

**FORT HANCOCK 21st CENTURY ADVISORY COMMITTEE**  
**MEETING #33**  
**June 26, 2019**

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| <p>Agenda Items for Next Meeting:</p> | <ul style="list-style-type: none"> <li>● Conflict of Interest language</li> <li>● Provide Updates: <ul style="list-style-type: none"> <li>○ Status of FACA Executive Order</li> <li>○ Bond Requirements (and Builders Risk)</li> </ul> </li> <li>● From Facilitator: Discussion to better understand historic rehabilitation requirements that are seen as particularly costly or onerous and explore opportunities to provide relief</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>Action Items for Next Meeting:</p> | <ul style="list-style-type: none"> <li>● Bonds and Insurance Follow Up: <ul style="list-style-type: none"> <li>○ Committee Members will gather information on Bond and Builders Risk Insurance for presentation prior to the next meeting (Tony Mercantante, Jim Krauss, Mike Holenstein). Committee Members will try to identify a consistent method of determining requirements with the understanding that not all the leases will be subject to the same levels/requirements.</li> <li>○ NPS/Co-Chairs will schedule a call to discuss the findings/report prior to distribution of findings to the Committee at large.</li> </ul> </li> <li>○ Historic Tax Credits: <ul style="list-style-type: none"> <li>○ Identify what can be done to streamline the historic tax credit process, and to make the process less costly.</li> <li>○ NPS to seek an extension on Mr. Samuelson's behalf for resolution of items identified of Historic Tax Credit application and to work with Lessee and with SHPO to address SHPO concerns pertaining to the Lessee's Historic Tax Credit application.</li> </ul> </li> <li>● Other: <ul style="list-style-type: none"> <li>● Committee to provide the following: <ul style="list-style-type: none"> <li>○ Conflict of Interest Statement</li> </ul> </li> <li>● NPS to provide the following: <ul style="list-style-type: none"> <li>○ Materials used for porches and roofs to be posted on committee website</li> <li>○ Materials such as drawings or cost estimate provided by LOI holders (current and those who subsequently</li> </ul> </li> </ul> </li> </ul> |

Committee  
Recommendations -  
ADOPTED:

- withdrew interest) to be posted on committee website
  - Process map outlining historic tax consultation process
  - Process for moving forward with Permitting once a Lease is signed
  - Conflict of Interest statement and any additional questions for consideration by NPS Ethics staff prior to fall meeting
  - NPS to re-install signs at Fort Hancock – Buildings available for Lease
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- Operating Procedures as adopted will be posted to committee website
  - Committee Co-Chairs, Facilitator and NPS staff will maintain a Recommendation/Task tracking document to be updated after each meeting and used to facilitate agenda and work development.
  - Insurance & Bonds Discussion:
    - General Liability Insurance: The standard \$1 million per occurrence/\$3 million aggregate required by NPS is sufficient.
    - Flood Insurance: \$250,000. Meets FEMA cap due to location.
    - Property Insurance: The level of property insurance to be required should be Replacement Costs New without identifying a dollar figure. The insurer will identify the RCN based on an index. Include a 20% premium to account for historic building costs (determination as to whether this is allowed by policy issuer).
    - Bond Requirement: Strong preference among Committee to require minimum performance bond based on costs to NPS to stabilize property. NPS may be willing to waive the bond requirement.

Attendees:

NPS: Jennifer T. Nersesian, Gateway National Recreation Area (GATE) Superintendent and Designated Federal Officer (DFO); Pam McLay, GATE Chief of Business Services; Karen Edelman, GATE Business Services; Daphne Yun, GATE Public Affairs; Pete McCarthy, Sandy Hook Unit Manager.

Facilitator: Bennett Brooks

FACA Committee Members: Shawn Welch, Gerard Glaser - Committee co-chairs Michael Walsh, Tony Mercantante, Jim Krauss, Guy Hembling, Patrick Collum, Linda Cohen, Mary Eileen Fouratt, Dr. Howard Parish

Other guests/attendees: Barney Sheridan (Lease holder), Brian Samuelson (Lease Holder), Tom Mertens (interested party)

- Pledge of Allegiance
- Agenda Review – Bennett Brooks
- Review of March 2019 Meeting Recommendations:  
Please see updated Tracker

### **Superintendent's Updates and Announcements:**

- Summer Concert series was cancelled for protection of endangered piping plover nesting in that part of Beach E. The park explored other locations as options but was unable to find a suitable substitute. There may be opportunities for concerts after nesting season.
- Betsy Barrett has retired as president of the Sandy Hook Foundation (SHF). Pat Alcaro is the new President.
- Helium Act Funding and \$100,000 from the Sandy Hook Foundation will be used to rehabilitate NIKE barracks for visitor group-camping.
- A groundbreaking ceremony for Buildings 23 and 56 - to be occupied by the Marine Academy of Science and Technology (MAST) - took place on June 12, 2019. Monmouth County is investing \$12 million dollars in the project. The rehabilitation of the buildings will meet SOI Standards. Special thanks to Lillian Burry, Monmouth County Freeholder, as a champion of this project.
- The Sandy Hook Chapel Floor has been redone. The AC has been replaced. It is much quieter than the previous system.
- Building 102 has been rehabilitated and is now occupied by 36 Seasonal employees. Tours to the committee are available after the meeting.
- The old concession building (was the Sea Gull's Nest) at Beach Center Area D has been demolished. NPS is considering future options – likely it will go out as an RFP.
- Theater is back on the Sandy Recovery list so we have funding to do restoration work. Project is now in contracting and is expected to be complete by the end of the FY. Repairs will be limited to first floor.
- Paving projects are ongoing at Sandy Hook throughout the summer.
- New maintenance facility is almost complete – ahead of schedule. The project includes the restoration of two historic buildings.
- Regarding recommendations to use Sandy Hook as a Pilot to move leasing forward, those recommendations were embraced by our Washington office.

- The park is working closely with Washington Services Office to accelerate work at Sandy Hook. The work includes the streamlined Condition Assessments (CAs) we are undertaking. GATE was one of the first in line to pilot the new Parametric CA process. We will have a full team out here in September to train park staff on this process to get all buildings at GATE done. We will be one of the first parks in the NPS to have real information about the true state of our Deferred Maintenance (DM). DM is the Secretary of Interior's (SOI) number one issue. There is a bill winding its way through Congress to address DM by putting funding towards deferred maintenance. It is an issue that has bipartisan support, and GATE is positioning itself to have good data on the DM and to be able to capture the assistance that is proposed. Also, the DM data will help us understand what our needs are.
- In terms of leasing, we are having success on larger buildings that lend themselves to commercial services. We are finding it more difficult to lease the Officers Row (OR) buildings. Based on information from prior LOI Holders, it is our theory that if we can make investments in some of the OR buildings, we can help make them more attractive to investors. We are trying to get as many roofs redone as we can.
- As another demonstration of using Fort Hancock as a pilot, Washington Services Office has dispatched contractors this week to Fort Hancock to undertake Enhanced Technology Condition Assessments on Officers Row Houses. They used drones (in accordance with policy/exceptions) to take photos and scans of buildings that were not safe to enter. Other technologies were also employed to gather digital data on the structures. This information is then brought back to the office where it is used to create a very detailed condition assessment of the structures, from which a project, scope of work and cost estimates can be created. The goal is to have the roofs for Officers Row contracted by the end of the year.
- At the same time, the park staff that has been undertaking roof repair and patching and are moving to porch repair. The goal is to undertake repairs to all the OR roofs through the aforementioned project. Repairs are contingent on available funding and prioritization may be necessary. We welcome input on how to make that determination and can discuss whether buildings in the best or worst condition take priority. The Washington Services Office team is also trying to document parts of our process and thinking about market analysis and how to help us make more strategic investment. Booz Allen Hamilton is on board for the market analysis portion.
- Rehabilitation of porches is visibly underway.
  - Guy Hembling expresses concern with the maintenance obligations associated with the porch rehab and other features – the wood required under the Secretary of Interior Standards is expensive and requires painting. There has to be a way to introduce modern less expensive materials (instead of mahogany for the porches, copper roofs, and \$3000

windows). If you hold it to the historic standards today, no one can afford to undertake the rehab. The costs are excessive.

- In response, Superintendent indicates we have discussed some of these points with State Historic Preservation Office (SHPO) and are hoping we can come to an agreement on some of these issues.
- New executive order has ordered all government agencies to cut their Federal Advisory Committees by 30%. Gateway has completed the requisite report making its case that the Fort Hancock Committee is critical to our leasing efforts at Fort Hancock. Superintendent underscores importance of this committee. Report required 2018 recommendations but we also included the 2019 recommendations because the accomplishments of the committee are significant.

## Leasing Update

- Building #53 Lease is fully executed.
- Recap of Lease, Letter of Intent (LOI), and due diligence status; presentation to be posted on the FACA website.
- Brief discussion: Drawings and other materials prepared under LOIs become the property of the US and can be posted on the FACA website in the case where LOI holders withdrew.
- Regarding why LOI holders withdrew from leasing opportunities: sometimes it is for financial reasons, other times, it is because they were unable to manage the scope of what they had proposed (multiple buildings).
- Reminder to the Committee that Lessees sign the Lease first, and we sign after we confirm the SHPO has approved the proposed rehab. We have at least one lease in the queue signed by the Lessee for which we are in the process of completing Section 106 compliance, after which we will sign.
- The park has been extending LOIs (building 104 as an example)
- The park will have to appear before the NPS Development Advisory Board (DAB) in connection with the level of investment anticipated in Barracks Building 24.
- The park is addressing the process for moving forward with obtaining Permits from Middletown Township (MT).
  - Question: How does the park determine how long to keep LOIs in effect for multiple buildings. What about back up proposals?
  - Response (Pam McLay): NPS's current practice is to determine an appropriate time frame for feasibility. Generally, if there is no back up offer, we will extend the LOIs as long as we see progress with the due diligence. We do have one back up offer but we could determine that we would terminate an LOI if there was a backup offer and there was no progress. Hiring A&Es is expensive and the LOI holders are investing under the LOIs – we see actual progress.
  - Question: No active Leases or LOIs on OR Buildings. What can NPS do about that?
  - Response to Q (Pam McLay): NPS is working on getting roofs, porches, and masonry done (funding contingent) to make those attractive opportunities.
  - Question: What happened to the “for Lease” signs that used to be posted in front of the buildings?
  - Response (Pam McLay) NPS will consider putting them back up.

- Action Item: Confirm the Park has the drawings submitted by the original LOI Holder for Officers Row Building 17. Post to committee website if available. (concept plans posted as of 15 July)

**LOI/Lease Holder Update** - Shawn Welch & Gerry Glaser - Committee Co-Chairs

- Barney Sheridan – Building #53 Lessee highlights some of the challenges arising in connection with the project. He came to us as a result of the signs in front of the building (which are no longer in front of the buildings). He is an individual, not a developer, no corporate backing but he wants to be part of it. He is apprehensive about the business opportunity. Getting to a signed lease took two years. Based on the insurance discussion we just had, insurance could be prohibitive to his project. The process is simply slow. Every turn of the project costs money. He has lined up subcontractors who are “dying on the vine.” He had a rough start with his first architect. He asks NPS to line up A&Es they could recommend as a pool, same with contractors, as well as identify costs for proposed Lessees. Objections to bonding requirements. The process should really be about the people who want to be here, not just the people who can afford to be here. Why should he be left holding the bag with a bond, when the benefit of partial completion goes to the next person in line?
- Brian Samuelson – Building #21 Lessee. The project overall is cumbersome and clumsy. It is difficult to meet milestones. People are losing interest. For example, one of the Building #21 renters, who has an LOI for Building #104, is very frustrated. The process has run him out. The buildings are falling down – let’s get it 80% right (rather than striving for the gold standard). Mr. Samuelson has mixed experience working with park staff - does not feel supported by NPS as a result of stop work orders issued for his project. His application for Historic Tax Credits recently rejected by NPS due to State Historic Preservation Office (SHPO) identified concerns. SHPO has not been responsive to him, and he said the rejection came out of the blue. He wants an extension on the application for tax credits. He was recently notified his application will no longer be considered after July 11. He does not recommend that people invest in FOHA based on his experience and the tax credit draw which is held out as an incentive. SHPO never contacted him about their concerns. They went directly to Department of Interior with a list of grievances and never corresponded directly with him. There is an issue with the heating system as well but all heating systems are temporary in nature as a result of the change from coal to oil and most recently to propane. SHPO also had comments about masonry. What exactly does “replace in kind” mean?
  - NPS Response (Pam McLay): NPS will reach out to SHPO and coordinate regarding the tax credit application. This is a learning experience for us. When you did your work, there was no SHPO consultation until after the work was completed. SHPO had not seen the plans and specifications beforehand. After learning from this, NPS modified the leasing process to ensure the consultation begins before the Lease is signed. This way, by the time the Lease is ready for signature, we all know SHPO is on board.

- Guy Hembling: The standards to which NPS and the Lessees are held make this a hardship, overly expensive.
- Tom Mertens of BON (Back of Napkin) Development (not an LOI Holder or Lessee) has experience rehabilitating historic structures in Hudson County (private developer). Loves history. Hears about this process, has explored it and shakes his head. The amount of time the process takes has turned a lot of people away. They hear about the red tape involved and are not interested in moving forward. He has experience working with municipalities but the layers of approvals here are too heavy. Time is money and this effort costs too much. If he could change two things he would streamline the amount of entities in the mix (USA, MT, and SHPO) and reexamine the cost of recreating the past – the cost of materials is prohibitive.
- Superintendent Response: The historic tax credit process works if you comply with the milestones. The first lease was signed prior to Section 106 compliance or review of plans. That is when we realized we need to do that before we sign the leases so we can ensure we have undertaken the necessary review and approval. Now all of that is done before we sign a lease. We review the plans and specs at the park, anticipate what SHPO may have issues with and report back to proposed Lessees. We undertake consultation early in the process to come up with solutions to meet the standards. For example, SHPO is working with us to address an extension to Building 114 (officers' club) and we are helping to develop a viable solution. Typically, if something has passed muster with us, it is something SHPO will also approve. Sometimes SHPO comes back with additional stipulations. For example, with Building 104, SHPO came back with additional stipulations, beyond what the park required. Not to say there isn't room for negotiations. It is looked at as a whole project, with give and take, with the understanding there has to be negotiation in order to make the project feasible. We have our review, SHPO has their review, and then you may apply for historic tax credits. Part of what we are trying to push for at the national level is the consolidation of this process. Also, note we are in a national historic landmark district. We are trying to effectuate signature by one party as approval for all.
- Action item: Make process map of tax credit application process and post construction process.
- Conclusion/Recommendations: Streamline the process, Identify what can be done to streamline the historic tax credit process, and to make the process less costly.
- Conclusion/Recommendations: NPS to seek an extension for completion of tax credit application on Mr. Samuelson's behalf.

### **Public Comment @ 11:30**

Commenters will be called in the order they sign up ● Commenters will be given three (3) to five (5) minutes to speak, based on how many people sign up ● Commenters should address the Committee as a whole & speak to issues within the Committee's scope ● At the discretion of the Committee and only if the commenter is willing, Committee members may ask clarifying questions

- Malcom DeBoes: How does the NPS accept a proposal to the RFP? NPS explains that the proposals are reviewed by the Regional Office, and if deemed sufficient, the NPS will

work with the selected Applicant on an LOI. LOI is the instrument is in effect between the selection of the Applicant and the signature of the Lease. It allows the LOI holder to access the Premises.

**Insurance and Bond Requirements** - Presentation to be posted on FACA Website.

- Leases identify types of insurance required “in amounts sufficient” to..... NPS must determine:
    - What is the appropriate level of coverage (Liability, Construction)? Presentation will be posted on the FACA website. Among the questions to be discussed:
    - Should Builders Risk be based on:
      - Replacement Cost
      - Cost of Proposed improvements
      - Cost to the Government to secure site (building) for next lease proposal
    - Should we require bonds? In what amounts?
  - We want to arrive at a conclusion that is consistent among the buildings
  - Committee Discussion:
    - For Builders Risk – MT recommends we require bonds in the amount it would cost the government to rebuild the structure. MT will report back on how bonds are structured for their projects.
    - Committee members point out that bonds can be secured with collateral or by showing a related stream of income that can support the bond.
    - Some Committee Members recommend using the amount of the initial investment for the basis of the bond.
  - **Conclusion/Recommendation:** Builders Risk Insurance should be for the amount of the proposed improvements and in the amount of the cost to the government.
  - Further discussion is tabled for later in the day.
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- Agreed that NPS will send SHPO a request for extension of Samuelson’s period of compliance. Recommendation: Encourage NPS to work with the Lessee and SHPO to facilitate an extension of the Lessees’ Historic Tax Application
  - Superintendent will call first in any case.

● **12:00 Working Lunch**

● **Insurance and Bond Requirements continued:**

- Committee Comment (Patrick Cullum): The typical market place the Lessor purchases the insurance. In this case, the NPS is acting as a landlord but also requiring the lessee to act as an owner by inserting the insurance requirements.
- NPS Comment (Pam McLay): Insurance companies will not over-insure. We have to consider this when we identify levels of insurance required. The coverage requirements we have identified in the presentation are based on Marshall and Swift.



Additionally, it is not clear whether Lessees can obtain bonds if they are not contractors themselves.

- Committee Comment: The cost of obtaining a bond could be prohibitive. Those costs deplete the amount of funding available for a Lessee to invest in the structure itself.
- Committee Comment: It may be difficult to identify the RCN for structures built in the 1890s.
- Response from a Lessee (Barney Sheridan) after being asked about insurance costs and identifying those which would make the project infeasible. Lessee has no issue getting liability and property and flood insurance but takes issue with the bond. All the contractors he is hiring have insurance and are licensed. Also, he does not think the insurer will replace historic materials in kind in the event of a property insurance claim.
- NPS Comments (Pam McLay):
  - If contractors are covered, maybe they can provide the Certificates of Insurance (COIs) and name the US as additional insured. In any case, a discussion is necessary about whether we need to identify a dollar threshold after which the bond requirement kicks in. Who is doing the valuation in that case? At the end of the day, the assessment of the value and cost is subject to what the insurance company indices say about it. Should we consider a bond equivalent to the costs of stabilizing the building? How would we identify the cost?
  - We always require a bond whenever we award a contract. However, because NPS is not making the investment in the buildings, the risks are much, much lower. We can make an argument to waive the performance bond. Maybe we need to weigh the worst case scenario for each building and identify whether we will still require some level of performance bond. Regardless, we need to document the decision for the administrative record.
  - The Superintendent asks the committee to provide some sort of written document articulating the conclusions we make with respect to this discussion.
- One of the committee members (Patrick Cullum) points out that we have a number of abandoned properties and are no worse for the wear – in fact, the properties are enhanced.
- Committee Member recommends we consult with an insurance representative/consultant (Patrick Cullum or Jim Krauss). Committee Member Tony Merchantante offers to provide information about MT bonding requirements.
- Conclusion/**Recommendation**: After further discussion the Committee agrees:
  - Liability Insurance: The standard \$1 million per occurrence/\$3 million aggregate required by NPS is sufficient.
  - Flood Insurance: \$250,000. Meets FEMA cap due to location.
  - Property Insurance: The level of property insurance to be required should be Replacement Costs New without identifying a dollar figure. The insurer will identify the RCN based on an index. Include a 20% premium to account for historic building costs.
  - Bond Requirement: NPS would be willing to waive the bond requirement if the proposed initial improvements are for interior rehabilitation only.
- Action Items:

- Committee Members will form a working group to gather information on Bond and Builders Risk Insurance for presentation prior to the next meeting (Tony Mercantante, Jim Krauss and Mike Holenstein). Committee Members will try to identify a consistent method of determining requirements with the understanding that not all the leases will be subject to the same levels/requirements.
- NPS and Co-Chairs will schedule a call with the working group to discuss the findings/report prior to distribution of findings to the Committee at large.
- Based on advice from Committee, NPS encourage to set insurance and bonding requirements prior to next FACA meeting. NPS to report back the results of its fact-finding and decisions at next FACA meeting.
- Agenda Item: Bond Requirement Discussion/Follow Up

- **Committee Governance Discussion**

- Committee Operating Procedures: Committee Review of Operating Procedures (distributed via email prior to meeting). Operating procedures are approved with consensus and will be posted.
- Task List: The Task List is a summary of the recommendations and action items from the meeting minutes. It is helpful in obtaining responses to the Committee's recommendations. Though it is a working document for internal use, the Task List is useful to track progress and identify projects assigned to various Committee Members. It is also useful to show Committee Members how they have spent their time on this committee. The Task List also helps shape the Agenda. Co-chairs ask Committee Members to review the Task List, provide comments, and provide feedback about the format. Committee consensus that this will continue as an internal working document.
- Conflict of Interest: There is renewed interest in the efforts at Sandy Hook at the Secretary [of Interior] and Department [of Interior] level. Ethics guidance was provided to the Committee in the early days of formation. The Committee has asked for someone from the Department to speak to Committee on the topic of ethics. Topics for this discussion include the following:
  - Conflict of Interest. What, if any, conflict of interest issues, land on the table in front of us. How do we deal with them?
  - Perception. Want the public to perceive that we are doing things in an above the board ways.
  - Fiduciary Responsibility. What types of fiduciary responsibility do Committee Members have?
- The Committee's sole role is to advise the park. The Committee does not have to deal with conflicts in the same way that agency employees do. What are the implications for the Committee Members?
- It is important to circulate a draft Conflict of Interest statement. We need to address transparency and should not be uncomfortable addressing related decisions.
- We are hoping to have a DOI Ethics Officer present on this topic at one of the upcoming meetings.

- Committee Member Comment (Mike Walsh): There is no harm in having a list of what is or could be conflict, making it clear to Committee Members what is within the realm of their representation. Having a written document identifying actions that are not within the Committees purview is helpful and that would be clear if it were in writing.
- Recap: Review Discussion, Confirm Action Items and Recommendations (summarized above)
- One additional recommendation from a Committee Member (Mike Walsh): Put signs back up – available for Lease.
- Adjourned