

**INDE**  
**DEED RESTRICTION CONCERNS and NPS RESPONSES**  
**From the 1-22-2010 Meeting**

**Height and Footprint**

- Height restrictions were identified to protect the view shed for the Custom House along Chestnut Street and 3<sup>rd</sup> Street. Emphasis was placed on protecting the view shed from the First Bank. Questions were raised about the rationale for the various heights. There was a concern that the height restrictions seemed arbitrary.

*Response: This scheme satisfied two requirements: 1) the NPS's desire to respect the scale of the First Bank (a National Historic Landmark), and the general scale and character of Chestnut St, Y and 2) ARC's circulation, space, and utility needs for the future museum. NPS worked closely with ARC's architect, Ayers, Saint, Gross, to arrive at the heights and massing indicated on the height limitations diagram dated December 17, 2009.*

- There is a concern that the footprint of a new building may extend to the property line along Chestnut Street, whereas the existing building is set back from the property line and aligns with the façade of the US Custom House on Chestnut Street. The concern focused on how the alignment of a new building will impact the US Custom House and the Chestnut Street corridor.

*Response: The proposed building footprint aligns with, and would reestablish, the historic building line along Chestnut St. The Chestnut St. sidewalk will remain a consistent, tree-lined corridor until it reaches the grand US Custom House entry façade. In addition, allowing new construction to the property line may eliminate the possibility of unprogrammed, underused space along a secondary façade. This proposed building envelope is consistent with the ARC conceptual design and anticipated space needs.*

**Tribal**

- There will be another meeting with all three tribes, NPS and ARC to make sure that the deed restrictions are correctly framed and everyone feels comfortable with language in the proposed deed restrictions. Tamara Francis, Sherry White, ARC and NPS agree that they will participate in this meeting.
- ARC and Tribes may need a separate agreement that outlines the detailed process that ARC will follow when implementing the deed restrictions. ACHP and Chuck Smythe will paraphrase Section 106 and NAGPRA provisions from other transfer cases that can be used in this situation – series of steps to address consultation.

*Response: The tribes have requested that the processes be identified in the deed restrictions, instead of through a separate agreement with the ARC. The NPS has developed language for the three proposed deed restrictions based on paraphrasing language from Sec. 106, NAGPRA and NPS Management Policies 2006 (interpretation), and is in discussions with tribal representatives, Tamara Francis and Sherry White, on these deed restrictions. The third tribe will defer to the other*

*two in this discussion, but will be given the opportunity to review the final language. ARC has agreed in principle with the deed restrictions and will be given the opportunity to review the language after the tribes have come to agreement.*

### **Agreements (PA and/or legally binding commitments)**

- A programmatic agreement needs to be developed to include the Tribes, SHPO, ACHP and NPS. Some believe it would be appropriate to include The City of Philadelphia and ARC so that the agreement continues after the exchange.

*Response: NPS has determined the land exchange to be an adverse effect on cultural resources under Section 106 of the National Historic Preservation Act as amended. We are in the process of developing a Programmatic Agreement (PA) among our key consulting parties that stipulates how we plan to resolve those adverse effects. Typically, PA signatories include the State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), and associated federally recognized tribes. Signatories can also include - although it's not required - other invited parties who have a key interest or involvement in the federal undertaking. For this land exchange, NPS will recommend that the City of Philadelphia be a signatory on the PA to assure appropriate public comment during the rezoning and building design after federal transfer. NPS will invite ARC to be a signatory to the PA. They may elect to participate or not at their sole discretion.*

### **Design**

- Concerns that any new building will be compatible (materials, etc.) with the historic area and that there are appropriate opportunities for the public to comment on any new construction.

*Response: NPS will ask the City of Philadelphia to be a signatory on the PA or if the City does not want to be a signatory the NPS will request that the City provide the consulting parties with a clear written understanding of the City rezoning and design review process and associated public comment opportunities.*

### **Use**

- Several participants still feel that a deed restriction restricting the use of the property by future owners is needed.

*Response: NPS will ask the City of Philadelphia to be a signatory on the PA or will request that the City provide the consulting parties with a clear written understand of the City rezoning and design review process. NPS believes that local zoning is the appropriate way in which to address any future development that may occur on the property.*

- There are concerns about where a service access would be located. Currently, the service access is proposed for Third St. The preference is to have the service access not on a major street and instead to have it on a street like American St.

*Response: While American St. would be preferred, it is managed by GSA and is adjacent to a significant federal facility (Custom House) that houses the NPS and Homeland Security so access to this street is strictly controlled. The NPS had discussions with GSA but there has been no willingness to allow a service entrance from this street.*

### **Future Development**

- Concerns that it is clear that the right of first offer applies to future sale or lease and there were concerns that NPS will not be able to respond in the time frames laid out in the deed restrictions.

*Response: NPS is comfortable with the time frames in the deed restriction but will include language that makes it clear that the acquisition can be by the NPS or its Designee, which will allow the government to use a non-profit land trust to assist with potential future acquisition.*

### **ACHP**

- Concerned about specific definitions of “significant” and “adverse effect” (i.e. page 5)

*Response: NPS will include an appropriate legal definition for “significant” and “adverse effect” in the deed restriction.*

*Significance - the meaning or value ascribed to a structure, landscape, object, or archeological site based on the National Register criteria for evaluation. Such a property or resource is associated with events, activities, or developments that were important in the past, with the lives of people who were important in the past, with significant architectural history, landscape history, or engineering achievements, or it has the potential to yield information through archeological investigation about our past.*

*Adverse effect - is found when an activity diminishes, either directly or indirectly, any of the characteristics of a historic building, structure, object, landscape, or archeological site that qualifies the property for inclusion on the National Register of Historic Places.*

- Concerned about what “work plan” means in the deed restrictions.

*Response: Work plan has been defined as written plan in the deed restriction.*

### **PA SHPO Office**

- Concerned about the ability of the federal government to respond to a right of first offer during short time frames in the deed restrictions.

*Response: NPS intends to include “Designee”, which will allow the government to use a non-profit land trust to assist with potential future acquisition.*

2/1/2010

- Concerned that this land exchange is happening too quickly, which is not allowing enough time for stakeholder involvement, review or comment.

*Response: NPS has worked hard to provide a variety of opportunities for public and stakeholder input and comments including a public meeting, posting of information to the public PEPC website and stakeholder meetings. The NPS intends to honor the commitments of the letter of intent and complete the exchange process in 1-year.*

- Questioned why the NPS is utilizing deed restrictions and not a covenant that would be held by the SHPO. A covenant would keep the consulting parties involved beyond the exchange and throughout the parcel development.

*Response: Deed restrictions are covenants. The solicitors see no legal difference between a deed restriction and covenant. Deed restrictions run with the land regardless of ownership so they provide protection in perpetuity. Assuming that the City of Philadelphia and the SHPO will be part of the PA, this will allow for future public comments.*

### Other

- All parts want to better understand the City of Philadelphia's process for approval of development on this site.

*Response: The City of Philadelphia will be invited to become a signatory of the PA, which will allow for future public comments.*

- There is concern that because the process is moving so quickly that the consulting parties have not seen all the documents such as the PA so they are not sure if these future documents will really address their concerns.

*Response: NPS believes the PA will allow for and address all outstanding concerns regarding the proposed land exchange. If that is not the case and there is a fatal flaw, NPS commits that we will go back to the stakeholders to resolve it.*