

August 29, 2008

James Boyer, Samuel L. Reynolds, Khaalid Walls; Philadelphia Branch Corps of Engineers, Skipper Scott, Fort Worth, Texas Division, Corps of Engineers, Douglas McLearn, Mark Shaffer; Pennsylvania Historical and Museum Commission, John T. Eddins, Tom McCulloch; Advisory Council on Historic Preservation, Jeremy Beaudry; Neighbors Allied for the Best Riverfront John Connors; Director, Penn Treaty Museum John Gallery; Executive Director, Preservation Alliance Jonathan Farnham; Director, Philadelphia Historical Commission Tamara Francis; Cultural Preservation Director, Delaware Nation Torben Jenk; Kensington History Project Debbie King; Northern Liberties Neighbors Association Terrence McKenna; Keating Consulting, LLC Hilary Regan; Northern Liberties Neighbors Association Maya van Rossum; Delaware Riverkeeper Stephen Tull, Vice President, Pennsylvania Archaeological Council Sherry White; Tribal Historic Preservation Officer, Stockbridge-Munsee Band of Mohicans

SugarHouse Consulting Parties et al,

As Chief, Regulatory Branch, Philadelphia District Corps of Engineers, Frank Cianfrani's letter of August 27, 2008, is just further evidence that this SugarHouse Section 106 Process is a sham and possible fraud designed to find nothing of historic interest nor archaeological potential.

Rushing forth with a Memorandum of Agreement is a bureaucratic attempt to cover up twenty months of inadequate oversight by Cianfrani, the Corps of Engineers, the Pennsylvania Historical & Museum Commission and just recently, the "trust" without investigation of the Advisory Council for Historic Preservation.

**1. Cianfrani is wrong to conclude that the "industrial (and pre-industrial) modifications and disturbance" on the SugarHouse site have no archaeological potential nor value to understanding history.**

The Archaeological Resources Protection Act of 1979 (Public Law 96-95; 16 U.S.C. 470bb, Section 3) states:

the term "archaeological resource" means *any material remains of past human life or activities* which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, *weapons, weapon projectiles, tools, structures or portions of structures*, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items."

Cianfrani's use of euphemisms — "removal of obstructions (foundations, slabs, walls, etc.), to whatever extent they are now present" — is a clear violation the Archaeological Resources Protection Act. Cianfrani has allowed the removal of the *material remains of past human life*, and condoned the destruction of the archaeological context.

There is no archaeological value to a virgin site with no human activity.

Cianfrani's complete disregard for archaeology and archaeologists is clear. For eighteen months Cianfrani never thought it necessary to find a qualified archaeologist or historian for this SugarHouse Section 106 Process. Cianfrani appointed Jim Boyer, a Corps' biologist.

When finally pushed by the Advisory Council for Historic Preservation in late June 2008, Cianfrani found a Corps' archaeologist in Fort Worth, Texas! Skipper Scott is known for "solving myriad problems of the permit program," not for any historical or archaeological scholarship of the ancestral settlement of the Delaware River, the Revolutionary War, nor the industrial development of Philadelphia.

Scott rendered a judgement in just two weeks, without any supporting report, then fled on vacation. As of August 29, Scott has still not provided any supporting report to the Consulting Parties.

The archaeological potential should not be decided by those who have no respect for archaeology, nor any knowledge of the diverse history of the SugarHouse site where extensive documentary evidence dates back to 1664.

**2. Cianfrani is clearly wrong to conclude "the applicant has made a reasonable and good faith effort to identify historic properties at the SugarHouse site, as required by the Corps' and ACHP's regulations."**

Section 106 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]*

*"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]*

*"Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines." [36 CFR § 800.4.b.1]*

The Corps, PHMC and ACHP have relied solely on the false assertions by the applicant, largely ignoring the hundreds of pages of concerns expressed and historical documentary evidence delivered by professional historians with an extensive knowledge of the SugarHouse site through over three centuries of development. The applicant's historian, A.D. Marble, repeatedly paraphrased the published research of Jenk, Milano and Remer (Kensington History Project). Yet Marble have rejected attempts to set the historical record straight with "cannot comment."

The Corps, PHMC and ACHP have also ignored and dismissed the many concerns expressed by the Philadelphia's most experienced practicing professional archaeologists who are represented as a Consulting Party through the Philadelphia Archaeology Forum.

The Corps, PHMC and ACHP have never questioned why Marble's historical research excluded so much of the historical documentary evidence for the SugarHouse site: British Redoubt No. 1 (1777), Batchelors' Hall (ca. 1728, Philadelphia's second-oldest learned society after Ben Franklin's Junto), Masters Tide Mill (c. 1715), Kensington Bank (ca. 1826), Burtis & Keen's Cotton Mill (ca. 1820), Kensington Screw Dock & Spermaceti Works (ca. 1830), Point Pleasant Foundry (ca. 1809), the 18th & 19th century shipyards of the Grices, Eyres, Bowers, Donaldsons, Clintons, Wilson and others, plus much more from the associated industries, residences and taverns.

**3. Cianfrani is clearly wrong to conclude: "We believe the A.D. Marble's 'Phase IB/II Supplemental Archaeological Survey, Geomorphological Assessment and Report Clarification,' dated June, 2008 (Supplemental), satisfactorily addresses the original points raised by your office [PHMC], and the subsequent points that have been raised by the PAF, Mr. Jenk and others..."**

Section 106 requires:

*"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].*

Cianfrani's "beliefs" are *not sufficient documentation to enable any reviewing parties to understand its basis.*

Mr. Jenk adamantly disagrees that Marble's reports "satisfactorily address" the issues raised by him and the Kensington History Project through hundreds of pages of documentary evidence.

Without supporting documentation, Cianfrani is clearly wrong to conclude: "A.D. Marble's historians have reviewed all of the maps and supporting documentation provided by the consulting parties, principally Mr. Jenk, and determined that Batchelor's Hall was not present on the SugarHouse site. As with Redoubt #1, if any remains still did exist, they would not possess the integrity to be determined an historic property..."

Batchelors' Hall.

Marble flip-flops on the location of Batchelors' Hall:

- i. "... west of Point No Point Road near Gunnar's Run..."
- ii. "A.D. Marble performed subsurface investigation activities in the reported, possible former location of Bachelor's Hall. No evidence of the former Bachelor's Hall was found to be present on the subject Site."
- iii. "Based upon A.D. Marble's investigation the USACE can be comfortable that the former Batchelor's Hall was not located on the SugarHouse Casino site."

Marble never accurately state where Batchelors' Hall actually stood. No competent surveyor would accept Marble's use of the 1752 Scull & Heap map, nor Marble's second-hand texts, nor their contradictory flip-flop explanations.

Any competent surveyor would turn instead to the evidence provided by Jenk et al including deeds, land partitions, road petitions and surveys including the superbly

detailed *“Plan of about three acres of land on which the Building call'd 'Batchelors Hall lately stood the lines through the same show the manner in which it was divided amongst the severall claimers by a Jury of the County of Philadelphia began in January 1775 and finished in June following in Order of Confirmation Surveyed by Jn. Lukens, S.G. [Surveyor General of Pennsylvania].”*

Cianfrani never bothered to assign a competent surveyor from the Philadelphia Branch to review and compare the cartographic evidence for Batchelors' Hall supplied from the applicant and Consulting Parties. Cianfrani, PHMC and ACHP have no clue where Batchelors' Hall stood.

#### Redoubt No. 1.

Twenty months into this sham “archaeological investigation” Marble has still not found one map of Redoubt No. 1, where citizens and soldiers fought and died to found this country. The fortifications and barracks of Redoubt No. 1, plus the ferry, have enormous historical value if examined by competent archaeologists with experience in Revolutionary War military sites.

Marble admits that they knew nothing about the Revolutionary War activities on the SugarHouse — “it came to A.D. Marble & Company's attention that a Revolutionary War period fort was potentially located within the subject property...”

Subsequently, Marble never brought in anyone with any knowledge or experience of that critical period of American history — relying instead on the same failed “senior historians” and “principal investigators” who knew nothing and long claimed, “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.”

Marble has repeatedly tried to “spin” inaccurate second, third and fourth-hand testimony against first-hand manuscript evidence for Redoubt No. 1. Marble refers to a “square guardhouse” when the historic documents clearly state that it was a twenty by forty foot *barracks*. Lewis Nicola's superb “Plan of the English Lines Near Philadelphia 1777” even shows the bed frames. Marble admitted that they could never find the detail scales on that Nicola map.

Again, Cianfrani never bothered to assign a competent surveyor to compare the cartographic evidence from the sixteen maps and descriptions for Redoubt No. 1. Cianfrani, PHMC and ACHP have not accurately determined where Redoubt No. 1 stood, nor the ferry which was used continually during the occupation of Philadelphia and served as the major river crossing when the British left.

Archaeological evidence of these Revolutionary War defenses just one mile north of Independence Hall is important. Redoubt No. 1 was the best defended and longest-lasting of the defenses, and is uniquely interesting because it was defended by Simcoe's Rangers, an elite corps of native-born and immigrant citizens. Declaring their own sense of independence, these citizens were not conscripted to fight, they chose to stay loyal to the King. And they lived at Redoubt No. 1.

**4. Cianfrani is clearly wrong to seek the consent solely of the PHMC and ACHP, deliberately avoiding the expressed concerns and evidence delivered by the Consulting Parties. Cianfrani has ignored repeated requests for meetings to clarify this complex history and to resolve the differing interpretations of historic evidence and archaeological potential as put forth by the applicant and the Consulting Parties.**

The only meeting of the Consulting Parties was held on Jan. 18, 2008, when Terrence McKenna of Keating blurted "Enough of the history lesson!" (the one site visit was not a meeting).

Cianfrani has chosen to exclude the Consulting Parties from all other meetings, choosing to meet only "with your office [PHMC], the applicant, the Corps, and A.D. Marble."

Section 106 requires:

"Consultation. The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. [36 CFR § 800.4]

"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]

"Disagreement with finding. If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section. [36 CFR § 800.5.c.2.i]

"Council review of findings. When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in Sec. 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its determination. The agency official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly. [36 CFR § 800.5.c.3]

"Resolution with Council participation. If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties," [36 CFR § 800.6.b.2]

## ACHP

Tom McCulloch of the Advisory Council for Historic Preservation admitted: "*I don't believe the archaeologist the Philadelphia District has brought on board has had the time to prepare any further extended justification that goes beyond his professional opinion (based on review of the documentation and onsite meetings), that the applicant is meeting its requirements.*"

But McCulloch continues: "I have known both the Corps' and State's archaeologists for many years and *I trust their judgment* when they say they have given due consideration to the information provided by the consulting parties, and are satisfied that the consultants also have taken this material into account in designing their identification efforts."

"Trust" is not adequate oversight.

## PHMC

Douglas McLearn and Mark Shaffer of the Pennsylvania Historical and Museum Commission should never have allowed this farce to continue for so long. McLearn and Shaffer were ignorant of — or obscured — the existence of Redoubt No. 1 and the entire chain of defenses built by the British Army during their occupation of Philadelphia in 1777-78.

McLearn and Shaffer followed Keating's absurd claim that the implosion of the Sugar Refinery in 1997 destroyed all archaeological remains. Despite repeated claims from the Consulting Parties, Keating has not provided the evidence of "massive destruction" by the building of the Pennsylvania Sugar Refinery. If McLearn and Shaffer bothered to reviewed the Sanborn surveys and historic photographs of the Pennsylvania Sugar Refinery, they would see the large network of rail lines and spurs — none of which needed deep foundations.

McLearn and Shaffer must be ignorant of the million-plus artifacts recovered from the 5.5-acre Constitution Center site (5th & Arch) which was also heavily developed with nine-story buildings. Archaeological artifacts were found under every structure on that site. Why are McLearn and Shaffer satisfied with the mere four thousands artifacts from the 22.6 acre SugarHouse site along the far more historic Delaware River? Trying to dismiss all other historical evidence before the Sugar Refinery's arrival in 1881 reflects a suburban mindset of "one site, one structure, one history." Or some political agenda.

Practicing preservation professionals in Pennsylvania are aware of the problems and probation that the PHMC currently sits under for misapplying National Landmark standards to National Register nominations. We know that PHMC staff have gone through workshops and that anyone nominating a historic site in Pennsylvania are to copy the National Park Service on all correspondence. I have spoken about these problems at PHMC with Paul Loether, Chief of the National Register of Historic Places and National Historic Landmarks Division of the NPS. Loether and the National Park Service should be brought in to clear up this mess with the PHMC and the SugarHouse Section 106 Process.

Sincerely,

Torben Jenk (with Ken Milano, Rich Remer / Kensington History Project)  
1512 North Second Street, Philadelphia PA 19122-3810  
215 739-6061  
doxot@verizon.net