources will be determined by the NPS in consultation with experts as deemed necessary. Removal of any such materials from the site or from the park is subject to penalties provided for in law and regulation.

10. Report and Review

- a. On or before June 30th and December 31st of each year until NPS, the Council, and the SHPO agree in writing that the terms of this agreement have been fulfilled, the Partners shall prepare and provide a report to the NPS and the SHPO addressing the following topics:
 - i. Progress in the rehabilitation of the site.
 - ii. Progress in site preparation.
 - iii. Progress in design and construction.
 - iv. Status of any interim protection of historic properties.
 - v. Progress in archeological monitoring and data recovery.
 - vi. Any problems or unexpected issues encountered during the year.
 - vii. Any changes the Partners believe should be made in the implementation of this agreement.
- b. Based on the review of this report, the NPS and SHPO shall determine whether this agreement shall continue in force, be amended or terminated. If the decision is to

amend or terminate, NPS and SHPO shall consult with the Partners in accordance with the following stipulation.

11. Resolving Objections

- a. All signatories commit to ongoing and productive dialogue and consultation to ensure the success of the project.
- b. However, should any signatory (as defined in the Advisory Council's regulations, 36CFR Section 800.6.c) to this agreement object to any action carried out or proposed by another signatory with respect to the development of the site or to the implementation of this agreement, NPS shall consult with the objecting party to resolve the objection. If after initiating such consultation, NPS determines that the objection cannot be resolved through consultation, NPS shall forward all documentation relevant to the objection to the SHPO, including NPS's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the SHPO shall exercise one of the following options:
 - i. Advise NPS that the SHPO concurs in NPS's proposed final decision, whereupon the NPS will respond to the objection accordingly; or
 - ii. Provide NPS with recommendation, which NPS shall take into account in reaching a final decision regarding its response to the objection; or
 - iii. Notify the NPS that the objection will be referred for comment to the Council, pursuant to 36 CFR Section 800.6(b), and proceed to refer the objection and comment to the Advisory Council on Historic Preservation (the Council).
- c. Should the SHPO not exercise one of the above options within 30 days after receipt of all pertinent documentation, the NPS may assume the SHPO's concurrence in its proposed response to the objection.
- d. NPS shall take into account the SHPO's recommendations or comments provided in accordance with this stipulation with reference only to the subject of the objection. All responsibilities under this agreement that are not the subject of an objection shall remain unchanged/

12. Amendments

- a. Any signatory to this agreement may propose to NPS that the agreement be amended, whereupon NPS shall consult with the other signatories to this agreement to consider such an amendment. 36 CFR Part 800.5(c) shall govern the execution of any such amendment.

13. Termination of this Agreement

- a. Per 36CFR800.6(c)(8): “If any signatory determines that the terms of a Memorandum of Agreement cannot be carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The Agency Official shall either execute a Memorandum of Agreement with signatories under §800.6(c)(1) or request the comments of the council under §800.7(a).” 36CFR800.14(b)(3) regulates the development of Programmatic Agreements and states that the undertaking shall follow 36CFR800.6.
- b. If the terms of this agreement have not been implemented in a timely way in accordance with the developer’s plan (as submitted in accordance with section 1.d.) this agreement shall be considered null and void, and the NPS, if it chooses to continue with its participation in the development, shall re-initiate its review in accordance with 36 CFR 800.

Execution of the agreement and implementation of its terms evidence that NPS has taken into account the effects of the undertaking on historic properties.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their authorized representatives the day and year written below.

NATIONAL PARK SERVICE – SANDY HOOK UNIT, GATEWAY NRA

By: _____ Date: _____
 Richard Wells, Acting Superintendent

STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
 Dorothy P. Guzzo, Administrator

SANDY HOOK PARTNERS

By: _____ Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: _____
 John Fowler, Executive Director