

Ex-FORREST SHERMAN
Section 106 Consultation Meeting #2
Philadelphia, PA, November 22, 2010

ATTENDEES:

LOUISE D. BRODNITZ
ADVISORY COUNCIL ON HISTORIC PRESERVATION

JEAN H. CUTLER DIRECTOR,
SUSAN M. ZACHER, HISTORIC STRUCTURES SECTION CHIEF
DOUGLAS C. McLEAREN CHIEF, ARCHAEOLOGY AND PROTECTION DIVISION
HISTORICAL PENNSYLVANIA AND MUSEUM COMMISSION

TUWANA HUDSON CUMMINGS, ESQ.
NAVAL SEA SYSTEMS COMMAND

GLEN CLARK, DEPUTY PROGRAM MANAGER
CHRISTINA DUTTON, DONATION MANAGER
NAVY INACTIVE SHIPS PROGRAM

TRAVIS N. GERY, ESQ.
KANTROWITZ AND PHILLIPPI, LLC.

KURT WAGEMANN, PRESIDENT
USS FORREST SHERMAN DD-931 FOUNDATION, INC.

DR. KEN STRAFER, DIRECTOR
PROJECT ENDURING PRIDE

JESSE LBOVICS, MANAGER
OLYMPIA/BECUNA INDEPENDENCE SEAPORT MUSEUM

MINUTES:

Ms. Cummings opened the meeting with a quick review of the first consultation meeting.

Mr. Clark gave a quick update about the comments that were received via the website regarding the ex-FORREST SHERMAN. He estimated approximately 70 comments were received all on Friday 19 November 2010: the majority being one sentence in favor of saving ex-FORREST SHERMAN. Mr. Wagemann disagreed saying it was well over 100 comments and they were longer than one sentence. A question was brought up by Mr. Lebovics as to why the comments started on Thursday. The answer from Mr. Wageman was that he sent a notice out to the Foundation members of which there are approximately 1000 members. Mr. Lebovics then added that approximately 10% of the members responded. Mr. Wageman stated he does not have email addresses for all members. There was discussion of the timing of the posting. There was a disagreement about the start date and end date for

the 30 day comment period. Ms. Cummings added that the Navy is still collecting comments. There was a disagreement about the scope of the comment period; Mr. Gery said he was under the impression that the comment period addressed the area of impact only, which was disputed by Ms. Cummings who said it was for all comments. The parties decided that the comment period covered everything up to and including the determination that the proposed undertaking would have adverse affect on the historic property.

The next item was raised by Mr. Wageman regarding the letter dated October 20, 2010, which was sent by Representative Hocker to PMS 333. Ms. Cummings handed out copies of PMS 333's response, dated November 18, 2010, to the group. Mr. Wageman stated that this was another example of PMS 333 interfering with potential donees. He cited his engineering survey and stated that Captain Pietras gave false information. There was discussion about the draft of the ship which was stated in the letter, being the current navigational draft rather than the draft of the ship minus the sonar dome which Mr. Wageman cited from his engineering study. The discussion continued regarding the tenor of the Navy's letter. Mr. Gery alleged that the Navy's letter was misleading and withheld information from Representative Hocker. Ms. Cummings refuted these statements and urged the group to move forward and not rehash old allegations.

Mr. Wagemann informed the consulting parties that he would be meeting with Representative Hocker the week after Thanksgiving to discuss ex-FORREST SHERMAN. Mr. Lebovics stated that a lot would have to be changed on ex-FORREST SHERMAN to fit that location. Mr. Wagemann refuted Mr. Lebovics statement and assured the other consulting parties that the area above the 03 would require cutting and could be reinstalled by bolting rather than welding so it could be removed in the future if necessary.

Mr. Gery brought up the FOIA requests that Mr. Wageman and Mr. Gery submitted. There was discussion about what was requested and what was provided.

Ms. Brodnitz said that the Navy response to the letter was probably not the best approach, (see below). Ms. Cummings responded stating that the Navy believed the response was necessary and appropriate.

There was discussion regarding the March 15, 2010 Federal Register which published the Program Comment for the Department of the Navy for the Disposition of Historic Vessels effective March 5, 2010 and whether the Program Comment will be used to achieve Section 106 compliance for ex-FORREST SHERMAN. Ms. Brodnitz noted that it was the Navy's discretion whether to use the Program Comment.

Ms. Brodnitz directed the conversation back to the letter saying that it is a bit intemperate and perhaps it should have been treated as an inquiry only. The discussion followed how the Navy cannot ignore a letter from a Representative that there is a certain timeline and process for responding to a query.

Mr. Wageman said that \$9000 was spent conducting the last engineering survey, so it will cost money to refute the figures the Navy pulled out of the air. Ms. Cummings requested a new estimate for the new location. Mr. Gery stated that time must be given to investigate alternatives. Ms. Cummings disagreed, stating that the Navy is not required to consider speculative alternatives.

Ms. Brodnitz said that if they think the letter may foreclose the opportunity they (Forrest Sherman Foundation) should get new numbers and have Representative Hocker respond. There was a discussion about the time frame for that response. Ms. Cutler said getting new engineering numbers would be a catch 22, as the Foundation may spend money to get new numbers for the new location but it may not have any results if the vessel does not become available for donation. Ms. Brodnitz stated that the Forrest Sherman Foundation would have to make that call.

Mr. Gery said they want a year for ex-FORREST SHERMAN to be on donation hold, allowing the Foundation time to assess if raising the money is possible. Ms. Cummings said the Foundation won't give evidence of potential donees, which is what the Navy has asked for. There was a discussion about whether the one year period is reasonable. Mr. Gery reiterated that it is difficult to get a commitment if they can't say the ship is available.

Ms. Brodnitz asked if the ship would have to be on donation hold to donate. Mr. Clark explained that donation hold just keeps it from getting dismantled. Ms. Brodnitz explained that while donation hold is a hold on the process, so is Section 106. There was a discussion on the law regarding Section 106. Ms. Brodnitz suggested putting language in a programmatic agreement suggesting a period of time (to be determined) for the Foundation to get the application/money/endowment/etc. She suggested that the group could draft the wording such that if the Foundation or another potential donee could come up with sufficient funding, that donee could have the ship. The issue of the ship being put back on donation hold was raised again. Ms. Brodnitz stated that the Navy has reviewed that issue and made a decision that it would not put it back on donation hold. She asked if the Foundation would consider pursuing donation another way.

There was a discussion about the length of time the Foundation should be given to show proof of commitments and what is acceptable for a complete application. The parties discussed giving the Foundation one month vs. two years to show proof of viability and firm financing. Mr. Gery Ms. Brodnitz reaffirmed that the parties were not discussing the program comment as we are currently under Section 106. Mr. Strafer stated that the \$10M in Representative Hocker's letter would expire 3rd quarter of FY11. Ms. Cummings said the Navy may be willing to give 60 days for the Foundation or State to prove they have commitments. Mr. Wageman said that is not enough time. The discussion continued regarding time frame and Ms. Brodnitz suggested the programmatic agreement be drafted without a time frame. There was more discussion about time frame and Ms. Brodnitz said we have discussed 1 year, 9 months and July 1st but we need to start drafting and can leave the time frame to be filled in later. Ms. Cutler says she thinks 1 year is a reasonable time frame and Ms. Brodnitz agreed. The consulting parties decided to move on and discuss mitigation measures.

Ms. Brodnitz asked the parties what they thought would be appropriate mitigation measures for the ship. Ms. Zacher raised documentation as a possible mitigation measure, but stated that she believes documentation alone is insufficient. Ms. Zacher suggested salvage, signage, and the possibility of having HABS/HAER documentation prepared as an additional mitigation measure. The parties discussed dismantling and how much the government sells these ships for. The process for sales contracts was

also discussed. Mr. Wagemann inquired as to how much it costs to store the ship per year. Mr. Clark explains that it is approximately \$50-\$75K per year unless it begins to sink or there are other problems.

The consulting parties discussed the location and inventory of 32 Curator items that were removed by the Navy when the vessel was decommissioned.

The consulting parties discussed the feasibility of storing curator items at a technology museum.

Ms. Cutler asked whether the Navy could provide financial assistance to potential donees. Ms. Cummings reminded everyone that the Navy is prohibited by statute from providing financial assistance to potential donees. Ms. Cutler further inquired as to whether the Navy could give in kind services instead of money. Mr. Clark explained that the Navy can't do that. Mr. Clark further explained that Ex-MISSOURI and ex-INTREPID received financial assistance in the form of Congressional grants, which is outside of Navy appropriations and authority.

Ms. Zacher requested to know what mitigation measures the Navy was offering.

Ms. Cummings handed out the list of the Navy's proposed mitigation measures.

Mr. Clark explained the open house process for existing ship museums to remove material from stricken ships pending disposal for the purpose of improving the display of the existing museum ships.

Ms. Cutler asked if the Foundation had a location to display artifacts or if they would go out of existence if the ship was no longer around. Mr. Wageman said they would still be around as they have reunions but they would probably display the artifacts with another group such as the Tin Can Sailors Association.

Ms. Brodnitz asked Mr. Wageman what his impressions of the Navy's mitigation list was. Mr. Wageman said he wouldn't agree to anything but saving the ship; and Mr. Gery added that he and his client (Mr. Wagemann) may need to consider mitigation. Ms. Brodnitz asked Mr. Wageman to put together a list of mitigations he would like to see, by the next meeting.

Ms. Cummings said we can continue discussing the timeframe and possible mitigation measures and in the mean time she would begin drafting the agreement. Ms. Cummings further asked if anyone had additional proposed mitigation measures to send them via email and she would include them in the draft agreement which would be provided to everyone for comment.

Ms. Cummings then asked if it was more convenient for the consulting parties to have the next meeting via phone or video conference next time as a few members of the group expressed difficulty with traveling for these meetings. These options were discussed and the Navy offered to find out if certain locations have these capabilities. The next meeting date was set to for January 13, 2011 at 1 PM. The Navy offered to host an in person meeting at the Washington Navy Yard for those consulting parties that are in the DC metropolitan area.

Ms. Cummings asked that potential donees provide a valid cost estimate and proof of an endowment in addition to funding commitments. The HABS/HAER documentation was discussed further as a possible means of mitigating the adverse effect of disposal.

The Navy said they will post the comments, which were received, and the meeting minutes via the Navy's website.

Ms. Brodnitz suggested that the Navy invite Representative Hocker to participate as a consulting party in future consultation meetings.