

STAFF RECOMMENDATION

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NCPC File No. 0735

NATIONAL CAPITAL PLANNING COMMISSION
ENVIRONMENTAL AND HISTORIC PRESERVATION POLICIES AND PROCEDURES
(As adopted on September 13, 1979 and amended on September 3, 1981, October 21, 1982, and
April 1, 2004)

FINAL POLICIES AND PROCEDURES

March 25, 2004

Abstract

The Commission staff has drafted final revisions to the agency's environmental and historic preservation policies and procedures. This final document addresses necessary changes to the Commission's existing requirements that describe how the National Capital Planning Commission, beginning at the earliest possible point, considers the environmental and historic aspects of proposed actions that it reviews and acts upon, including commemorative works. The proposed final revisions would supersede current provisions regarding environmental documentation required by the Commission. The revisions also address the National Historic Preservation Act (NHPA), Section 106 compliance, pertaining to Commission review and action.

Commission Action Requested

Commission adoption pursuant to its authority under The National Capital Planning Act (40 U.S.C. § 8711 et seq.), the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq., the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (43 F.R. 55978-56007), and National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).

Executive Director's Recommendation

The Commission:

Commends both the Council on Environmental Quality and the Advisory Council on Historic Preservation for their staff's assistance in the revision to the Commission's proposed procedures.

Adopts the attached final National Capital Planning Commission Environmental and Historic Preservation Policies and Procedures, dated April 1, 2004.

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PROPSAL SUMMARY

Executive Summary

The Commission requires, in the submission of all projects, environmental and historic information that complies with the National Environmental Policy Act (NEPA) and the Section 106 Process of the National Historic Preservation Act (NHPA) as specified by the Advisory Council on Historic Preservation (ACHP) in their implementing regulations at 36 CFR, Part 800. It is the goal of the Commission staff to update the Commission's current policy and procedures to better comply with guidance from ACHP and the Council on Environmental Quality (CEQ); to be more efficient in addressing historic property concerns; and to ensure that official actions undertaken by the Commission comply with the procedural requirements identified by NEPA and the Section 106 processes.

Procedure Revision Issues:

- Since the last update to the Commission's environmental procedures, in October 1982, CEQ has issued guidance on topics it has found necessary to clarify in implementing NEPA. Guidance for the most part has adhered to issues involving federal agency documentation and analysis specified by NEPA through CEQ implementing regulations found in the federal code (40 CFR, Parts 1500-1508).
- Additionally, in June 1999 and January 2001, ACHP revised their implementing regulations for historic properties (36 CFR, Part 800) to better accommodate and identify the fit between Section 106 compliance and the NEPA process with other changes.
- Varying NEPA issues necessitated updating the Commission's procedures to implement new guidance. The attached revised procedures include the CEQ and ACHP advocated changes that would enhance NEPA and Section 106 compliance for Commission reviews.

Key Proposed Revisions:

- Section 1

The revised policy and procedures document now specifies three important objectives in Section 1. The document:

- Reaffirms that the National Capital Planning Commission follows the requirements of NEPA and the Section 106 requirements for projects the Commission sponsors.

- Identifies that the Commission must adhere to and meet the objectives of NHPA and its Section 106 process when applicable.
- Provides guidance to other federal agencies by outlining the required documentation that must accompany each project or master plan submission to the Commission.

The revised procedures note that engaging NEPA and Section 106, meeting their requirements, and confirming an applicant's completion of environmental documentation will help the Commission evaluate a proposal's environmental and historic effects.

- Section 2

This section clarifies commonly used terms and introduces new items that are discussed in the new text.

- Section 3

Section 3 is a new section clearly stating the policy of the Commission in a distinct portion of the procedures as requested by CEQ.

- Section 4

This section is significantly revised to define decision points and requirements for preparing NEPA and historic preservation compliance information based on differing forms of Commission approval. Of significance is the specific elaboration of site location for commemorative works. This section also includes a clause regarding Commission actions in emergency situations.

- Section 5

This completely new section of the procedures identifies scoping in the NEPA document preparation process. Although the concept of "scoping" has existed for several years, the provision was not previously addressed by NCPC. CEQ believes scoping is important to the NEPA process, and that the objectives of NEPA scoping should be clearly expressed.

- Section 6

Section 6 denotes specific requirements expected of an applicant and clarifies points CEQ believes are important to note, regarding non-federal applicants, given the increased responsibility the Commission inherits in such circumstances.

- Section 7

This revision specifies that all submissions include Section 106 process information and also stipulates requirements when NCPC is serving as a lead responsible agency for the Section 106 process. The section also indicates the responsibilities of the Executive Director when NCPC is serving in a lead role.

- Section 8

This section identifies Commission actions that are categorically excluded from further NEPA process review. CEQ requested specific modification of this area of the Commission's procedures to identify criteria and to specify extraordinary circumstances that must be considered before categorically excluding a particular action.

This section now distinguishes the Federal Elements and the District of Columbia Elements of the *Comprehensive Plan for the National Capital* and excludes those actions from the requirement to prepare an EA or an EIS when submitting those documents for Commission review. Other actions are modified, as requested by CEQ and concurred in by NCPC Acting Counsel, to further clarify and establish categorical exclusions in the revised procedures.

- Section 9

This new section specifies Commission actions that normally require preparation of an Environmental Impact Statement (EIS). This information is a requirement of CEQ regulations. Specific steps are identified, for reference by the public, indicating the EIS preparation process.

This section, at the request of CEQ, introduces how the Commission establishes a baseline of significance to consider whether to prepare an EIS. The information was directly produced by CEQ and staff and was recommended by CEQ for inclusion.

- Section 10

This section identifies Commission actions that normally require preparation of an Environmental Assessment (EA). This information is a requirement of CEQ regulations and must include the criteria for determining the categories of actions reviewed by an EA. Actions that normally require preparation of an EA include approval of the location of commemorative works within the District of Columbia or the Region. The section also specifies preparation of an EA when a master plan or master plan modification is submitted for Commission review.

- Section 11

CEQ requested that a clear course of public input and comment to the Commission's NEPA process be specified in the revised procedures. CEQ also recommended showing how the NEPA public process fits with other environmental laws. This section provides that information.

- Section 12

Section 12 introduces the delegated authority granted to the Executive Director as specified by Commission action in October 1996. A similar section currently exists in the current procedures, but is now revised with the 1996 information. Paragraphs (H) and (I) are additions that CEQ required in the new procedures.

- Section 13, 14 and 15

These sections are re-issued with updated information citing new contact points, the Commission's new location, and corrected information on legislative citation, authorities, etc.

- Appendices

The appendices include an outline for the preparation of an EA, as does the current procedures. However, revisions have been made to the Commission's NEPA outlines for both the EA and EIS documents identifying additional content that includes more detail on historic preservation issues, environmental justice, and cumulative impact evaluations.

In conformance with guidance both from CEQ and the new implementing regulations for Section 106 of the National Historic Preservation Act, effective in June 1999 and January 2001, the Commission endorses streamlining the NEPA/NHPA evaluation and documentation process by combining the processes when possible, but as options. The coordination of the two analysis procedures requires certain specific steps be included in the NEPA documentation in both the EA and the EIS. These requirements are further identified in the revised procedure appendices.

The outline includes the requirement for addressing environmental justice. This revision responds to CEQ guidance issued in December 1997 about this topic in the context of NEPA. CEQ's guidance outlines six principles that should be addressed in the course of NEPA review to ensure consideration of environmental justice, and these are emphasized in the framework.

PROPOSAL ANALYSIS

Staff seeks Commission approval of the final Environmental and Historic Preservation Policies and Procedures, dated April 1, 2004. After research, evaluation of changes, and adoption of suggested comments by the public and other federal agencies, the environmental policies and procedures are ready to be issued in their final form. All suggested changes by CEQ and ACHP have been addressed in revising the attached policies and procedures. Other government agency comments, including identified concerns by the NPS in March 2004, have been considered and incorporated.

The staff believes that the final policies and procedures will not have a significant economic impact on any substantial number of entities. The Environmental and Historic Preservation Policies and Procedures, in its final version, impose mandatory responsibilities only on federal agencies and limited non-federal applicants. As set forth in the CEQ regulations, 40 CFR, Part 1500-1508, and Section 106 of the NHPA, the duties to take into account the effect of federal actions and undertakings on the environment and on historic resources are federal agency duties. Indirect effects on small entities, if any, created in the course of a federal agency's compliance with Section 106 of the NHPA or NEPA have been considered and are believed to be minimal.

The final policies and procedures do not impose reporting or record keeping requirements or the collection of information as defined in the Paperwork Reduction Act, beyond those already specified by the CEQ NEPA regulations disseminated in 1978.

The policies and procedures do not mandate state, local, or tribal governments to participate in the Commission environmental and historic review process. Instead, state, local, and tribal governments may decline to participate, if they desire. State Historic Preservation Officers do advise and assist the Commission, as appropriate, as part of their duties under NHPA. In addition, in accordance with Executive Order 12875, Enhancing Intergovernmental Partnership, the policies and procedures include several flexible approaches to consideration of environmental and historic compliance processes in federal agency decision making. The procedures also promote flexibility and cost effective compliance by providing for alternate procedures, categorical exclusions, standard treatments for review, and opportunity for public comments.

The proposed policies and procedures intend to avoid adverse human health or environmental effects, including impacts to historic properties, and they seek to avoid potential significant adverse effects from Commission actions within the National Capital Region regarding these issues. The participation and consultation process established by these policies and procedures requests public participation—including participation by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed federal actions being considered by the Commission. The procedures are a means of access for minority and low-income populations to participate in the federal decision process that may affect such resources as environmentally sensitive areas, historically significant neighborhoods, unique historic buildings, and traditional cultural properties. The Commission

considers environmental justice issues in reviewing analysis of submission alternatives and mitigation options when applicant submissions are coordinated with NEPA compliance as specified in the final policies and procedures. The final procedures have been reviewed and commented upon by the public and other federal agencies, and have been revised based on that input, for final approval by the Commission. To achieve this end, in conformance with NEPA implementing regulations and provisions of NHPA, **the staff recommends the Commission approve and adopt the final procedures attached to this report.**

The Commission staff, as a final commentary, wishes to acknowledge the assistance and participation of the reviewers who took time to observe, analyze, and respond to the proposed revised procedures, and in particular expresses appreciation to the staffs of the Advisory Council on Historic Preservation and the Council on Environmental Quality for their time and support.

SUPPLEMENTAL INFORMATION

Previous Commission Action

The Commission, at its September 2, 2000 meeting, authorized circulation of the draft Environmental and Historic Preservation Policies and Procedures for public review and comment.

Comments on the Revised Procedures During the 60-Day Public Comment Period

In revising the policies and procedures, the Commission sought comment from CEQ, ACHP, federal agencies, and the general public. A *Federal Register* Notice, announcing the intended changes, was available to the public on September 25, 2000 (see attachments). Additionally, the Commission provided a draft policies and procedures notice to its standing Tentative Agenda mailing list participants, and placed a notice and electronic copy of the draft text on the Commission's internet website. The 60-day comment period on the draft policies and procedures ended on November 24, 2000.

Following the conclusion of the comment period, NCPC staff reviewed the public comments it received on the draft document. This occurred on November 27 through late February, 2001. Comments from citizens and government agencies varied but were limited in number. No comments were provided by state or local agencies, although telephoned questions were received by staff.

The General Services Administration (GSA) provided early comments, during development of the draft, that were reflected in the draft prior to its distribution. Additional comment from GSA was provided to NCPC in January 2004 and is responded to at page 14 to 17.

The National Park Service (NPS) provided comments on December 2000 and additional input in February and March 2004. Of particular concern to the Park Service were issues of coordination

of early NEPA documentation regarding commemorative works and clarification of NHPA Section 106 review requirements pertaining to memorials and monuments. In mid March 2004, NPS representatives and legal staff agreed to the revised language that now appears in the final procedures at Section 4 and specifies further detail regarding commemorative work site proposals.

CEQ review and approval of the procedures has been thorough and in depth. In the later part of 2002 into 2003, CEQ itself initiated a federal Task Force review government-wide of the NEPA process overall, which potentially could have affected development of NCPC final procedures. Mr. Horst Greczmiel, CEQ Associate Director for NEPA Oversight, noted that the Task Force effort undertook the goals of “recognizing the value that NEPA provides as well as the concern that the NEPA process was becoming no more than a process, losing its focus on helping Federal agencies make better-informed decisions.” Further CEQ comment on the specific NCPC revisions is noted at page 14.

The ACHP provided comments in a meeting on February 13, 2001 and in a follow-up letter on February 20, 2001, indicating their support of the policy and procedure revisions. ACHP did, however, express concerns about specific details involving the application of the Section 106 process to Commission actions. The staff has carefully considered the Council’s issues about the changed policy and procedures. ACHP’s suggested revisions to the document have been implemented with NCPC staff accepting a majority of the recommendations. Responses to the ACHP issues occur on pages 10 to 14 of this report. Further verbal comment was provided to NCPC by the ACHP staff in a February 2004 meeting that resulted in additional minor revisions, particularly in the policy statement at Section 3 and its discussion of compliance with Section 110 of NHPA.

The Chairman of the Committee of 100 for the Federal City provided comments regarding the procedures on February 22, 2001. These comments, which have been addressed in the final policies and procedures, are discussed on pages nine and 10.

The Coalition to Save Our Mall provided comments about the procedures on January 21, 2004. These comments are discussed beginning at pages 17 and 18.

The suggested changes for the final environmental and historic policies and procedures included:

NPS Comment: ...Section 4(A), we would suggest adding the following new sentence after the word “submission” on the third line from the bottom: “If the Section 106 process results in a Memorandum of Agreement (MOA), the MOA must be executed and submitted to the Commission prior to the final project approval.”

Response: Change Implemented.

Committee of 100 Comment: In Section 13 (Now Section 8), NCPC attempts to ‘categorically exclude’ from any NEPA review a lot of categories of projects that may, in fact, have a significant environmental impact. Some of the exclusions may be due to the fact that NCPC’s review in that context is advisory only, and therefore no NEPA obligations [are] attached. However, the concept of ‘categorical exclusions’ assumes that the agency does have NEPA obligations with respect to the specific category of action, but in the agency’s experience....does not have significant environmental impacts. It is difficult to determine from the NCPC list which types of projects are listed for which reason.

Response: The categorical exclusions section has been revised to clarify the intent of the exclusion list. Nevertheless, the exclusions, by definition, are actions that NCPC has determined do not individually, or in the context of cumulative significant effects, have an important impact on the human environment. They must comprehensively relate to the types of activities acted upon by the Commission when the action does not appear to require an Environmental Assessment or Environmental Impact Statement. Even so, every project the Commission reviews as a potential candidate for categorical exclusion must be evaluated for the presence of extraordinary circumstances, as specified in Section 8, to be considered a categorical exclusion.

Committee of 100 Comment: The proposed rules attempt to specifically list the impacts [that] should be assessed and what information should go into an Environmental Assessment (EA) and Environmental Impact Statement (EIS). See Appendices A and B. However, the listing of types of impacts is too restricted...We recommend that NCPC refrain from providing a specific list of impacts, since such a listing would likely be misconstrued as not requiring the agency to evaluate non-listed categories of impacts. Instead, reference should be simply made to the definitions contained in the CEQ regulations.

Response: Although the concern may in theory occur, the practical matter is that CEQ regulations do not define impact evaluations that should occur in the development of an Environmental Assessment. The regulations do, in a general manner, allude to broad areas of interest in the development of Environmental Impact Statements. CEQ has made clear to federal agencies that an agency should augment the CEQ procedures and further explain what information and documentation each requires to make informed environmental decisions. That is the general intent of the Appendices and a current outline is already present in the Commission’s existing policies and procedures. In addition, as clearly specified by the new procedures and by CEQ guidance, scoping of an environmental document is the defining activity that focuses the intent and issues of any environmental document. Consequently, this activity is now identified by the NCPC procedures at Section 5.

Committee of 100 Comment: We urge NCPC to make an Environmental Assessment available for public review and comment.

Response: Change Implemented.

Committee of 100 Comment: The EIS procedures (Appendix B) suggest that preparation of an EIS can substitute for compliance with Section 106, and therefore obviates the need to negotiate a Memorandum of Agreement addressing mitigation to historic properties. This is not appropriate.

Response: The text alluded to does not allow the outcome specified. The process noted only highlights that an EIS, developed as specified, can provide the information basis to conduct resolution of Section 106 issues. The approach is conditional in that the EIS process must adhere to the specifications of the Advisory Council on Historic Preservation regarding the EIS preparation identified in their procedures at 36 CFR, Subpart B, Section 800.8. However, the process of developing a Record of Decision (ROD) must adhere to the objectives of the procedure for a Memorandum of Agreement and the EIS ROD must be provided to the Advisory Council for comment on its adequacy if issues warrant it. It should be noted this process is offered in the procedures as an optional approach for combined Section 106 and NEPA documentation.

Committee of 100 Comment: In Section 6, (Now Section 9) the decision ... to prepare an EIS should not be delegated, since this decision is too important to be made completely outside of any public scrutiny.

Response: The comment assumes that the delegation removes public opportunity to comment on the decision to prepare or not prepare an EIS. The procedures are clear that if an EIS is to be undertaken, the effort must be noticed and scoped--with the public having an opportunity to comment. Conversely, the decision not to prepare an EIS is noticed and scoped by virtue of the announcement to prepare an EA in lieu of an EIS. Moreover, the resulting finding from an EA is also available to the public. The delegation only authorizes the Executive Director to undertake an EIS without a formal Commission approval to initiate such an effort.

Committee of 100 Comment: On the page with Section 11(F) (Now Section 9 (H)), this should be modified to permit, but not require, the Executive Director to adopt an existing EIS since adoption may not always be appropriate. (For example, when an EIS is old, where circumstances have changed... etc.)

Response: The conditions expressed as a concern are matters that must be considered as specified by the CEQ at Section 1506.3(a) of their regulations. The text was changed to " may".

ACHP Comment: At Section 1. We recommend that the Policies and Procedures identify NCPC's responsibility to meet the requirements of Section 106 of NHPA, as a third "primary function" which would parallel the first, which pertains to NEPA.

Response: Change Implemented.

ACHP Comment: At Section 1. Paragraph number three with its referenced sections falls short, in our view, of describing or properly referencing the information and therefore does not meaningfully address how the coordination can be accomplished. Clearly distinguish between “information” pertaining to the Section 106 process versus the process itself.

Response: Change Implemented.

ACHP Comment: At Section 2. We encourage using terms of art that relate to the Section 106 process and can best be defined by the reference to the Council’s regulations. Examples include: National Register of Historic Places, State Historic Preservation Officer, Advisory Council on Historic Preservation, National Historic Landmark, Memorandum of Agreement, etc.

Response: Change Implemented.

ACHP Comment: At Section 3. We recommend adding language to this section that would reinforce the Commission’s goals “to avoid or minimize adverse environmental and historic impacts of submitted proposals” as articulated in Section 1.

Response: Change Implemented.

ACHP Comment: At Section 4(A). Greater clarity is needed to address what part of the Section 106 process must be completed at each decision point. ... As now written, it is clear that Section 106 should be completed prior to final Commission approval; however, all other progressive Commission reviews of submitted documentation appear only to require that Section 106 be initiated. ... it would likely be inappropriate for the Commission to act on “submitted documents” prior to initiation and/or completion of subsequent steps of the Section 106 process, such as Section 800.4 “Identification of historic properties,” Section 800.5 “Assessment of adverse effects,” and Section 800.6 “Resolution of adverse effects.”

Response: Change Implemented.

ACHP Comment: At Section 4(B). This section is unclear with respect to Section 106 obligations that would be associated with federal facility master plans. ... Is it the intent to state that the Commission would review to determine with certainty that all Section 106 responsibilities have been met prior to final approval?

Response: Change to text has been made indicating Section 106 responsibilities that are expected.

ACHP Comment: At Section 4(D). Because acquisition of land and subsequent use or disposal may have potential to affect historic properties, and would be a federal undertaking subject to

Section 106, we recommend adding a statement of the Commission's intent to complete Section 106 requirements.

Response: Change Implemented.

ACHP Comment: At Section 4(E). Based on our understanding of the nature of the Commission's actions, we recommend adding a statement clarifying that, for projects where the Commission is the sole federal party, the project would constitute a federal undertaking subject to Section 106.

Response: Change Implemented.

ACHP Comment: At Section 5 (Now Section 11). The phrase "environmental documents" should be clarified. We recommend a consistent use of parallel references to NEPA and NHPA as a means of reinforcing that NEPA compliance does not constitute, or substitute for, Section 106 compliance. We also suggest providing specific information about how NEPA documentation may incorporate Section 106 documentation, and how such documentation would provide a basis for Section 106 review. Since the policies and procedures seek to facilitate coordination of NEPA and Section 106, this section should provide specific direction for doing so. We refer you to Section 800.8(c) of our regulations for the approach to using the NEPA process to comply with Section 106, which if chosen by the federal agency, entails advance notification to the State Historic Preservation Officer and the Council, as well as adherence to standards for developing environmental documents to comply with Section 106.

Response: Change Implemented to the extent necessary. It should be noted that the appendices already have a more detailed explanation of how NEPA documentation may incorporate the Section 106 documentation. Language has now been provided to express the stipulations noted in the comment.

ACHP Comment: Section 6 (Now Section 12). Based on the text of Section 8, the intent is for the Commission to delegate certain Section 106 determinations to the Executive Director, in addition to those currently listed in this section. Please note that Section 110 (l) of NHPA requires that response to Council comment not be delegated by the head of the agency, i.e. the Chairman of NCPC.

Response: Clarification is now specified that no NHPA delegation exists.

ACHP Comment: Section 7 (Now Section 6). We recommend consideration be given to combining this section with Section 8 (Now Section 7), to provide a clear outline of an integrated approach to NEPA and Section 106.

Response: This section was developed to explain the submission process in the context of NEPA documentation that may, or may not, include Section 106 documentation. Because Section 7 clearly endorses combining Section 106 and NEPA documentation, that emphasis does not need to be duplicated. It is acknowledged (even by the Council's own regulations), however, that an applicant has the option to combine, or not combine, NEPA and Section 106 documentation. Additionally, concurrent documentation may not always take place depending on the applicant's project development process. Consequently, to ensure that both compliance processes are discussed, the staff believes it is important to individually address the information required by each process in separate successive sections to convey what information is required by NCPC.

ACHP Comment: At Section 8 (Now Section 7). This section contains certain language taken directly from NHPA and the Council's regulations, yet, by removing this language from its context, could cause confusion. We recommend the section be redrafted. It would be appropriate for subsequent steps in the Section 106 process (beyond Section 800.3) to be initiated and/or concluded prior to most, if not all, Commission approvals for projects potentially affecting historic properties, not only prior to final Commission approval. Therefore, inclusion of detailed information on the first step alone falls short of accurately characterizing the nature of Section 106. Basic principles of Section 106 are alluded to in a generic manner...However, all the steps toward achieving these basic goals—beyond initiating the process—are absent, depriving the reader of any sense of what it means to bring the process to conclusion. In [Section 8] (E) and (F), the text goes on to state principles of Section 106 that pertain to public involvement. The intent of these principles, however, is unattainable without the ability of the public to gain access to the Section 106 process, which entails specific federal determinations that are each subject to consultation, review, and if necessary, appeal to the Council or to the Secretary of the Interior, depending on the determination.

Response: Change Implemented.

ACHP Comment: Section 9 (Now Section 5). This section would be an appropriate place to cross-reference Section 800.3 "Initiating the Section 106 Process."

Response: Change Implemented.

ACHP Comment: Section 10 (Now Section 11). The final paragraph of this section acknowledges that "some [laws] establish specific procedures for consultation" beyond public participation processes designed for carrying out NEPA. To meet the stated goals of the Policies and Procedures to combine and coordinate Section 106 and NEPA, we recommend that this section include references to specific provisions of the regulations, or a more concise statement on the subject of public participation for Section 106.

Response: A concise statement of public participation is now provided.

ACHP Comment: At Section 11 (Now Section 9). Reference to and a short discussion of the applicability of Section 800.8 would be appropriate and useful in this section.

Response: Change Implemented.

ACHP Comment: At Section 12 (Now Section 10). Reference to and a short discussion of the applicability of Section 800.8 would be appropriate and useful in this section.

Response: Change Implemented.

ACHP Comment: At Section 16. Replace “implementing procedures of Section 106” with “implementing regulations of Section 106.”

Response: Change Implemented.

Council on Environmental Quality (CEQ) Comments in 2003

CEQ from October 2000 through late 2001, continued to express concerns related to the Commission revision of procedures. Subsequently, NCPC staff continued to work toward revisions of the procedures and submitted a revised text in March 2002, February 2003, and in May 2003. In late September 2003, the National Environmental Policy Act (NEPA) Task Force released its final report in which it reported recommendations to the CEQ regarding ways to improve NEPA implementation through new technology, best practices, and more modern information and management systems. The Task Force, convened last year by CEQ, is an interagency group of experienced career federal employees, including NEPA experts, who conducted an extensive review of NEPA implementation involving all of the aspects of NEPA implementation. None of the final NCPC policy and procedural revisions were significantly impacted by the Task Force recommendations given that all of the issues of the Task Force report are incorporated to the degree required in their review by the CEQ Deputy General Counsel.

In early October 2003 CEQ Deputy General Counsel, Mr. Edward Boling, provided further specific revisions that augmented the review process of the Commission’s proposed revised procedures and which has culminated in the latest text changes.

Staff submitted the revised text to CEQ on November 21, 2003 and CEQ responded with a review letter dated December 24, 2003 indicating CEQ final approval of the NCPC Environmental and Historic Preservation Policy and Procedures (See attached letter).

GSA Comments in January 2004

GSA Comment: At Section 2 a definition of cooperating agency should be provided.

Response: Change Implemented.

GSA Comment: At Section 4 (A)(4) there is an inconsistency in the regulations regarding the status of Section 106 at the FONSI stage. This section indicates that the FONSI “must reflect the agency’s determination of effect under Section 800.5 of 36 CFR, Part 800 even though the Section 106 process may not have been completed.” Section 7(E)(2) indicates that the “results of the review should be reported in the FONSI if one is issued, with an explanation of how Section 106 review has resulted in avoiding significant adverse effect.” Section 10(H) indicates that the MOA required under Section 106 [which concludes consultation], or the final comments of the ACHP, should be addressed in the FONSI.

Response: The intent of the requirement at Section 4(A)(4) is as stated. The Finding pertaining to an Environmental Assessment or the Record of Decision regarding an Environmental Impact Statement is to indicate information about the agency’s determination of effect. Section 7 has now been clarified, in response to the comment, to better reflect requirements when NCPC is the lead agency under Section 106. Finally, at Section 10(H) it is noted any Memorandum of Agreement should be addressed or the final comments of the ACHP should be addressed in the FONSI.

These noted areas, although similar, are differing in their intent, depending on their location within the procedures. Section 4 indicates the basic level of information needed for the type of approval sought. Section 7 indicates the type of information to be achieved in conjunction with the conditions of NCPC as lead federal agency. Section 10 (H) only reiterates what the ACHP regulations note at Section 800.8(4).

GSA Comment: Section 4(B) 2nd to last paragraph; shouldn’t federal agencies seek NCPC participation as a cooperating agency only for projects in the District since NCPC’s approval authority is only within the District of Columbia? NCPC only has review authority outside of D.C.

Response: Section 4 has been revised in its entirety and clarifies, at its opening, the situation of when the requirement of cooperating agency status is necessary.

GSA Comment: Section 7, Preliminary Plan approval; Same comment as Section 4 (A) above.

Response: Same response as indicated to GSA on Section 4(A).

GSA Comment: Section 800.8 of the 36 CFR 800 does not require that the MOA be executed by or before the ROD, nor does it have the caveat of ‘unless there is some compelling reason.’ Why is NCPC applying this requirement?

Response: As a practical matter the Commission members and staff have found historic preservation issues involving projects to be one of the most controversial or contentious issues in the review and approval process. The Commission continues to strive for the most expeditious and considered review of all issues regarding projects submitted to the Commission. Both the

Commission and staff note that the ACHP regulations, in defining the use of the NEPA process for section 106 purposes does require that in approving an undertaking the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with ACHP requirements (800.8(c)(1)(v)). Commission experience finds those efforts are not being achieved when the project is submitted to NCPC for review and that, in many instances, the Section 106 information itself is incomplete. Nevertheless, the Commission members believe such information is important to their full understanding and decision making efforts regarding an action.

GSA Comment: Section 8(C)(10); Add 'Plan' after 'Comprehensive'.

Response: Change Implemented.

GSA Comment: Section 9(B) last paragraph; shouldn't federal agencies seek NCPC participation as a cooperating agency only for projects in the District since NCPC's approval authority is only within the District of Columbia? NCPC only has review authority outside of D.C.

Response: No, the Commission has specific approval authority on actions that involve areas under the Capper-Cramton Act of May 29, 1930 and in land acquisition actions that apply beyond the District of Columbia. Depending on the circumstances, these actions may also involve other federal agencies. Additionally, it has been the Commission's experience that time to time the U.S. Congress has specified particular approval roles to the Commission that may extend to the National Capital Region as defined under the Planning Act.

GSA Comment: Section 10(G)(4). Is this referring to NCPC approving its report on Federal projects? If not and it is referring to approving Federal agency master plans, this should be specific that this approval is only with the District of Columbia and only for location, height, bulk, number of stories, and size of federal buildings as well as provision of open space in and around federal public buildings.

Response: No, the Commission has specific approval authority on actions that involve areas under the Capper-Cramton Act of May 29, 1930 and in certain land acquisition actions that apply beyond the District of Columbia. Depending on the circumstances, these actions may also involve other federal agencies. Moreover, it has been the Commission's experience that time to time the U.S. Congress has specified particular approval roles to the Commission that may extend to the National Capital Region as defined under the Planning Act.

GSA Comment: Outline for EIS. I.B. Affected Environment. Why is NCPC's recommended outline different from CEQ's recommended outline (1502.10)? There should be some explanation that this can be a stand alone section as recommended in the CEQ regulations, or included in this section per NCPC's guidance.

Response: The text occurs at a section of the procedures that explains the outline is for information necessary for preparation of an EIS, but does not indicate it is the format for an EIS,

which means the arrangement or set-up, for the document. As noted, that guidance already exists within the CEQ regulations. Further, the information indicated focuses on the need for the type and amount of information thought reasonable as defined by CEQ regulations at 1502.15.

GSA Comment: Environmental Effects. What about hazardous waste? I don't see anywhere in your consequences a discussion on hazardous waste generation and/or removal.

Response: Change Implemented.

GSA Comment: Transportation. What about a discussion on pedestrian traffic and parking? In (A)(1)(d) there is a reference to pedestrian access, but no specific discussion on the volume of pedestrian traffic in the area and the efficiency of supporting infrastructure.

Response: Change Implemented.

Coalition to Save Our Mall Comment: Concerning project and master plan approvals. We support the enhancement of NCPC satisfying its NEPA and Section 106 responsibilities by requiring agencies to complete "certain" levels of NEPA and Section 106 documentation and through its assessment of the substantive adequacy of the data, completeness of the analysis, and conclusions of each of the documents.

Response: The Commission staff appreciates the expression of support for the proposed revisions.

Coalition to Save Our Mall Comment: We also support initiating Section 106 with the State Historic Preservation Officer at the time of agency submission for approval of preliminary project design. We urge the Commission staff to be stricter in the Section 106 completion before agencies apply for final approval.

Response: The intent of the clarified and revised procedures is to achieve successful agency submission compliance with Commission requirements at all project submission stages.

Coalition to Save Our Mall Comment: Regarding the strengthening of the scoping requirement, the Commission is defining scoping as an early and open process. We certainly support that, but do not understand how NCPC will monitor and keep the public informed on this process.

Response: The specifics of the exact intent and objectives of scoping are addressed in Section 5 of the revised procedures as it relates to Commission initiated proposals. As noted in the implementing regulations of CEQ, scoping is a process that focuses on objectives to define what is important to the effort of environmental analysis. As many submitted proposals for Commission review would be initiated by other federal lead agencies the Commission staff, representing a cooperating agency (NCPC), must assure itself that the appropriate measures to achieve CEQ compliance are met, including appropriate public notification of federal NEPA initiatives, should a question of adequate notice as required by CEQ possibly occur.

Coalition to Save Our Mall Comment: We support and we heartily encourage the expansion of public participation requirements but we do not see in the document how the NCPC will monitor and oversee the agencies providing public with information about a project.

Response: The specifics of the exact intent and objectives of public participation are addressed in Section 11 of the revised procedures as it relates to Commission initiated proposals. As many submitted proposals for Commission review would be initiated by other federal lead agencies the Commission staff, representing a cooperating agency (NCPC), must assure itself that the appropriate measures to achieve CEQ compliance are met including appropriate public involvement of federal NEPA initiatives. Moreover, at Section 7, paragraph (C) a specific requirement of information about public involvement in the Section 106 process is now required in all submittals. It should be noted by the commenter, that the current existing NCPC procedures do not address public participation.

Coalition to Save Our Mall Comment: We heartily concur on the integration of the NEPA and Section 106 process “as much as possible”. We question how NCPC will encourage the agencies to comply with that concept?

Response: The specifics of the intent are indicated at Section 9(I) and Section 10(H) defining the objectives of better coordinating the NEPA process with Section 106 conclusions. The development of this content and its objectives was realized after staff reviewed many “best practices” background research sources and the ACHP revised Section 106 regulations of January 2001. Nevertheless, it was concluded by staff after full review of the ACHP requirements that applicant agencies responding to the NCPC submission process can only be encouraged and not required to provide a fully integrated analysis between Section 106 review provisions and a NEPA analysis, since the ACHP regulations themselves allow the integration effort as an option and not a requirement.

Proposed Public Distribution

Public distribution of the final procedures will be achieved by issuance of a notice of the approved final Environmental and Historic Policies and Procedures indicating their availability. The final procedures will also be offered for use on the NCPC internet website and the full text will be placed in the *Federal Register*, as required by CEQ. Additionally, copies of the final procedures will be sent directly to CEQ and the Advisory Council on Historic Preservation for official filing.