

Preserving America's Heritage

June 25, 2008

Mr. Frank J. Cianfrani
Chief, Regulatory Branch
Corps of Engineers – Philadelphia District
Wannamaker Building, 100 Penn Square East
Philadelphia, PA 19107-3390

Re: CENAP-OP-R-2007-120-24, HSP Gaming L.P. permit application for “Sugar House Casino,” Philadelphia, Pennsylvania

Dear Mr. Cianfrani:

This letter responds to your June 5, 2008 request that the Advisory Council on Historic Preservation (ACHP) review the manner in which the Corps of Engineers has coordinated its responsibilities under Section 106 of the National Historic Preservation Act (16 USC 470f) and its implementing regulations, “Protection of Historic Properties” (36 CFR Part 800) in its review of the referenced permit application. Your letter also asks for our advice, guidance, and assistance in moving the Section 106 process forward for this undertaking, which we are providing to the Corps pursuant to 36 CFR §800.2(b)(2) and §800.9(a).

We have reviewed correspondence exchanged among the Corps, the Pennsylvania State Historic Preservation Officer (SHPO), and other consulting parties (including the Philadelphia Archaeological Forum, the Kensington History Project, the Delaware Nation, Delaware Riverkeeper, Penn Treaty Museum, Northern Liberties Neighbors Association, and the archaeological consultants A.D. Marble). We have also discussed this matter with the Pennsylvania SHPO and representatives of your office. We offer the following comments regarding actions taken to date by the Corps, and future actions that need to be considered.

Overall, it is our advisory opinion that the Corps is meeting its initial responsibilities under both the ACHP’s regulations and those of the Corps (33 CFR Part 325 Appendix C) to identify historic properties. Further, the Corps has acknowledged several other

consulting parties concerned with the effects of the proposed undertaking on historic properties and solicited their comments as the Section 106 process has gone forward.

1. Identification of consulting parties. The Corps appears to be proactive in allowing a diverse group of parties to participate in the Section 106 process. Moreover, it has solicited input from Indian tribes, archaeological and preservation organizations, and neighborhood organizations as the review process has proceeded. We believe the Corps, and the public at large, will benefit from this broad range of perspectives as it works through this project's possible adverse effects to historic properties.

2. Identification of historic properties. The initial archaeological surveys to determine the existence and nature of any pre- and post-contact archaeological properties that may be eligible for inclusion to the National Register of Historic Places have been coordinated closely with the Pennsylvania SHPO, and the results of these investigations shared with the other consulting parties. Many of these consulting parties have provided detailed comments to the Corps, raising several issues about the integrity of the remains that still exist on the project site and the adequacy of the investigations undertaken to date. In their March 26, 2008 letter to your office, the Pennsylvania SHPO has summarized these broad concerns in a series of recommendations, some focusing on the identification of historic properties, and others on subsequent mitigation of adverse effects. To complete the historic property identification process, we believe the Corps should take the following three actions.

First, the consulting parties are in agreement that additional investigations need to be carried out to determine if any remains of British Redoubt No. 1 still exist within the permit area, and what condition they may be in today, given the extent of ground disturbance since the 18th century. We believe this is an appropriate step to take in order to determine the presence of remains, and if extant, whether they retain sufficient integrity to be eligible for listing in the National Register.

Second, the Pennsylvania SHPO has agreed that the pre-contact component of site 36PH137 is eligible for listing in the National Register of Historic Places for the information it contains (that is, eligible under Criterion "D"). We believe the Corps should request the opinion of both the Delaware Nation and the Stockbridge-Munsee Community, Mohican Nation, on whether this site may be eligible under any other National Register criteria, since they can best address whether the property is of traditional religious and cultural significance to tribes.

Third, depending on the nature and depth of anticipated construction disturbance in the area, the Corps should require the applicant to further investigate where the original shoreline was located. This will enable the Corps to more effectively assess whether historic properties exist in the area that may be adversely affected by new construction.

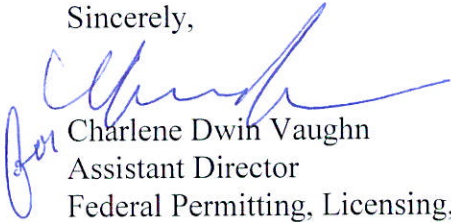
3) Need for in-house expertise: Finally, since the Philadelphia District does not currently have a professional archaeologist on its staff, and the controversial preservation issues in this case are archaeological in nature, your office should request the assistance of one of the Corps' archaeologists in another District office. This qualified professional could assist you in reviewing and making some of the findings and determinations that are the responsibility of the federal agency with jurisdiction over the undertaking. Findings and determinations the federal agency will need to make include, for example,

- at what point has the applicant made a “reasonable and good faith effort” to identify historic properties as the ACHP’s regulations require;
- decisions regarding National Register eligibility;
- assessments of effects and adverse effects to historic properties;
- development of reasonable and appropriate mitigation measures to resolve adverse effects.

We believe that tapping the Corps' considerable professional archaeological expertise will also assist the Philadelphia District in keeping the Section 106 discussions focused on those steps in the process that have not yet been completed or initiated, allowing the process to move ahead in a relatively straightforward manner.

We hope these comments are helpful to you. If you would like to discuss these issues, do not hesitate to call Dr. Tom McCulloch, who can be reached at 202-606-8554 or by eMail at tmcculloch@achp.gov.

Sincerely,



Charlene Dwin Vaughn
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs