



U. S. DEPARTMENT  
OF TRANSPORTATION

Federal Highway  
Administration

Pennsylvania Division

**JUL - 7 2010**

228 Walnut Street, Room 508  
Harrisburg, PA 17101-1720

In reply refer to:  
HEV-PA.1

Allegheny County, Pennsylvania  
Mellon Arena Proposed Demolition

Ms. Jean Cutler  
PA Historical & Museum Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>ND</sup> Floor  
Harrisburg, PA 17120-0093

Dear Ms. Cutler:

Thank you for your inquiry dated June 14, 2010 regarding the future of the Mellon Arena in Pittsburgh, Pennsylvania. Your letter both solicits our advice and requests the participation of the Federal Highway Administration (FHWA) in consultation under Section 106 of the National Historic Preservation Act. I have reviewed your letter and attachment as well as the June 16 letters to the Sports Exhibition Authority (SEA) and to the Advisory Council on Historic Preservation (Council).

Presently, neither the Transportation Improvement Plan (TIP) nor the Statewide Long Range Program (LRP) includes an activity that might feature the demolition of the structure. Neither the Pennsylvania Department of Transportation nor the Southwestern Pennsylvania Commission (SPC), the Metropolitan Planning Organization (MPO) for the region, is aware of any intent for a Federal-aid project on or near the site of the area. The action of demolishing sporting areas is not an activity that the FHWA could reasonably foresee having a transportation link or tie where Federal-aid funding might be provided through our programs. Therefore, the FHWA has no discretion or influence and cannot participate in Section 106 consultation on this activity.



Should conditions change or relevant new information be made available, we could reconsider this position.

Sincerely,



Renee Sigel  
Division Administrator

cc: Dan Cessna, P.E., District Executive, PennDOT District 11-0  
Barbara Franco, Executive Director, PHMC  
Reid Nelson, Advisory Council on Historic Preservation  
Chuck DiPietro, SPC  
Mark Young, PennDOT District 11-0





Commonwealth of Pennsylvania  
Pennsylvania Historical and Museum Commission  
**Bureau for Historic Preservation**  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120-0093  
[www.phmc.state.pa.us](http://www.phmc.state.pa.us)

June 14, 2010

Ms. Renee Sigel, Director  
FHWA, PA Division  
228 Walnut Street, Room 508  
Harrisburg, PA 17101-1720

Dear Renee:

I am writing to request your advice concerning the future of the Mellon Arena (Arena) located in Pittsburgh.

The Arena, built in the early 1960's, is eligible for listing on the National Register of Historic Places. Last year, a new Sports Exhibition Center was built adjacent to the Arena, making the Arena, in the eyes of the Sports Exhibition Authority (SEA), which owns it, as well as the new Sports Exhibition Center, redundant.

The SEA would like to demolish the Arena. The last event is scheduled for June 30, 2010, so this could happen anytime after that date.

The SHPO has been consulting with the SEA under the State History Code. As you may know, the History Code has no clearly defined procedures for consulting about project effects: it merely states the Agency "will consult." A while ago, the SEA informed our office that they were "anticipating federal funding" for the redevelopment of the acreage under and around the Arena, specifically to re-establish some semblance of the pre-Arena street grid. For this reason, it was agreed that the SEA could use Part 800, the regulations that govern Section 106, as a procedural template in order to impose some structure on the process for a project that was known to be controversial, and we concurred with that course of action. While the SEA, to my knowledge, has not received official notice that the federal funding is available, the SEA may want to proceed with demolition of the Arena.

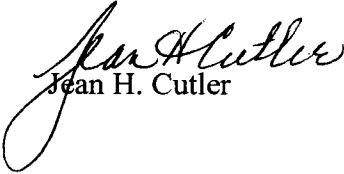
Advocates for preserving the Arena have inquired as to whether it would be considered anticipatory demolition if the SEA demolished the Arena when it is commonly known that it is anticipating federal dollars for the redevelopment of the site (street grid). From their perspective, the existence of a MOU (enclosed) calling for the SEA to demolish the Arena which, if not for the demolition, federal funds for re-establishing some semblance of the street grid would not be used. On the other hand, the Executive Director of the SEA has informed me verbally that the SEA has no money at this time for demolition.

Our purpose in conveying the concerns of preservation advocates regarding anticipatory demolition is to ensure that if a federal undertaking is identified, project consultation will proceed as efficiently as possible.

In light of the anticipated FHWA funding, I am writing to request FHWA's involvement in this consultation. Would FHWA agree to enter into consultation with us and the SEA prior to a federal undertaking being officially determined?

I know you and your staff are very busy; however, this issue is quite pressing. I look forward to hearing from you at your earliest possible convenience

Sincerely,



Jean H. Cutler

CC:

Barbara Franco, Executive Director, PHMC  
Bill Callahan, PHMC  
Mary Conturo, Executive Director, SEA  
Anne Nelson, PHLF  
Rob Pfaffmann, Save the Igloo  
Scott Leib, Preservation Pittsburgh  
Chris Cieslak, Oxford Development  
Tim Zinn, Michael Baker  
Gary English, [avigilantone@verizon.net](mailto:avigilantone@verizon.net)

**FOR IMMEDIATE RELEASE:**  
**March 13, 2007**

**GOVERNOR RENDELL HAILS MAJOR AGREEMENT KEEPING THE PENGUINS IN PITTSBURGH**

**PITTSBURGH** — Governor Edward G. Rendell today joined county, city and Pittsburgh Penguins team officials to announce an agreement calling for the construction of a new hockey arena to allow the NHL franchise to remain in the city.

"I am delighted that as a result of this historic agreement, the Penguins will stay and play in Pittsburgh for the foreseeable future," said Governor Rendell. "The Penguins will get the arena they so desperately need without imposing any additional burden on taxpayers. This, to me and the other public officials involved, was the key to securing this deal.

"We are able to build this arena only because Pennsylvania approved gaming. The majority of the funding going to this plan will come from gaming in one way or another," Governor Rendell said. "I proposed that Pennsylvania adopt gaming for one reason: to give Pennsylvanians property tax relief. But our ability to build a new arena for Pittsburgh is a major side benefit of gaming."

Governor Rendell said that the commonwealth, Allegheny County, the City of Pittsburgh, and the Sports and Exhibition Authority (SEA) have reached a basic understanding with the Lemieux Group LP (the Penguins) to build, operate and maintain a new arena in Pittsburgh. The new facility will be built adjacent to the Mellon Arena where the Penguins now play. Opened as the Civic Arena in 1961, the facility has been the Penguins' home since the team was formed in 1967.

The budget for design and construction of the new arena is set at \$290 million. The budget will include soft costs, eligible pre-development expenses previously incurred by the Penguins, acceptable design and construction contingencies and oversight expenses of the SEA.

The facility will be designed with the goal of assuring that anticipated costs do not exceed \$290 million. The Penguins will have ultimate control over the design and construction, provided that the commonwealth and the SEA each approve the design. The Sports and Exhibition Authority will be responsible for preparing the site for construction of the new facility.

The Penguins will enter into a 29.5-year lease for the new arena, commencing upon the facility's opening. The lease will obligate the Penguins to play hockey in the arena for the term of the lease and contain a non-relocation clause. They will also be required to make 30 payments of \$4.2 million per year through the term of the lease. The Penguins will manage, operate and maintain the new arena, subject to the terms of its current agreement with SMG.

Governor Rendell thanked all parties involved in the negotiation process, including Penguins owner Mario Lemieux, Pittsburgh Mayor Luke Ravenstahl, Allegheny County Executive Dan Onorato, and NHL Commissioner Gary Bettman. He also praised the Penguins for turning down offers from other cities.

"The team was willing to work with us to find a way to secure this agreement, even as the folks in Kansas City were repeatedly sweetening their offer. The Penguins did this because they believe in Pittsburgh and they believe in their fans. The team will pay more to stay in Pittsburgh than they would in Kansas City, but I believe -- and they agree -- that they will get infinitely more, too."

###

**EDITOR'S NOTE:** Copies of the term sheet and memorandum of understanding are attached.  
Pittsburgh Arena Term Sheet

1. The Penguins will enter into a 29.5 year lease for the new arena, commencing upon its opening. The lease will obligate the Penguins to play hockey in the arena for the term of the lease and contain a non-relocation clause.
2.
  - i. The Penguins will make thirty (30) payments of \$3.6M/year throughout the term of the new arena lease.
  - ii. Upon the opening of the new arena, the SEA will impose a new surcharge on parking. The first \$400,000/year of revenue generated from the new parking surcharge will be deposited annually into a capital reserve fund established to maintain and improve the new arena. The balance of the proceeds from the new parking surcharge in excess of \$400,000/year shall go to the Penguins.
  - iii. Upon the opening of the new arena, the SEA, at its expense, shall promptly demolish Mellon Arena and pave, stripe and in all respects prepare the land under Mellon Arena for use as a parking lot. Upon completion of this work, the Penguins shall pay an additional \$200,000/year over the life of the lease. This use shall continue until the land under Mellon

**Arena is developed.**

3. The Penguins will manage, operate and maintain the new arena, subject to the terms of its current agreement with SMG, and shall retain all revenues generated from all events at the new arena.
4. Except for the new parking surcharge, all revenue generated from existing surcharges shall go to the Penguins and no new surcharges of any kind shall be imposed without the approval of the Penguins.
5. Prior to redevelopment, the Penguins shall manage, operate, maintain and retain all revenues from all current and future parking lots on the current Mellon arena site.
6. The SEA will provide a 500 space surface lot adjacent to the new arena; the Penguins will manage, operate, maintain and retain all revenues from said lot. Alternatively, the Penguins may elect for the SEA to construct a 500 space structured parking garage adjacent and connected to the new arena in exchange for the Penguins paying an additional \$500,000 per year throughout the term of the new arena lease. The parties will agree on a deadline for the Penguins to make such election. If the Penguins inform the SEA of their election to build the garage by May 1, 2007, the SEA will be obligated to complete the garage in time for it to open in conjunction with the opening of the new arena. The Penguins will manage, operate, maintain and retain all revenues from the garage.
7. The arena construction budget will be set at \$290M. The budget will cover the following matters:
  - Construction
  - Design
  - Soft Costs
  - Eligible pre-development expenses previously incurred by the Penguins in an amount of approximately \$6M (Commonwealth and SEA to review and approve the itemized expenses)
  - Acceptable design and construction contingencies, including a 5% owner contingency
  - Oversight expenses of the SEA, estimated at approximately \$2.5M
8. The new arena will be designed with the goal of assuring that all matters listed in Paragraph 7 do not exceed \$290M. The Penguins will exercise ultimate control over the design and construction, provided that the Commonwealth and the SEA each shall approve the design.
9. A GMP for the mutually approved arena design will be contracted for at the earliest appropriate time, taking into account the relationship between design certainty and achieving a cost efficient GMP. If the GMP plus the other matters listed in Paragraph 7 ("GMP+") exceed \$290M, the Penguins and the Commonwealth agree to split any excess 50/50 up to a GMP+ of \$310M. The Penguins will have the right to pay their share of the increase in the GMP+ from \$290M to up to \$310M in the form of increased annual payments, rather than a lump sum. In the event the GMP+ exceeds \$310M, the Penguins shall have the right to terminate their participation in the project without further financial obligation, provided that the parties shall first work together in good faith to redesign and value engineer the arena to lower the GMP+ to a level not exceeding \$310M.
10. Once the GMP+ is established, the Penguins shall be responsible for any cost overruns, provided that the Penguins shall have the right to modify the design of the new arena to mitigate such overruns, subject to the reasonable oversight of the Commonwealth and the SEA.
11. The SEA will pay the Penguins \$8.5M for the hospital site. The parties recognize that it is essential for the SEA to gain access to the property as soon as possible to begin abatement, demolition and other site work. It is anticipated that the source of the \$8.5M will be from bond proceeds over and above the \$290M referenced in Paragraph 7. In the event the SEA must access the property to commence its work before the \$8.5M is available, the parties will work together to devise an arrangement acceptable to the current mortgage holders of the hospital site to enable conveyance of the hospital site to the SEA as soon as possible.
12. The Penguins shall be reimbursed for legitimate predevelopment costs of approximately \$6M out of the \$290M referenced in Paragraph 7. To the extent any such costs are not reimbursable from the bond proceeds contemplated to fund the \$290M, the Commonwealth will develop an alternative means of delivering this reimbursement to the Penguins.
13. To fund marketing expenses incurred by the Penguins in promoting the Team and/or the current or new arena, the Commonwealth will provide funds for the direct economic benefit of the Penguins in an amount equal to \$2M, which the parties contemplate will be paid in a lump sum.
14. \$3M from the bond proceeds (over and above the \$290M construction budget referenced in Paragraph 7) shall be deposited into a capital reserve fund for the new arena.

15. In the event the City of Pittsburgh amusement tax rate is increased or a comparable tax on tickets or admissions is created or increased at any time during the term of the new arena lease, the Penguins shall receive a credit against their financial obligations under the new arena lease or be paid an amount equal to the proceeds from any such new or increased tax on tickets or admissions for arena events.
16. The SEA shall be responsible for all site conditions on the new arena site and shall be responsible for making the site available for construction of the new arena in a clean, buildable condition. Utilities and other infrastructure shall be made available in a manner and in locations consistent with the design of the arena.
17. Development Rights:
  - For the value and on the terms set forth in this Paragraph 17, the Penguins shall have development rights to the entire Mellon Arena site, as well as any portion of the hospital site which is available for development following construction of the new arena and the agreed upon surface or structured parking facilities built in connection therewith.
  - The development rights may be assigned in whole or in part by the Penguins at any time with SEA approval, which shall not be unreasonably withheld or delayed.
  - Following execution of the new arena lease, the Penguins shall negotiate, in good faith, terms for PITG Gaming to potentially participate in development rights.
  - The Penguins and the SEA shall work together to develop a comprehensive redevelopment plan for the development site. The parties shall work together in a good faith, collaborative manner to promote a timely and desirable redevelopment process. The final redevelopment plan(s) shall be subject to SEA approval, which shall not be unreasonably withheld or delayed.
  - The development site shall have a drawdown period of 10 years, commencing on the first anniversary of the later of: (1) the opening of the new arena and (2) the demolition of Mellon Arena and preparation of the land thereunder for use as a parking lot. Upon the commencement of the drawdown period, the Penguins shall be obligated to develop a pro rata portion of the development site during each succeeding twelve month period. For example, if the overall development site is 28 acres, the drawdown schedule would call for development of 2.8 acres per year.
  - Upon the Penguins identifying a parcel they wish to be redevelop, the parties shall have the value of the parcel appraised, taking into account its approved use, on a traditional "1/1/1" appraisal method.
  - The Penguins are entitled to \$15M of credits from redevelopment. Until the entire \$15M credit has been received, these credits may be earned in any combination of three ways: first, in the event the Penguins are developing a parcel, the parcel shall be appraised as described above, and the Penguins shall receive a credit against the purchase price in an amount equal to the appraised value; second, the Penguins shall receive the proceeds from the sale or lease of any parcel to a third party, whether by the Penguins or by the SEA; third, at the conclusion of the ten year drawdown period, to the extent the Penguins have not earned credits totaling \$15M, the SEA shall pay the shortfall in cash.
  - If, on a cumulative basis, the Penguins fail to perform in a timely fashion on the drawdown schedule, the Penguins shall forfeit their development rights with respect to the corresponding amount of land. For example, if the drawdown schedule calls for development of 2.8 acres per year and, at the end of any drawdown year, the Penguins have failed to develop land at a rate of 2.8 acres per year, the Penguins would forfeit their development rights with respect to the number of acres representing the short fall. In every case, the Penguins shall have the right to designate the location of the land on the development site to which its development rights are forfeited.
  - Failure to meet the drawdown schedule and/or forfeiture of development rights with respect to any portion of the development site shall not affect the Penguins' right to operate and retain revenue from the present or future parking lots on the Mellon Arena site prior to any such lot being redeveloped; provided, however, that the Penguins shall forfeit their rights with respect to parking upon the 10th anniversary of the beginning of the drawdown period.
18. The Commonwealth of Pennsylvania, Allegheny County and the City of Pittsburgh shall be responsible for the full and timely performance of all public sector obligations.

**PITTSBURGH ARENA  
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is entered into on March \_\_, 2007 among the Commonwealth of Pennsylvania (the "Commonwealth"), Allegheny County (the "County"), the City of Pittsburgh (the "City"), the Sports and Exhibition Authority of Pittsburgh and Allegheny County ("SEA") and Lemieux Group LP (the "Penguins").

The Commonwealth, the County, the City, and the SEA have reached a basic understanding as to a venture with the Penguins to build, operate and maintain a new arena in Pittsburgh adjacent to the current Mellon Arena. The parties are determined to proceed with this venture upon the mutual understandings contained in the attached Term Sheet setting forth the anticipated respective obligations and expectations of the Commonwealth, the County, the City, the SEA and the Penguins. The parties mutually acknowledge that they will work diligently to negotiate and execute a lease and other definitive agreements reflecting the understandings in the Term Sheet within thirty (30) days hereof. The parties intend that the lease and other definitive agreements will use a format and other general relationships utilized for the development, construction and occupancy of PNC Park and Heinz Field, subject to the provisions of the Term Sheet.

**COMMONWEALTH OF  
PENNSYLVANIA**

By: \_\_\_\_\_  
**SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY  
COUNTY**

By: \_\_\_\_\_  
**ALLEGHENY COUNTY**

By: \_\_\_\_\_  
**LEMIEUX GROUP LP**

By: \_\_\_\_\_  
**CITY OF PITTSBURGH**

By: \_\_\_\_\_