

September 28, 2006

Mr. Greg McKay
U.S. Army Corps of Engineers
Operations Division, Regulatory Branch CELRL-OP-FS
600 Dr. Martin Luther King Place, Rm. 752
Louisville, KY 40202
Subject: Draft MOA, River Park Place, 199200465 (Jefferson Co.)

Dear Mr. McKay:

In addition to my previous comments and in response to the Draft MOA #2, we offer the following

Comment 1 - The definitions appearing in Draft MOA #2 Stipulation 1(A)(1) are much too broad. Failure to identify and mitigate the obvious incompatibilities presented by the requirement that the DOI Standards apply to rehabilitation of Paget House will likely result in serious erosion of the quality of any measures to properly preserve the integrity of this resource.

In spite of the well-intentioned attempt by the SHPO (s) and some consulting parties to soften the Standards as a gesture of good faith, there has been absolutely no reciprocal action from the developers. As a result, pertinent guidelines pertaining to new and adjacent construction as they apply to the NRHP listed structures must be recognized and any final determination must be within the scope of the Standards. We believe this requires reasonable compromise on the part of the developers and negotiated stipulations that specifically address mitigation of the contentious issues of environment, setting, size, scale, and massing.

The inconvenient conclusions that result are:

- v Since this proposed development falls within the scope of the Sec 106 Process and is subject to the determinations and ramifications thereof, the DOI Standards must be applied for appropriate treatment of the NRHP listed resources in the development area and,
- v Since the overall design of this project is incompatible with the concepts specifically stated in the Standards, the design must be revised to bring it into compliance.

Please refer to my Comment on Draft MOA #1 Comment #1 for supporting details.

Comment 2 - To allow construction of any component of this proposed development without a fully reviewed and approved plan for treatment of the Paget House, and Heigold Façade, would be improper.

The entire purpose of this Sec 106 process is to identify and insure the proper treatment of historic resources within the subject area, not to absolve the developers of responsibility. Draft MOA #2 Stipulation 1(C) states: “Prior to initiation of construction on the Paget House...” “ We would suggest this should read, ”Prior to the initiation of construction”. (*on the Paget house omitted*)

We have already stated our firm belief that premature construction of an artificial escarpment upstream of Paget House will put this structure in much greater danger of collapse during flood than it is in now. As discussed during the first C P Meeting in Nov 2005, no one wants this structure to be left “in a hole”. According to preliminary plans presented at the time, this was never the intention of the developers. Elevation of Paget House, in place, to a level above the BFE is the only rational alternative and this must be done in the initial stages of construction to protect it from the readily foreseeable but unpredictable flood that could occur at any time.

Not only should there be final approval of rehabilitation plans for Paget House and Heigold Façade prior to any construction, the stipulations should include:

- v Immediate Phase III data recovery of the grounds to clear the way for stabilization, elevation, and rehabilitation.
- v Pre-construction protective measures,
- v Definition and prioritization of specific rehabilitation phases,
- v Specific performance deadlines within the context of the general Riverpark Place Phase I construction timeline.
- v Immediate stoppage of work in all other areas if these deadlines are not met.

Without these stipulations, there is no incentive whatsoever for the developers to complete the critical baseline requirements pertaining to Paget House and no assurance they will not be indefinitely deferred... again.

The primary developer, Louisville Waterfront Development Corporation, has already agreed to rehabilitate Paget House once before... 10 years ago. The result has been further deterioration and no serious effort at even stabilization. Other interim preservation requirement related to the Falls Harbor MOA such as relocation of Heigold Façade and documentation of historic resources during the River Road relocation have also been apparently ignored. This dismal track record and recent WDC statements suggesting Paget House could be sacrificed as a bargaining chip for required mitigation

elsewhere indicates these developers need specific guidance and incentives to fulfill their responsibilities.

Comment 3 – Stipulation II (H) requires clarification.

What exactly constitutes a “previously unidentified property”? Does this mean:

- v Property? Structure? Feature? Landscape? Artifact?
- v Previously identified? Examined? Thought to exist? Uncovered? Reburied?
- v That may not have been identified but appears on a plat or other historic map,
- v Not physically examined through archaeological methodology,
- v Arbitrarily excluded from further study but uncovered in the course of this activity,
- v Newly discovered outbuildings, gardens, or servants quarters related to previously identified structures,
- v Undiscovered middens,
- v Known only through anecdotal evidence but never physically identified,
- v Known to exist in the past but incorrectly determined to have been destroyed,
- v The variations are endless.

The problem also arises, who will make the determination of applicability in the field during what promises to be a massive construction project, the foreman, the machinery operator, a laborer? The only way to insure a proper investigation of all of the potentially applicable features is to extend the requirement for skilled supervision of machine stripping of all historic overburden to the entire development area. In addition to facilitating the resolution of the above-mentioned problems with definition through a more methodical investigation, this is the only way to accomplish the COE/SHPO stated goal of discovery and proper reinterment of 100% of the Native American burial sites known to exist throughout the area.

Comment 4 – I would respectfully request that, if possible, any future C P Meeting be limited to those formally granted C P status and persons with specific contributions to the process.

Comment 5 - I must also request that the formal comments and responses generated by this MOA process be distributed to those formally granted consulting party status, or at least be discretely made available online. If this could be done, I believe it would accelerate the process.

Comment 6 – The developers have staged construction material and heavy equipment in the proposed development area. This is premature and only indicates further misunderstanding and of this regulatory process.

The developers seem to believe that at the point an MOA is signed, they can immediately begin construction. It is my understanding that **36 CFR 800** requires additional steps including: Coordination with the National Environmental Policy Act (**800.8**), Council (ACHP) review of Section 106 compliance (**800.9**), review of Special requirements for Protecting National Historic Landmarks (**800.10**), reviews pertaining to Documentation standards (**800.11**), and that the process may be further prolonged by Emergency situations (**800.12**), Post-review discoveries (**800.13**), and also post Sec 106 necessities such as: Public Interest reviews, Rivers and Harbors Act review, and coordination with and review of required authorizations granted or pending with other local, state, and federal agencies.

The developer should be informed they are delusional in their expectations and any further expense, delay, or inconvenience this may cause them is not the fault of the COE, the SHPOs, the Tribes, the consulting parties, or anyone else other than the developers themselves. It is the developer's responsibility to adjust his plan in response to the regulatory requirements and other determinations in advance of the issuance of a DA, not the other way around.

Comment 7 – Please consider this as an addendum to my formal comments on Draft MOA #1 as those remain pertinent and unresolved.

Thank you for the continuing opportunity to comment. Please feel free to contact me if you have any questions.

Sincerely,

Bert A. Ribeiro

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