

date: October 2, 2008
to: Sugar House Consulting Parties
from: Torben Jenk, (215) 739-6061, doxot@verizon.net
topic: Professional Standards for Sugar House Section 106

The National Historic Preservation Act, Section 106 clearly states:

"Professional standards. Section 112.a.1.A of the act requires **each Federal agency responsible for the protection of historic resources, including archaeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.**" [36 CFR § 800.2.a.1]

On Jan. 22, 2008, James Boyer wrote:

"Please understand that some of us involved in this consultation do not have a professional background in the field of history or archaeology."

On Oct. 1, 2008, James Boyer wrote:

"As you know, we sent a letter to PHMC on August 27, 2008, summarizing the identification and evaluation efforts that have been carried out to date at the Sugar House site. In that letter, we stated our position that the applicant has made the required 'reasonable and good faith effort to identify historic properties.' We also made a determination that construction of the development as proposed would have an adverse effect on identified historic and pre-historic properties.

"Since that time, some consulting parties have continued to raise questions about our findings, including whether any remains or artifacts from the British redoubt may be present on the site. This has shifted the focus away from the consideration of historic properties in the context of compliance with the National Historic Preservation Act (NHPA). Only historic properties are eligible for consideration under Section 106 of this law."

My numerous reports, filled with illustrations and excerpts from the historic documentary record (fully footnoted), shows the National Register eligibility and archaeological potential of over a dozen structures that stood within the Sugar House Area of Potential Effect, including British Army Redoubt No. 1, Batchelors' Hall, Master's Tide Mill, the shipyards, foundries, cotton mill, screw dock & spermaceti works, bank, the sugar refinery and others.

These are not casual references to any and all historic structures that stood on the Sugar House site but to structures with likelihood of substantial and deep elements like the race that carried water to power the tide mill — low tide is five to six meters (fifteen to eighteen feet) below current grade level.

The Corps, PHMC and ACHP continue to follow the lead of Terrence McKenna and his revolving-door of Principal Investigators from A.D. Marble (Daniel Bailey, Richard Baublitz and Judson Kratzer), plus Marble's Historian Paul Schopp, who have repeatedly claimed that nothing could survive due to later industrialization and implosion — without providing the sufficient documentary evidence of the extent of those activities.

Unsubstantiated blanket statements are not sufficient and violate Section 106 which clearly states:

"Review existing information on historic properties within the area of potential effects, including **any data concerning possible historic properties not yet identified**" [36 CFR § 800.4.a.2].

"... **the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility.** The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible" [36 CFR § 800.4.c.1]

"The agency official shall ensure that **a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis**" [36 CFR § 800.11].

To date, Douglas McLearn of the PHMC has only acknowledged the National Register potential of two elements on the Sugar House site: the Native Indian component and British Army Redoubt No. 1.

McLearn has NOT explained his determination to exclude the evidence for the other historic structures that clearly stood on the Sugar House site. McLearn must provide that "sufficient documentation to enable any reviewing parties to understand its basis."

Tom McCulloch of the ACHP wrote on August 4, 2008:

"I have known both the Corps' and State's archaeologists for many years and I trust their judgment..."

"Trust their judgement" is not "sufficient documentation to enable any reviewing parties to understand its basis" and opens the ACHP to claims of cronyism.

To date, there is no documentary proof from the Corps, PHMC or ACHP that the historical documentary evidence provided by myself and the other Consulting Parties has been carefully studied and weighed against the claims of the applicant.

Parroting the wishes of the applicant that nothing can survive is lax oversight and runs against the substantial experience of Philadelphia's practicing archaeologists who recognize what does survive even in "disturbed sites."

On September 9, 2008, James Boyer wrote:

“After review, we are satisfied that this area does not have a good potential for finding eligible resources. It is not reasonable to make an applicant continue looking for a proverbial ‘needle in a haystack.’”

While it might not be clear to Mr. Boyer — a biologist — historians and archaeologists know that successful archaeological investigations depend upon careful documentary research. Evidence from all sources needs to be gathered and compared. Using deeds, surveys, maps, plus manuscript and published texts, archaeologists can accurately and efficiently pinpoint their field excavations. Anything else would more accurately be described as “pinning the tail on the donkey.”

The appalling cartographic skills of A.D. Marble are well documented in my March 28, 2008, report.¹ Not mentioned therein, but perfectly representative is Judson Kratzer’s and Paul Schopp’s statement in Feb. 2008:

“The Nineteenth Century at the Subject Property. The Delaware Riverfront and East and West side of Penn Street between Marsh Street (Present-Day Ellen Street) and Shackamaxon Street.”

Marsh Street became Poplar Street, not Ellen Street. Marsh/Poplar Street is 450 feet south of Ellen Street.

Kratzer and Schopp are WRONG AGAIN. Who noticed?

Under Kratzer’s and Schopp’s research the size of Redoubt No. 1 ballooned from 16,000 sf (“125 feet square”) in December 2007 to 35,000 sf (175 feet by 200 feet) in their latest map.

Lewis Nicola’s “Plan of the English Lines near Philadelphia 1777” — the map that Kratzer could not find the detailed scales for — shows Redoubt No. 1 to be closer to 100 by 120 feet (12,000 sf).

Kratzer and Schopp ran Trench #16 through the only section of the fort without a moat, the entrance!

Trench #17, to the west, even if in the right location, was too shallow to find the moat which seemingly flooded before “High Water,” about twelve feet below the current grade.

Kratzer and Schopp never looked for the defensive stockade which ran into the Delaware River below low tide, as depicted on two original manuscript maps (Fleury & Nicola).

Marble continues to deny the strength and longevity of the fort, even after we sent them John F. Watson’s quote from *Annals of Philadelphia* (1830): “The British redoubts remained til lately—one on the Delaware bank in a line with the stone-bridge street [Laurel Street]...”

¹ *Response to Marble & Co.’s SugarHouse Phase IB/II Report (Feb. 2008)* by Torben Jenk, Ken Milano & Rich Remer (3/10/2008)

Terrence McKenna's and A.D. Marble's flip-flops on the location for Batchelors' Hall have also been repeatedly exposed by me, but NOT commented upon by the Corps, PHMC or ACHP.

McKenna and A.D. Marble use only secondary sources and refuse to acknowledge the original manuscript deeds, surveys, land partitions and road petitions for Batchelors' Hall — including the survey by John Lukens, the Surveyor General of Pennsylvania.

McKenna and A.D. Marble also refuse to acknowledge the early eighteenth century surveys for Masters' Tide Mill, the dozens of maps of the shipyards, the Port Warden surveys and other original cartographic information that I have provided repeatedly to this Section 106 process. This information is crucial to determining the National Register eligibility and archaeological potential.

Despite McKenna's and Marble's repeated and flagrant mis-representations of the historic documentary evidence, and repeatedly poor mapping skills, Mr. Boyer wrote on September 9, 2008:

"...we have contacted the applicant, and discussed having their archaeologist put together additional maps, figures or overlays to be distributed to consulting parties to make sure that all can better understand locations of (as stated by ACHP): "its test trenches, pits, and borings against the purported location of the fort and hall, with a short summary of the findings of its testing program in these specific areas."

Neither Boyer nor McCulloch can limit the cartographic evidence to "the fort and hall." Section 106 clearly requires:

"Review existing information on historic properties within the area of potential effects, including **any data concerning possible historic properties not yet identified**" [36 CFR § 800.4.a.2].

McCulloch has never clarified his comment on Aug. 4, 2008:

"Not every nook and cranny needs to be investigated, especially in light of the apparent extent of previous ground disturbance on this site."

"Nook and cranny" is neither mentioned nor defined anywhere in Section 106.

McKenna's and Marble's repeated claims of "previous disturbance" have not been supported by sufficient documentary evidence. The extent and locations of the Pennsylvania Sugar Refining Co. buildings — and the extensive railroads within and outside the buildings — has not been accurately mapped.

Long, long ago, the Corps, PHMC and ACHP should asked for and studied a series of maps that cartographically depict all of the historic documentary information provided for the Sugar House site through all four dimensions:

1. object (historic structures)
2. location (from known and measurable locations)
3. depth (basements, foundations, moats, mill races, relation to tide, etc.)
4. time (to weigh archaeological potential and explain mixed artifacts)

It is important to remember that Terrence McKenna, Daniel Bailey, Richard Baulblitz, Paul Schopp, James Boyer, Samuel Reynolds, Frank Cianfrani, Douglas McLearn and Mark Shaffer raised NOT A PEEP OF CONCERN for British Army Redoubt No. 1 throughout 2007 — NOTHING.

The archeological and historical importance of Redoubt No. 1 is not diminished by the lack of historical knowledge at the Corps, PHMC or ACHP.

The historical importance of this Revolutionary War fort just one and a half miles from Independence Hall should be clear to all. These defenses forced General Washington and the Continental Army to Valley Forge. On December 2, 1777, General Washington wrote to Horatio Gates:

"Genl. Howe has withdrawn himself close within his lines, which extend from the upper Ferry upon Schuylkill to Kensington upon Delaware. They consist of a Chain of strong Redoubts, connected by Abattis. We have reconnoitered them well, but find it impossible to attack them while defended by a force fully equal to our own in Continental Troops."

Section 106 clearly requires:

"... the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible" [36 CFR § 800.4.c.1]

While Section 106 puts responsibility on the applicant to prepare professional reports and to identify sites with National Register potential, the Corps, PHMC and ACHP should weigh the plausibility of that research.

None of A.D. Marble's three Principal Investigators (Dan Bailey, Richard Baulblitz & Judson Kratzer), nor their Historian, Paul Schopp, have ever found any substantiating information for Redoubt No. 1. This Section 106 process has clearly shown that they collectively knew nothing about the Revolutionary War activities on the Sugar House site.

Christine Gill, "Archaeological Laboratory Director/Archaeologist" appears only in Marble's Feb 2008 report as: "has done comprehensive work on a War of 1812 battlefield archaeological study with terrestrial and underwater components, and has excavated battlefield and encampment sites involving the American Revolution and Civil Wars."

Despite the obvious historical and archaeological importance of Redoubt No. 1, Terrence McKenna as Project Executive, never thought it necessary to find — and the Corps, PHMC nor ACHP never required — a qualified professional with experience and knowledge of the Revolutionary War and eighteenth century British military engineering. Un-detailed on the maps, but sure to have existed, were the privies and wells which served the 400+ members of Simcoe's Queen's Rangers who defended and had their barracks at Redoubt No. 1. [Kratzer and Schopp have repeatedly, and mistakenly, called those rectangular barracks a "square guard house."

Judson Kratzer has long claimed:

"We believe no other significant remains from the fort exist. If any remains could possibly exist, it would only be the filled in portion of the depression that likely surrounded the fort. It is our contention that any remains of any kind would be difficult to interpret without the existence of the overall resource. No further action is recommended within the area of the former Fort."

The Sugar House Section 106 documentation shows that I delivered EVERY historic map for Redoubt No. 1 — ALL SIXTEEN — including the Montrésor/Nicole map which I sent to Paul Schopp on December 12, 2007, with other substantiating information. Schopp responded with:

"Unfortunately, I cannot respond due to my contractual obligations to my company's client."

Schopp had repeatedly paraphrased the published historical research of my two collaborators in the Kensington History Project, Ken Milano & Rich Remer. We have known Schopp for years and he knows that our published research is but a tiny fraction of our overall research.

Section 106 requires:

"Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties" [36 CFR § 800.4.a.3]

From December 12, 2007, through the Consulting Party meeting on Jan. 18, 2008, and afterwards, I have offered this research. By ignoring this historical documentary evidence, Schopp and Kratzer cannot claim to have made a "good faith effort."

Schopp's and Kratzer's ignoring of the historical documentary record has forced me to repeatedly re-iterate the importance of just a select few sites within the Sugar House Area of Potential Effect: Redoubt No. 1, Batchelors' Hall, Masters' Tide Mill and the shipyards.

Much more historical documentary evidence sits in Ken Milano's, Rich Remer's and my research files — unpublished and unused to guide field archaeology on the Sugar House site.

The Corps, PHMC and ACHP should follow Section 106 and require McKenna, Kratzer, Schopp and others to:

"... apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility." [36 CFR § 800.4.c.1]

Anything less of a *fig-leaf* of "good faith effort."

On October 1, 2008, James Boyer wrote:

"For example, no remains, or even artifacts, from the redoubt have been recovered anywhere on the site. We have not seen any evidence that any historic properties exist where the redoubt was located."

Judson Kratzer's inability to locate Redoubt No. 1 or "any historic properties" within the Sugar House Area of Potential Effect site is a result of poor research skills, poor mapping skills, and his motivations.

Kratzer's inability to find the fort does not prove that the fort is not there — it shows that Kratzer cannot find it.

Doug Money also exposed this charade on June 25, 2008:

"HSP Gaming's consultants contend that no waterfront resources (piers, shipways, etc.) have yet been found, therefore they no longer exist."

On September 9, 2008, James Boyer wrote:

"... the area west of Penn Street was a former high spot that has since been graded down a meter or more, removing the original surface soil layers. The area east of Penn Street is a former pile-supported foundation over former river sediments, now filled with demolition rubble. The foundation and piers of the former sugar refinery were originally excavated over two meters deep. Taking these facts into consideration, we determined that additional study in these areas was not necessary."

It is astounding that the depth of the moat around Redoubt No. 1 — the place of highest archaeological potential — was NEVER taken into consideration. The moat around Redoubt No. 1 was close to four meters deep and seemingly flooded before "High Water," as clearly shown on Nicola's superbly detailed "Plan of the English Lines near Philadelphia 1777" — the same plan which Kratzer admits to not being able to find the detailed scales for.

Respecting Mr. Boyer's statement: "Please understand that some of us involved in this consultation do not have a professional background in the field of history or archaeology" (Jan. 22, 2008), I forwarded information on July 31, 2008, about the successful archaeological investigations at Fort Ligonier (1960-65) which found over 35,000 man made objects, mostly in the moat!

James Boyer responded on Jan. 31, 2008:

"I'm originally from west-central PA, although I've never been to Ft. Ligonier. However, I checked a web site, which indicates much of the site was preserved and restored. Furthermore, given the rural nature of that part of the State, I would guess that the overall level and extent of disturbance and subsurface disruption would have been nothing at all like what we have on the Sugar House site (from the past residential, utility and industrial use). Just something to consider."

"Guess" is not sufficient.

I also shared this Fort Ligonier information with Douglas McLearn and Mark Shaffer of the PHMC on July 30, 2008, and clearly stated the importance of that depth around Redoubt No. 1:

"After the Jan 18 USACE meeting, archeologists A. D. Marble seemed finally ready to acknowledge that British Redoubt No. 1 was on the SugarHouse site. Paul Schopp assures me that he understands the importance of this find. Dick Baublitz of Marble keeps nattering on about the 19th century Sugar Refinery and how nothing can survive, yet **Baublitz didn't understand the difference between the Nicole map and Nicola Plan, nor the crucial evidence of the relationship of the moat around Redoubt No. 1 to high and low water of the Delaware River.** Having denied the existence or possibility of the fort for so long, yet being shown incontrovertible evidence, Marble are surely rushing to catch up. I hope their Phase II report, supposedly over 500 pages long, is not full of fluff and filler gathered from more second-, third- and fourth-hand sources."

Even with this clear information and the maps I provided (in separate emails), McLearn and Shaffer never explained why they approved of the "removal of obstructions (foundations, slabs, walls, etc.), to whatever extent they are now present" and Test-Piling.

As to the geomorphology, Boyer contradicts himself on July 11 and Sept. 9, 2008:

"We have not sought further comments at this time from CPs on the additional archaeology / geomorphology that was carried out recently."

"We have not seen an acknowledgement by the consulting parties of the geomorphology findings..."

"... Archaeological investigations normally apply sampling techniques within areas that have the potential to contain resources. Basic survey and subsurface investigations for historic properties identification do not entail moving 100% of the overburden."

Boyer cannot have it both ways and surreptitiously approve the "removal of obstructions (foundations, slabs, walls, etc.), to whatever extent they are now present" in Historic Area H-3 where little sampling took place.

Kratzer's own reports show that a tiny fraction of that 8.3-acre section has been archaeologically investigated — less than 1% by area, and less than than 0.5% by volume.

The only place where Marble found artifacts was where they looked closely, in a portion of Historic Area H-1. Marble's own reports show that less than 2% of the Sugar House Area of Potential Effect has been carefully examined.

As always, Kratzer started by denying the National Register-eligibility and archaeological potential of even the Native Indian or prehistoric component where 3,500 year old artifacts were recovered from the top four inches !!!!

The purported approval of that “removal of obstructions” by Skipper Scott, the Corps’ archaeologist in Forth Worth, Texas, has never been substantiated by sufficient documentation as required by Section 106:

“The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis” [36 CFR § 800.11].

I have been asking for this evidence for two months.

Boyer has continually ignored the concerns of Philadelphia's most experienced archaeologists, including Doug Mooney, President of the Philadelphia Archaeology Forum and a Sugar House Consulting Party, who has pleaded before, and again on Sept. 27, 2008:

“Regrettably, all arguments related to the integrity and context of the refinery’s archaeological remains may be, or may soon be, moot given that the Army Corps is currently allowing HSP Gaming to destroy archaeological features associated with the Sugar Refinery complex as a result of on-going pre-construction activities.... Any activity that has the potential to affect archaeological resources falls squarely under the aegis of Section 106, and appropriate archaeological testing, documentation, and evaluation is mandated in advance of those activities. In this instance, proposed activities clearly had the potential to impact archaeological resources. To date the deliberative process involved in assessing effects associated with the test piles has not been in any way fully articulated or documented, as required by the Section 106 regulations. This, in our view, represents a very serious violation of the intent of federally mandated preservation law.”

From January through September 2008 — despite the repeated requests from Consulting Parties and the clear disagreements over the conclusions made — Boyer never thought it necessary to arrange a second Consulting Party meeting.

Only on Oct. 1, 2008, did Boyer announce the date for the second Consulting Party meeting (Oct. 29, 2008).

That Consulting Party meeting should include acknowledged experts like Ken Milano and Robert A. Selig, PhD., who have repeatedly and clearly provided historical documentary evidence to this Sugar House Section 106 process. Their involvement, along with others, was clearly explained by me to James Boyer by email on Feb. 15, 2008.

Terrence McKenna wrote on May 6, 2008:

“Note that on page four of Mr. Jenk’s comments, he identifies two additional contributors to the document: Mr. Ken Milano and Mr. Rich Remer. Of this group, Mr. Jenk is the only Consulting Party to the SugarHouse Section 106 process. Messrs. Milano and Remer are not proper parties to the Section 106 process.”

McKenna's assertion has never been commented upon by Boyer, the Corps, PHMC or ACHP. Section 106 requires:

"Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties" [36 CFR § 800.4.a.3]

McKenna should study the reports done by his own consultants, A.D. Marble & Co., who repeatedly paraphrase Milano & Remer's published research on Kensington.

Marble's Phase IA Archaeological Survey Report (Daniel Bailey & Paul Schopp, March 2007); see the "Historic Cultural Context" (pp. 11-13) where Remer's research is paraphrased on three separate occasions. Remer's research is specifically cited again on pages 19 & 23. Marble provides three paragraphs of information on the Pennsylvania Sugar Company on page 33, the final two paragraphs include direct citations to Milano's research.

Phase IB/II Archaeological Investigation (Judson Kratzer & Paul Schopp, Feb. 2008); see pages Milano & Remer's paraphrased research on pages 45, 60, 61, 89 & 90.

Milano's and Remer's published research was appropriately included in the "References" section of both the March 2007 and Feb. 2008 reports.

In my responsibility as a Consulting Party to this Sugar House Section 106 process, I have shared both my own research and the substantial complementary information from others including Milano and Selig. Milano and Selig should be at the Consulting Party meeting to personally express their wide experience and to answer questions from the Corps, PHMC, ACHP and Consulting Parties.

As we move forward, Section 106 clearly requires:

"The views of the public are essential to informed Federal decision making in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties,..."
[36 CFR § 800.2.d.1]

"Resolution of adverse effects... Involve the public. ... The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking."
[36 CFR § 800.6.a.4]

The public comment period for "Resolution of adverse effects" can only be held after those "adverse effects" are clearly debated and defined by the applicant, Corps, PHMC, ACHP and Consulting Parties.