

Meeting Summary

The National Center for the American Revolution/National Park Service Land Exchange Consulting Party Work Session Dec 17, 2009

Background

A meeting of the consulting parties for the National Center for the American Revolution (ARC)/National Park Service (NPS) land exchange was held on Thursday, December 17, 2009 to discuss the compliance process in detail and to further refine the deed restrictions developed to minimize the potential impact on cultural resources that may result when the site moves from federal to private ownership. A court reporter was present to record the meeting and will provide a detailed transcript. The purpose of this summary, therefore, is to highlight the key issues and concerns raised, possible resolutions voiced, and next steps needed to move the Section 106 compliance process forward.

General Compliance Process Overview

Cynthia MacLeod and Shaun Eyring described the project and the compliance process to the work session participants. This included a brief project background and a summary of the Section 106 process undertaken by the park to date.

Concerns were expressed, especially by representatives from the State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP), over the clarity of the project's Section 106 process and over the role of Section 106 once the land exchange is complete. Specific issues included:

- Process was not clear to everyone present. The SHPO, for example, was unsure about exactly where the NPS was in the process. The SHPO and ACHP suggested that the NPS be very clear about where they are in the process, how they have engaged the public and consulting parties, and to make a determination of effect.
- Questions were raised concerning when Section 106 ends; the SHPO asked for clarification about its role once the land exchanges into private hands. The ACHP lawyer by phone stated that the deed restrictions would play a key role in ensuring long-term preservation of the land. The lawyer suggested that Section 106 would include a programmatic agreement (PA) among the NPS, the SHPO, the ACHP, and others as appropriate ensuring that deed restrictions would be developed and become a legal part of the land exchange. A signed PA would complete Section 106 obligations for the undertaking.

- Concerns were raised that not all appropriate consulting parties were present or invited to consult. The SHPO suggested five additional consulting parties that they would like to see participate.
- Concerns were cited over whether the land exchange would be defined as an adverse or no adverse effect on cultural resources. While the NPS would like to say that the exchange has only a potential adverse effect that would be avoided or mitigated by the deed restrictions, NPS agreed that the paperwork would say adverse effect.

Deed Restriction Discussion

All deed restrictions were discussed with the work group and questions answered. No specific concerns were raised and all present appeared to be in general agreement with the first five restrictions: 1. Right to Access Bell Tower; 2. Subdivision Limitation; 3. Right of First Offer; 4. Signage; 5. Height Limitations

Concerns and recommendations were voiced about the following restrictions:

Plan of Development (POD)

After much discussion and clarification, Arc requested that we drop this restriction, since there is no formal POD yet in Philadelphia City code; it is only proposed. Stakeholders present, such as city and civic association representatives felt that city review, under which any future site development would fall, would be adequate to address issues of character, use, and general design appropriateness for the area.

Archeology

Much discussion centered on the archeology restriction. While in general the restriction was agreeable to those present, concerns were raised about the lack of standards for curating archeological objects and the need for stronger language to address tribal interests. Concern was also expressed about the need for archeological studies before the land exchange is completed and the park suggested that the NPS provide a Phase 1a study. Separate attention in a new deed restriction relative to concerns of the Tribes representatives was suggested in order to ensure that future owners of the property are appropriately sensitive to issues of cultural patrimony, sacred sites and objects.

Next Steps

1. Identify standards for curating archeological objects recovered from the site (Delaware Nation representative and NPS);

2. Provide examples of language identifying role/process of NPS and others for future consultation with three federally recognized tribes (Delaware Nation representative and NPS);
3. Conduct Phase 1a archeological study (NPS);
4. Provide Phase 1a and deed restriction information to inform appraisal (NPS);
5. Identify other interested parties that need to be consulted before continuing with action, including the five additional parties that were identified during the meeting (NPS);
6. Continue consulting with interested parties as part of Section 106 process (NPS);
7. Develop and distribute for review Section 106 documentation with adverse effect finding; begin developing a programmatic agreement (NPS);
8. Hold additional consulting party meetings as needed (NPS).