

CHAPTER VI- NATIONAL CAPITAL PLANNING COMMISSION

PART 601 -- NATIONAL ENVIRONMENTAL POLICY ACT REGULATIONS

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Authority: 40 CFR 1507.3.

Subpart A – General

§ 601.1 Purpose.

This part establishes rules that supplement the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) regulations that the National Capital Planning Commission (NCPC or Commission) and its applicants shall follow to ensure:

(a) Compliance with NEPA, as amended (42 U.S.C. 4321 *et seq.*) and CEQ regulations for implementing the procedural provisions of NEPA (40 CFR parts 1501 through 1508).

(b) Compliance with other laws, regulations, and Executive Orders identified by NCPC as applicable to a particular application.

§ 601.2 Policies.

Consistent with 40 CFR 1500.1 and 1500.2, it shall be the policy of the NCPC to:

(a) Comply with the procedures and policies of NEPA and other related laws, regulations, and orders applicable to Commission actions.

(b) Provide applicants sufficient guidance to ensure plans and projects comply with the rules of this part and other laws, regulations, and orders applicable to Commission actions.

(c) Integrate NEPA into its decision-making process at the earliest possible stage.

(d) Integrate the requirements of NEPA and other planning and environmental reviews required by law including, without limitation, the National Historic Preservation Act, 54 U.S.C. 306108 (NHPA), to ensure all such procedures run concurrently.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects on the quality of the human environment in the National Capital Region.

(f) Use all practicable means to protect, restore, and enhance the quality of the human

environment including built and socioeconomic environments and historic properties within the National Capital Region.

(g) Streamline the NEPA process and Environmental Impact Statements (EIS) to the maximum extent possible.

(h) Use the NEPA process to assure orderly and effective NCPC decision-making and to foster meaningful public involvement in NCPC's decisions.

§ 601.3 Definitions.

For purposes of this part, the following definitions shall apply:

Administrative Record means a compilation of all materials (written and electronic) that were before the agency at the time it made its final decision. An Administrative Record documents an agency's decision-making process and the basis for the decision.

Categorical Exclusion or *CATEX* means, as defined by 40 CFR 1508.4, a category of actions which do not individually or cumulatively have a significant effect on the human environment except under extraordinary circumstances and which have been found to have no such effect in procedures adopted by a federal agency (NCPC) in implementation of CEQ's regulations and for which, therefore, neither an Environmental Assessment (EA) nor an EIS is required.

Central Area means the geographic area in the District of Columbia comprised of the Shaw School and Downtown Urban Renewal Areas or such other area as the District of Columbia and NCPC shall subsequently jointly determine.

Chairman means the Chairman of the National Capital Planning Commission appointed by the President, pursuant to 40 U.S.C. 8711(c).

Commemorative Works Act or CWA means the federal law codified at 40 U.S.C.

8901 *et seq.* that sets forth the requirements for the location and development of new memorials and monuments on land under the jurisdiction of the National Park Service (NPS) or the General Services Administration (GSA) in the District of Columbia and its environs.

Commission means the National Capital Planning Commission created by 40 U.S.C. 8711.

Comprehensive Plan means The Comprehensive Plan for the National Capital: Federal Elements prepared and adopted by the Commission pursuant to 40 U.S.C. 8721(a).

Cooperating Agency means, as defined in 40 CFR 1508.5, any Federal Agency other than a Lead Agency that has jurisdiction by law or special expertise with respect to a proposal (or reasonable alternative) for legislation or other major action significantly affecting the quality of the human environment; a state or local agency of similar qualifications; or when the effects are on a reservation, an Indian Tribe when agreed to by the Lead Agency.

Cumulative Impact means, as defined in 40 CFR 1508.7, the impact on the environment that results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time.

Emergency Circumstances means a sudden and serious occurrence or situation requiring immediate attention to protect the lives and safety of the public and protect property and ecological resources and functions from imminent harm.

Environmental Assessment or *EA* means, as defined in 40 CFR 1508.9, a concise document for which a federal agency is responsible that serves to briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or FONSI; aid an agency's compliance with NEPA when no EIS is necessary; facilitate preparation of an EIS when one is necessary; and includes a brief discussion of the need for the proposal, alternatives as required by section 102(2)(E) of NEPA, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Environmental Document means, as set forth in 40 CFR 1508.10, an Environmental Assessment, and Environmental Impact Statement, and for purposes of these regulations, a Categorical Exclusion determination.

Environmental Impact Statement or *EIS* means, as defined in 40 CFR 1508.11, a detailed written statement as required by 42 U.S.C. 4332(2)(C).

Environs means the territory surrounding the District of Columbia included in the National Capital Region pursuant to 40 U.S.C. 8702(a)(1).

Executive Director means the Executive Director employed by the National Capital Planning Commission pursuant to 40 U.S.C. 8711(d).

Executive Director's Recommendation or *EDR* means a concise written report and recommendation prepared by NCPC staff under the direction of NCPC's Executive Director regarding a proposed action and transmitted to the Commission for its

consideration.

Extraordinary Circumstances means special circumstances that when present negate an agency's ability to categorically exclude a project and require an agency to undertake further NEPA review.

Federal Agency means the executive agencies of the federal government as defined in 5 U.S.C. 105.

Finding of No Significant Impact or *FONSI* means, as defined at 40 CFR 1508.13, a document prepared by NCPC or a Federal Agency applicant that briefly presents the reasons why an action, not otherwise excluded (40 CFR 1508.4), will not have a significant effect on the human environment and for which an EIS will not be prepared. It shall include the EA or a summary of it and shall note any other EAs or EISs related to it (40 CFR 1501.7(a)(5)). If the EA is included in the FONSI, the FONSI need not repeat any of the discussion in the EA but may be incorporated by reference.

Lead Agency means, as defined in 40 CFR 1508.16, the agency or agencies preparing or having primary responsibility for preparing an EA or an EIS.

Memorandum of Agreement or *MOA* means for purposes of implementing the regulations in this part 601, a written agreement entered into between a Lead, Co-lead, Cooperating Agency, or a Non-federal Agency to facilitate implementation of NEPA and preparation of the requisite environmental documentation. A MOA can be written at a programmatic level to apply to all projects involving NCPC and particular applicant or on a project-by-project basis.

Mitigation means, as defined in 40 CFR 1508.20, avoiding an impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or

magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments.

Monumental Core means the general area encompassed by the U.S. Capitol grounds, the National Mall, the Washington Monument grounds, the White House grounds, the Ellipse, West Potomac Park, East Potomac Park, the Southwest Federal Center, the Federal Triangle area, President's Park, the Northwest Rectangle, Arlington Cemetery and the Pentagon area, and Joint Base Myer-Henderson Hall.

National Capital Planning Act means the July 1952 legislative enactment, codified at 40 U.S.C. 8701 *et seq.* that created the present day National Capital Planning Commission and conferred authority upon it to serve as the planning authority for the federal government in the National Capital Region.

National Capital Region means, as defined in 40 U.S.C. 8702(2), the District of Columbia; Montgomery and Prince Georges Counties in Maryland; Arlington Fairfax, Loudon, and Prince William Counties in Virginia; and all cities in Maryland or Virginia in the geographic area bounded by the outer boundaries of the combined area of the counties listed.

Non-federal Agency for purposes of the National Environmental Policy Act and the regulations in this part means those applicants outside the definition of Federal Agency that prepare plans for or undertake projects on land within the National Capital Region subject to NCPC's jurisdiction. Non-federal Agencies include, without limitation, the

Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the United States Institute of Peace, the Government of the District of Columbia, private parties undertaking development on federal land, and the Maryland National Capital Parks and Planning Commission. In most instances, the Non-federal Agency has legal jurisdiction over the project and special expertise relative to the project's components.

Notice of Availability or *NOA* means a public notice or other means of public communication that announces the availability of an EA or an EIS for public review.

Notice of Intent or *NOI* means, as defined in 40 CFR 1508.22, a notice published in the Federal Register that an EIS will be prepared and considered. The notice shall briefly describe the proposed action and possible alternatives; describe the agency's proposed Public Scoping process including whether, when, and where any Public Scoping meeting will be held; and state the name and address of a person within the agency who can answer questions about the proposed action and the EIS. For purposes of NCPC implementation of NEPA, NCPC may determine, at its sole discretion, to publish an NOI that an EA will be prepared and considered.

Purpose and Need as described in 40 CFR 1502.13 means the underlying purpose and need for agency action to which the agency is responding in proposing the alternatives including the proposed action.

Programmatic NEPA Review means a broad or high level NEPA review that assesses the environmental impacts of proposed policies, plans or programs, or projects for which subsequent project or site-specific NEPA analysis will be conducted. A Programmatic NEPA Review utilizes a tiering approach.

Record of Decision or *ROD* means a concise public record of an agency's decision in cases requiring an EIS that is prepared in accordance with 40 CFR 1505.2.

Scope means, as defined in 40 U.S.C. 1508.25, the range of actions (connected, cumulative and similar); alternatives (no action, other reasonable courses of action; and mitigation measures not included in the proposed action); and impacts (direct, indirect and cumulative) considered in an EIS or an EA. The process of defining and determining the scope of issues to be addressed in an EIS or EA with public involvement shall be referred to as *Public Scoping*. Internal scoping activities shall be referred to by the word scoping without capitalization.

Submission Guidelines means the formally-adopted document which describes the application process and application requirements for projects requiring review by the Commission.

Tiering means, as defined in 40 CFR 1508.28, an approach where Federal Agency applicants, NCPC on behalf of Non-federal Agency applicants, or NCPC for its own projects initially consider the broad, general impacts of a proposed program, plan, policy, or large scale project – or at the early stage of a phased proposal – and then conduct subsequent narrower, decision focused reviews.

Subpart B – Lead and Cooperating Agencies

§ 601.4 Designation of Lead Agency.

(a) A Federal Agency applicant shall serve as the Lead Agency and prepare an EA or an EIS for:

- (1) An application that requires Commission approval; and
- (2) An application for action on a master plan that includes future projects

that require Commission approval; provided that:

(i) The applicant intends to submit individual projects covered by the master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for specific projects referenced in the master plan.

(b) NCPC shall serve as Lead Agency and prepare an EA or an EIS for:

(1) An application submitted by a Non-federal Agency that requires Commission approval;

(2) An application submitted by a Non-federal Agency for action on a master plan that includes future projects that require Commission approval; provided that:

(i) The Non-federal Agency applicant intends to submit individual projects covered by the master plan to the Commission within five years of the date of Commission action on the master plan; and

(ii) The Non-federal Agency applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for a specific project referenced in the master plan; and

(3) An application for approval of land acquisitions undertaken pursuant to 40 U.S.C. 8731 – 8732.

§ 601.5 Lead Agency obligations.

(a) The obligations of a Federal Agency applicant designated as the Lead Agency in accordance with § 601.4(a) shall include, without limitation, the following:

(1) Act as Lead Agency as defined in 40 CFR 1501.5 for the NEPA process.

(2) Integrate other environmental reviews and other applicable regulatory requirements to include, without limitation, Section 106 of the NHPA. (3) Allow NCPC, to participate as a Co-lead or Cooperating Agency, as appropriate, and consult with Commission staff as early as possible in the planning process to obtain guidance with respect to the goals, objectives, standards, purpose, need, and alternatives for the NEPA analysis.

(4) Invite affected federal, state, regional and local agencies to participate as a Cooperating Agency in the NEPA process.

(5) Consult with the affected agencies as early as possible in the planning process to obtain guidance on the goals, objectives, standards, purpose, need, and alternatives for the NEPA analysis.

(6) Work with Cooperating Agencies and stakeholders in the following manner:

- (i) Keep them informed on the project schedule and substantive matters; and
- (ii) Allow them an opportunity to review and comment within reasonable time frames on, without limitation, Public Scoping notices; technical reports; public materials (including responses to comments received from the public); potential mitigation measures; the draft EA or EIS; and the draft FONSI or ROD.

(7) Prepare the appropriate Environmental document consistent with the applicant's NEPA regulations, the requirements of this part, and CEQ regulations. If the Lead Agency applies a CATEX and NCPC as Cooperating Agency does not have a corresponding CATEX that it can apply, the Lead Agency shall prepare an EA to satisfy NCPC's NEPA requirement.

(8) Determine in its Environmental document whether an action will have an adverse environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1505.1(e) and take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(9) Prepare, make available for public review, and issue a FONSI or ROD.

(10) Ensure that the draft and final EIS comply with the requirements of 40 CFR 1506.5(c) and include a disclosure statement executed by any contractor (or subcontractor) under contract to prepare the EIS document and that the disclosure appears as an appendix to the EIS.

(11) Compile, maintain, and produce the Administrative Record.

(12) Provide periodic reports on implementation of Mitigation measures to NCPC and other Cooperating Parties consistent with a schedule established in the Environmental document. All such reports shall be posted on NCPC's website.

(13) For an application that has yet to obtain final Commission approval, re-evaluate and update Environmental documents that are five or more years old as measured from the time of their adoption when either or both of the following criteria apply:

(i) There are substantial changes to the proposed action that are relevant to environmental concerns.

(ii) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(14) Consult with NCPC on the outcome of the re-evaluation of its Environmental document; provided that if NCPC disagrees with the Lead Agency's conclusion on the

need to update its Environmental document, NCPC may, at its sole discretion, either prepare its own Environmental document or decline to consider the application.

(b) When NCPC serves as Lead Agency in accordance with § 601.4(b), in addition to the obligations listed in paragraphs (a)(1) through (14) of this section, NCPC shall:

(1) Require Non-federal Agency applicants other than the District of Columbia and the Maryland National Capital Parks and Planning Commission to enter into a MOA with NCPC. In the MOA, and in subsequent implementation thereof, the Non-federal Agency shall commit to providing all necessary assistance to facilitate and ensure NCPC's compliance with its NEPA obligation.

(2) The MOA may be prepared as a programmatic MOA that addresses a uniform approach for the treatment of all applications from a particular Non-federal Agency applicant or address a specific Non-federal Agency application. The request to enter into a project specific MOA shall be made after a determination is made as to the inability to utilize a CATEX.

(3) A MOA with a Non-federal Agency shall specify, without limitation, roles and responsibilities; project information necessary to prepare the proper Environmental document; project timelines and submission schedules; the submission of periodic reports on implementation of Mitigation measures, principal contacts and contact information; and a mechanism for resolving disputes.

(4) Upon adoption of the MOA, NCPC shall publish the MOA in the Federal Register and post it on NCPC's website.

§ 601.6 Resolving disputes over Lead Agency status.

(a) In the event of a dispute with a Federal Agency applicant over Co-Lead Agency status, the parties shall use their best efforts to cooperatively resolve disputes at the working levels of their respective agencies and, if necessary, by elevating such disputes within their respective agencies.

(b) If internal resolution at higher agency levels proves unsuccessful, at NCPC's sole discretion, one of the following actions shall be pursued: the parties shall request CEQ's determination on which agency shall serve as Lead, or NCPC shall prepare its own Environmental document, or NCPC shall decline to take action on the underlying application.

(c) Disputes other than those relating to the designation of Lead Agency status or Cooperating Status as described in § 601.7(b), shall be governed by the requirements of subpart G of this part.

§ 601.7 Cooperating Agencies.

(a) When a Federal Agency applicant serves as the Lead Agency, NCPC shall act as a Cooperating Agency. As a Cooperating Agency, NCPC shall, without limitation, undertake the following:

(1) Act as a Cooperating Agency as described in 40 CFR 1501.6.

(2) Assist in the preparation of and sign a MOA with terms agreeable to NCPC if requested by the Lead Agency. At the Lead Agency's discretion, the MOA may be prepared as a programmatic MOA that addresses a uniform approach for the treatment of all applications where NCPC serves as a Cooperating Agency or address a specific application. The request to enter into a project specific MOA shall be made after a determination is made by the Lead Agency on the inability to utilize a CATEX.

(3) Participate in the NEPA process by providing comprehensive, timely reviews of and comments on key NEPA materials including, without limitation, Public Scoping notices; technical reports; documents (including responses to comments received from the public); the draft and final EA or EIS; and the Draft FONSI or ROD.

(4) Supply available data, assessments, and other information that may be helpful in the preparation of the Environmental document or the Administrative Record in a timely manner.

(5) Make an independent evaluation of the Federal Agency applicant's Environmental document and take responsibility for the scope and contents of the EIS or EA when it is sufficient as required by 40 CFR 1506.5.

(6) Prepare and sign a ROD or FONSI or, if NCPC concurs with the contents of the Federal Agency's document, it may co-sign the Federal Agency's ROD or FONSI. The ROD or FONSI may be signed to coincide with the submission of the final application or anytime thereafter, provided that if the Commission's final action requires, a ROD or FONSI signed prior to the Commission's final action shall be revised to conform with the final action.

(7) Provide documentation requested and needed by the Lead Agency for the Administrative Record.

(b) In the event a Federal Agency applicant fails to allow NCPC to participate in a meaningful manner as a Cooperating Agency, the parties shall agree to use their best efforts to cooperatively resolve the issue at the working levels of their respective agencies, and, if necessary, by elevating the issue within their respective agencies. If internal resolution at higher agency levels is unsuccessful, the parties may agree to seek

mediation. Alternatively, NCPC may prepare its own Environmental document either as a stand-alone document or a supplement to the Federal Agency applicant's Environmental document or take no action on the underlying application.

Subpart C – NEPA Submission Schedules

§ 601.8 NEPA submission schedule for applications governed by the National Capital Planning Act.

(a) Federal Agency applicants, and NCPC for non-Federal Agency applications, shall comply with NEPA for the following types of projects:

- (1) Projects requiring Commission approval; and
- (2) Master plans requiring Commission action with future projects requiring subsequent Commission approval; provided that:

- (i) The applicant intends to submit individual projects depicted in the master plan to the Commission within five years of the date of Commission action on the master plan; and

- (ii) The applicant intends to use the master plan EA or EIS to satisfy its NEPA obligation for specific projects referenced in the master plan.

(b) When Federal Agency and Non-federal Agency applicants submit projects of the type described in paragraph (a) of this section, the Federal Agency applicant or NCPC for a Non-federal agency application shall submit the requisite Environmental documentation timed to coincide with the Commission's review stages as set forth in paragraphs (c) through (f) of this section.

(c) *Concept review.* The NEPA Public Scoping process shall have been initiated by the Federal Agency applicant or NCPC for a Non-federal Agency application before the applicant submits an application for concept review. Alternatively, if the Federal Agency applicant or NCPC is contemplating use of a CATEX, the initiation of the Public Scoping process may be deferred until the final decision on use of a CATEX is made. Any NEPA information available at the time of concept review shall be submitted by the Federal Agency applicant or NCPC for a Non-federal Agency application to facilitate effective Commission concept review.

(d) *Preliminary review.* A Draft Environmental document shall be issued or published before the applicant submits an application for preliminary review. The NEPA information shall be provided to the Commission to facilitate the Commission's preliminary review and the provision of meaningful Commission comments and direction.

(e) *Final review.* A draft ROD or Draft FONSI shall be submitted at the time a Federal Agency applicant or NCPC for a Non-federal Agency application submits an application for final review. Alternatively, the Federal Agency applicant or NCPC for a Non-federal Agency application may submit a signed ROD or FONSI or sign a Draft ROD or FONSI after submission of a final application, provided that if the Commission's final action requires, a signed ROD or FONSI shall be revised to conform with the final action. For Federal Agency applications, at the time of final review, NCPC shall undertake the steps outlined in § 601.7(a)(5)-(6).

(f) *Deviations from the submission schedule for emergency circumstances.*

(1) This paragraph applies when the following three conditions exist: NCPC is the Lead Agency; Emergency Circumstances exist; and An Extraordinary Circumstance as set forth in § 601.11 is present that precludes use of a CATEX.

(2) When the three conditions described above exist, NCPC shall undertake one of the following actions:

(i) When Emergency Circumstances render it necessary to take an action that requires an EA, the Executive Director shall prepare a concise, focused EA consistent with CEQ guidance. At the earliest opportunity, The Commission shall grant approval for the EA.

(ii) Where Emergency Circumstances make it necessary for the Commission to take an action with significant environmental impact without observing the provisions of these regulations, NCPC shall consult with CEQ about alternative arrangements. NCPC will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 601.9 NEPA submission schedule for applications governed by the Commemorative Works Act.

(a) When, pursuant to the Commemorative Works Act, the National Park Service (NPS) or the General Services Administration (GSA) submits an application to the Commission for approval of a site and design for a commemorative work, NPS or GSA shall be required to comply with NEPA and submit the NEPA documentation timed to coincide with the Commission's review stages as set forth in paragraphs (b) through (e) of this section.

(b) *Concept site review.* (1) The NEPA Scoping Process shall have been initiated by NPS or GSA before the appropriate agency submits an application to the Commission for

concept site review. Available NEPA documentation for all concept sites shall be included in the application to facilitate effective Commission concept review.

(2) The Commission shall provide comments to NPS or GSA on the multiple sites to assist the applicant in selecting a preferred site.

(c) *Concept design review for preferred sites.* (1) The NEPA Public Scoping Process shall have been initiated before NPS or GSA submits an application to the Commission for concept design review. Available NEPA documentation shall be included in the application to facilitate effective Commission concept review.

(2) The Commission shall provide comments to NPS or GSA on the preferred site(s) and the concept designs for each site to facilitate selection of a preferred site and refinement of the memorial design for that site. The Commission may establish guidelines for the applicant to follow in preparing its preliminary and final commemorative work design to avoid, minimize or mitigate environmental impacts including adverse effects on historic properties. If the Commission imposes guidelines to avoid, minimize or mitigate adverse impacts, the applicant shall address the conditions or guidelines in its Environmental document.

(d) *Preliminary site and design review.* (1) NPS or GSA shall have issued or published its Draft Environmental document for the site selection process and the memorial design and shall have initiated the requisite public comment period before the applicant submits an application for preliminary site and design approval. The NEPA information shall be provided to the Commission to facilitate the Commission's preliminary review and the provision of meaningful Commission comments and directions.

(2) The Commission shall take an action on the preliminary site and

design and provide comments to the applicant on the preliminary design to assist the applicant's preparation of a final design.

(e) *Final site and design review.* A draft FONSI or, if an EIS is prepared, a draft ROD, shall be submitted by NPS or GSA at the time the appropriate agency submits an application for final review. Alternatively, the NPS or GSA may submit a signed FONSI or ROD or sign a Draft FONSI or ROD after submission of a final application , provided that if the Commission's final action requires, the signed FONSI or ROD shall be revised to conform with the final action. In response, NCPC shall undertake the steps outlined in § 601.7(a)(5) - (6).

Subpart D -- Initiating the NEPA Process

§ 601.10 Characteristics of Commission actions eligible for a Categorical

Exclusion.

(a) A Categorical Exclusion is a type of action that does not individually or cumulatively have a significant effect on the human environment and which has been found to have no such effect by NCPC.

(b) Actions that generally qualify for application of a Categorical Exclusion and do not require either an EA or an EIS exhibit the following characteristics:

- (1) Minimal or no effect on the human environment;
- (2) No significant change to existing environmental conditions;
- (3) No significant cumulative environmental impacts; and
- (4) Similarity to actions previously assessed in an EA concluding in a FONSI and monitored to confirm the FONSI.

§ 601.11 Extraordinary Circumstances.

(a) Before applying a CATEX listed in § 601.12, the Executive Director shall determine if a project or plan requires additional environmental review or analysis due to the presence of Extraordinary Circumstances. If any of the Extraordinary Circumstances listed in paragraphs (b)(1) through (10) of this section are present, the Executive Director shall not apply a CATEX and ensure that the proper Environmental document (EA or EIS) shall be prepared and made available to the Commission before the Commission takes action on the matter.

(b) Extraordinary Circumstances that negate the application of a CATEX include:

(1) A reasonable likelihood of significant impact on public health or safety.

(2) A reasonable likelihood of significant environmental impacts on sensitive resources unless the impacts have been or will be avoided, minimized, or mitigated to non-significant levels through another process to include, without limitation, Section 106 of the NHPA. Environmentally sensitive resources include without limitation:

(i) Proposed federally listed, threatened or endangered species or their designated critical habitats.

(ii) Properties listed or eligible for listing on the National Register of Historic Places.

(iii) Areas having special designation or recognition based on federal law or an Executive Order, to include without limitation, National Historic Landmarks, floodplains, wetlands, and National Parks.

(iv) Cultural, scientific or historic resources.

(3) A reasonable likelihood of effects on the environment that are risky, highly uncertain, or unique.

(4) A reasonable likelihood of violating an Executive Order, or federal, state or local

law or requirements imposed for the protection of the environment.

(5) A reasonable likelihood of causing a significant increase in surface transportation congestion, disruption of mass transit, and interference with pedestrian and bicycle movements.

(6) A reasonable likelihood of significantly degrading air quality or violating air quality control standards under the Clean Air Act (42 U.S.C.7401-7671q).

(7) A reasonable likelihood of significantly impacting water quality, public water supply systems, or state or local water quality control standards under the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Safe Drinking Act (42 U.S.C. 300f).

(8) A reasonable likelihood of a disproportionately high and adverse effect on low income and minority populations.

(9) A reasonable likelihood of degrading existing unsatisfactory environmental conditions.

(10) A reasonable likelihood of establishing a precedent for future action or making a decision in principle about future actions with potentially significant environmental effects.

(11) Any other circumstance that makes the action sufficiently unique in its potential impacts on the human environment that further environmental analysis and review is appropriate.

(c) The Executive Director shall include in his/her EDR, or the documentation of a Delegated Action, his/her decision to apply a Categorical Exclusion including consideration of possible Extraordinary Circumstances or not apply a Categorical Exclusion because of Extraordinary Circumstances.

§ 601.12 National Capital Planning Commission Categorical Exclusions.

(a) Commission actions that may be categorically excluded and normally do not require either an EA or an EIS are listed below. An action not specifically included in the list is not eligible for a Categorical Exclusion even if it appears to meet the general criteria listed in § 601.10(b).

(1) Approval of the installation or restoration of onsite primary or secondary electrical distribution systems including minor solar panel arrays.

(2) Approval of the installation or restoration of minor site elements, such as but not limited to identification signs, sidewalks, patios, fences, curbs, retaining walls, landscaping, and trail or stream improvements. Additional features include water distribution lines and sewer lines which involve work that is essentially replacement in kind.

(3) Approval of the installation or restoration of minor building elements, such as, but not limited to windows, doors, roofs, building signs, and rooftop equipment and green roofs.

(4) Adoption of a Federal Element of the Comprehensive Plan or amendment thereto or broad based policy or feasibility plans prepared and adopted by the Commission in response to the Comprehensive Plan.

(5) Approval of the installation of communication antennae on federal buildings and co-location of communication antennae on federal property consistent with GSA Bulletin FMR D-242, Placement of Commercial Antennas on Federal Property.

(6) Approval of federal and District government agency proposals for new construction, building expansion, or improvements to existing facilities, when all of the following apply:

(i) The new structure and proposed use are in compliance with local planning and zoning and any applicable District of Columbia, state, or federal requirements.

(ii) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings.

(iii) The proposed use will not substantially increase the number of motor vehicles in the vicinity of the facility.

(iv) There is little to no evidence of unresolved resource conflicts or community controversy related to environmental concerns or other environmental issues.

(7) Approval of transfers of jurisdiction pursuant to 40 U.S.C. 8124 that are not anticipated to result in d changes in land-use and that have no potential for environmental impact.

(8) Approval of a minor modification to a General Development Plan applicable to lands acquired pursuant to the Capper-Cramton Act, 46 Stat. 482 (1930), as amended, when non-significant environmental impacts are anticipated.

(9) Reorganization of NCPC.

(10) Personnel actions, including, but not limited to, investigations; performance reviews; award of personal service contracts, promotions, and awards; reductions in force, reassignments and relocations; and employee supervision and training.

(11) Legal activities including, but not limited to, legal advice and opinions; litigation or other methods of dispute resolution; and procurement of outside legal services.

(12) Procurement of goods and services, transactions, and other types of activities related to the routine and continuing administration, management, maintenance and operations of the Commission or its facilities.

(13) Adoption and issuance of rules, directives, official policies, guidelines, and publications or recommendations of an educational, financial, informational, legal, technical or procedural nature.

(b) The Executive Director shall include in his/her EDR, or the documentation of a Delegated Action, his/her decision to apply a Categorical Exclusion and the rationale for this decision.

Subpart E – Environmental Assessments

§ 601.13 Characteristics of Commission actions eligible for an Environmental Assessment.

(a) An EA is a concise document with sufficient information and analysis to enable the Executive Director to determine whether to issue a FONSI or prepare an EIS.

(b) Commission actions that generally require an EA exhibit the following characteristics:

- (1) Minor but likely insignificant degradation of environmental quality;
- (2) Minor but likely insignificant cumulative impact on environmental quality; and
- (3) Minor but likely insignificant impact on protected resources.

§ 601.14 Commission actions generally eligible for an Environmental Assessment.

Commission actions that typically require preparation of an EA include without limitation:

- (a) Approval of final plans for Federal public buildings in the District of Columbia, and

the provisions for open space in and around the same, pursuant to 40 U.S.C. 8722(d) and D.C. Code 2-1004(c).

(b) Approval of final plans for District of Columbia public buildings and the open space around them within the Central Area pursuant to 40 U.S.C. 8722(e) and D.C. Code 2-1004(d).

(c) Recommendations to a Federal or District of Columbia agency on any master plan or master plan modification submitted to the Commission that include proposed future projects that require Commission approval pursuant to 40 U.S.C. 8722(d)-(e) and D.C. Code 2-1004(c)-(d) within a five-year timeframe.

(d) Approval of a final site and design for a commemorative work authorized under the Commemorative Works Act pursuant to 40 U.S.C. 8905.

(e) Approval of transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between federal and District authorities, pursuant to 40 U.S.C. 8124, unless such transfers met the criteria of § 601.12(a)(7).

§ 601.15 Process for preparing an Environmental Assessment.

An EA prepared by NCPC as the Lead Agency for a project requiring Commission approval shall comply with the following requirements:

(a) The EA shall include, without limitation, a brief discussion of the proposed action; the purpose and need for the proposed action; the environmental impacts of the proposed action; the environmental impacts of the alternatives considered; Mitigation measures, if necessary; and a list of agencies and persons consulted in preparation of the assessment.

(b) The NCPC shall involve to the extent practicable applicants; Federal and District of Columbia agencies; the public; and stakeholders in the preparation of an EA.

(c) The NCPC, at the sole discretion of the Executive Director, may undertake Public Scoping for an action requiring an EA. The Public Scoping shall generally commence after issuance of a public notice in a media source with widespread circulation and the NCPC website of NCPC's intent to prepare an EA. The notice shall include the date, time and location of the Public Scoping meeting.

(d) The NCPC may solicit public review and comment of a Draft EA. The public comment period generally shall be thirty (30) calendar days. The public comment period shall begin when the Executive Director announces the availability of the Draft EA on the NCPC website (www.ncpc.gov). The NCPC, at its sole discretion, may decline to circulate a draft EA for non-controversial projects.

§ 601.16 Finding of No Significant Impact.

(a) If NCPC is the Lead Agency and the final EA supports a FONSI, NCPC shall prepare and execute a FONSI. The FONSI shall be prepared following closure of the discretionary public comment period on a Draft EA, or if no public comment period is deemed necessary, at the conclusion of the preparation of an EA. The FONSI shall briefly state the reasons why the proposed action will not have a significant effect on the environment and include the EA or a summary thereof, any Mitigation commitments, and a schedule for implementing the Mitigation commitments. NCPC may sign the FONSI to coincide with the submission of a final application or anytime thereafter, provided that if the Commission's final action requires, the FONSI shall be revised to conform with the final action.

(b) If NCPC is not the Lead Agency, it shall evaluate the adequacy of the Lead Agency's FONSI, and if determined adequate, NCPC may co-sign the Lead Agency's FONSI following Commission approval of the application. Alternatively, NCPC may prepare and execute its own FONSI consistent with the requirements of paragraph (a) of this section and sign the FONSI following the Commission's approval of the application.

(c) In certain limited circumstances described in 40 CFR 1501.4(e)(2)(i)-(ii), a FONSI prepared by NCPC shall be available for public review for thirty (30) days before NCPC makes its final determination. NCPC shall also publish all FONSIs on its website seven (7) calendar days before the Commission takes action on the underlying application.

(d) If the Commission determines a Lead Agency's EA does not support a FONSI, either the Lead Agency shall prepare an EIS, or the Commission shall not approve or consider further the underlying application.

§ 601.17 Supplemental Environmental Assessments.

(a) The NCPC shall prepare a supplemental EA if five or more years have elapsed since adoption of the EA and:

(1) There are substantial changes to the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information that are relevant to environmental concerns and have a bearing on the proposed action or its impacts.

(b) The NCPC may supplement a Draft or Final EA at any time to further the purposes of NEPA.

(c) The NCPC shall prepare, circulate, and file a supplement to a Draft or Final EA, and adopt a FONSI in accordance with the requirements of §§ 601.15 and 601.16. If NCPC is not the Lead Agency, it shall proceed as outlined in § 601.16(b) and (c).

Subpart F – Environmental Impact Statements

§ 601.18 Requirement for and timing of an Environmental Impact Statement.

Prior to the Commission’s approval of a major federal action significantly affecting the quality of the human environment, the Executive Director shall prepare an EIS for a Non-federal Agency application.

§ 601.19 Context, intensity, and significance of impacts.

(a) As required by 40 CFR 1508.27(a) and (b), NCPC’s determination of whether an EIS is required and whether impacts are significant shall be made with consideration to the context and intensity of the impacts associated with a proposed action.

(b) The significance of an action is determined in the context of its effects on society as a whole, the National Capital Region and its environs, the particular interests affected, and the specific locality or area within which the proposed action is located. The context will vary from project to project and will be based on the type, attributes, and characteristics of a particular proposal.

(c) The significance of an action is also determined based on the severity of impacts imposed by the proposal. Severity shall be determined based on an evaluation of a proposal in the manner outlined in 40 CFR 1508.27(b)(1) through (10). The evaluation shall also be informed by the relevant policies of “The Comprehensive Plan for the National Capital: Federal Elements” and other applicable Commission plans and programs. Proposed actions that conflict with or delay achievement of the goals and

objectives of Commission plans and programs are generally more likely to be found to have significant impacts than proposals that are consistent with Commission plans and programs.

(d) Proposed actions shall also be deemed significant and require an EIS if they exhibit at least one of the following characteristics:

- (1) The proposed action results in a substantial change to the Monumental Core.
- (2) The proposed action causes substantial alteration to the important historical, cultural, and natural features of the National Capital and its Environs.
- (3) The proposed action is likely to be controversial because of its impacts on the human environment.

§ 601.20 Streamlining Environmental Impact Statements

The NCPC as Lead Agency shall use all available techniques to minimize the length of an EIS. Such techniques include, without limitation, drafting an EIS in clear, concise language; preparing an analytic vs. encyclopedic EIS; reducing emphasis on background information; using the scoping process to emphasize significant issues and de-emphasize non-significant issues; incorporating relevant information by reference; using a programmatic EIS and tiering to eliminate duplication in subsequent EISs; and following the format guidelines of § 601.22.

§ 601.21 Programmatic Environmental Impact Statements and tiering.

(a) The NCPC shall prepare a programmatic Environmental document (Programmatic EA or PEA or Programmatic EIS or PEIS) to assess the impacts of proposed projects and plans when there is uncertainty regarding the timing, location and environmental impacts of subsequent implementing actions. At the time NCPC undertakes a site or project

specific action within the parameters of the PEA or PEIS, NCPC shall tier its Environmental document by summarizing information in the PEIS or PEA, as applicable, and concentrate on the issues applicable to the specific action.

(b) A PEIS or PEA prepared by NCPC shall be governed by the CEQ regulations and the rules of this part 601.

§ 601.22 Contents of an Environmental Impact Statement.

When NCPC serves as Lead Agency for an EIS, the following information shall be included in the EIS:

(a) A cover sheet. The cover sheet shall be one-page and include a list of responsible and Cooperating Agencies; the title of the proposed action that is the subject of the EIS; the name, address, and telephone number of the NCPC point of contact; the designation as to whether the statement is draft, final, or draft or final supplement; a one paragraph abstract of the EIS; and the date by which comments must be received.

(b) A summary. The summary shall accurately summarize the information presented in the EIS. The summary shall focus on the main conclusions, areas of controversy, and the issues to be resolved.

(c) A table of contents. The table of contents shall allow a reader to quickly locate subject matter in the EIS – either by topic area and/or alternatives analyzed.

(d) The purpose and need. A statement of the purpose of and need for the action briefly stating the underlying purpose and need to which the agency is responding.

(e) The identification of alternatives including the proposed action. This section shall provide a brief description and supporting documentation for all alternatives including the proposed action; the no action alternative; all reasonable alternatives including those

not within the jurisdiction of the agency; alternatives considered but eliminated and the reason for their elimination; the agency's preferred alternative, if one exists; the environmentally preferred alternative; and Mitigation measures not already included in the proposed action.

(f) The identification of the affected environment. This section shall provide a succinct description of the environment to be affected by the proposed action and the alternatives considered. This section shall include, if applicable, other activities in the area affected by or related to the proposed action.

(g) The identification of environmental consequences. This section shall focus on the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible commitments of resources which would be involved if the proposal is implemented. The impacts shall be discussed in terms of direct, indirect and cumulative effects and their significance, as well as any appropriate means to mitigate adverse impacts. The discussion shall also include issues and impact topics considered but dismissed to reveal non-impacted resources. Resource areas and issues requiring consideration shall include those identified in the scoping process, and, without limitation, the following:

(1) Possible conflicts between the proposed action and the land use plans, policies, or controls (local, state, or Indian tribe) for the area concerned.

(2) Natural and biological resources including topography, hydrology, soils, flora, fauna, floodplains, wetlands, and endangered species.

- (3) Air quality.
 - (4) Noise.
 - (5) Water resources including wastewater treatment and storm water management.
 - (6) Utilities including energy requirements and conservation.
 - (7) Solid waste and hazardous waste generation/removal.
 - (8) Community facilities.
 - (9) Housing.
 - (10) Transportation network.
 - (11) Socio-cultural and economic environments.
 - (12) Environmental Justice and the requirements of Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations).
 - (13) Urban quality and design of the built environment including visual resources and aesthetics.
 - (14) Historic and cultural resources to include documentation of the results of the Section 106 Consultation process.
 - (15) Public health and safety.
- (h) A list of preparers. This list shall include all pertinent organizations, agencies, individuals, and government representatives primarily responsible for the preparation of the EIS and their qualifications.
- (i) An index. The index shall be structured to reasonably assist the reader of the Draft or Final EIS in identifying and locating major topic areas or elements of the EIS information. The level of detail of the index shall provide sufficient focus on areas of interest to any reader not just the most important topics.

(j) An appendix. The appendix shall consist of material prepared in connection with an EIS (as distinct from material which is incorporated by reference) and material which substantiates any analysis fundamental to the EIS. The material in the appendix shall be analytical and relevant to the decision to be made. The appendix shall be posted on NCPC's website.

§ 601.23 The Environmental Impact Statement process.

(a) The NCPC shall involve the applicant, Federal and District of Columbia agencies, members of the public and stakeholders in the preparation of an EIS. Public participation shall be required as part of the Public Scoping process and review of the Draft EIS. The NCPC shall also consult with agencies having jurisdiction by law or expertise. Agencies with "jurisdiction by law" are those with ultimate jurisdiction over a project and whose assistance may be required on certain issues and those with other kinds of regulatory or advisory authority with respect to the action or its effects on particular environmental resources.

(b) To determine the scope of an EIS through a Public Scoping process, NCPC shall proceed as follows:

- (1) Disseminate a NOI in accordance with 40 CFR 1501.7 and 1506.6.
- (2) Publish a NOI in the Federal Register and on NCPC's website which shall begin the Public Scoping process.
- (3) Include the date, time, and location of a Public Scoping meeting in the NOI. The public meeting shall be announced at least thirty (30) calendar days in advance of its scheduled date.
- (4) Hold Public Scoping meeting(s) in facilities that are accessible to the disabled;

include Translators requested in advance; include signers or interpreters for the hearing impaired if requested in advance; and allow special arrangements for consultation with affected Indian tribes or other Native American groups who have environmental concerns that cannot be shared in a public forum.

(5) Consider all comments received during the announced comment period regarding the analysis of alternatives, the affected environment, and identification of potential impacts.

(6) Apply the provisions of this section to a Supplemental EIS if the Executive Director of NCPC, in his/her sole discretion, determines a Public Scoping process is required for a Supplemental EIS.

(c) A Draft EIS shall be available to the public for their review and comment, for a period of generally forty-five (45) calendar days. The public comment period shall begin when NCPC shares a copy of the Draft EIS with EPA in anticipation of EPA's publication of an NOA.. The NCPC shall hold at least one public meeting during the public comment period on a Draft EIS. The public meeting shall be announced at least thirty (30) calendar days in advance of its scheduled occurrence. The announcement shall identify the subject of the Draft EIS and include the public meeting date, time, and location.

§ 601.24 Final Environmental Impact Statement.

(a) The NCPC shall prepare a Final EIS following the public comment period and the public meeting(s) on the Draft EIS. The Final EIS shall respond to oral and written comments received during the Draft EIS public comment period.

(b) The Commission shall take final action on an application following a thirty (30) day Commission-sponsored review period of the Final EIS. The thirty (30) day period shall start when the EPA publishes a NOA for the Final EIS in the Federal Register.

§ 601.25 Record of Decision.

(a) If NCPC as the Lead Agency decides to recommend approval of a proposed action covered by an EIS, it shall prepare and sign a ROD stating the Commission's decision and any Mitigation measures required by the Commission. The ROD shall include among others:

(1) A statement of the decision.

(2) The identification of alternatives considered in reaching a decision specifying the alternatives that were considered to be environmentally preferable. The ROD shall discuss preferences among alternatives based on relevant factors including economic and technical planning considerations and the Commission's statutory mission. The ROD shall identify those factors balanced to reach a decision and the influence of various factors on the decision.

(3) A statement as to whether all practicable means to avoid or minimize environmental harm from the alternative selected has been adopted, and if not, why they are not.

(4) A monitoring and enforcement program that summarizes Mitigation measures.

(5) Date of issuance.

(6) Signature of the Chairman.

(b) The contents of the ROD proposed for Commission adoption shall be summarized

in the EDR and a full version of the document shall be included as an Appendix to the EDR. The ROD, independently of the EDR, shall be made available to the public for review fourteen (14) calendar days prior to the Commission's consideration of the proposed action for which the EIS was prepared.

(c) The Commission shall arrive at its decision about the proposed action and its environmental effects in a public meeting of record as identified by the Commission's monthly agenda.

(d) If NCPC is not the Lead Agency, it may either co-sign the Lead Agency's ROD if it agrees with its contents and conclusions or it shall prepare and sign its own ROD consistent with the requirements of paragraph (a) of this section. The ROD may be signed to coincide with the submission of a final application or anytime thereafter provided that if the Commission's final action requires, the signed ROD shall be revised to conform with the final action.

(e) If the Commission determines a Lead Agency's EIS fails to support a ROD, the Lead Agency shall revise its EIS, or, alternatively, the Commission shall not approve or give any further consideration to the underlying application.

§ 601.26 Supplemental Environmental Impact Statement.

(a) The NCPC shall prepare a supplemental EIS if five or more years has elapsed since adoption of the EIS and:

(1) There are substantial changes to the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information that are relevant to

environmental concerns and have a bearing on the proposed action or its impacts.

(b) The NCPC may supplement a Draft or Final EIS at any time, to further the purposes of NEPA.

(c) The NCPC shall prepare, circulate, and file a supplement to a Draft or Final EIS in accordance with the requirements of §§ 601.22 through 601.24 except that Public Scoping is optional for a supplemental EIS.

(d) The NCPC shall prepare a ROD for a Supplemental EIS. The ROD's contents, the procedure for public review, and the manner in which it shall be adopted shall be as set forth in § 601.25.

§ 601.27 Legislative Environmental Impact Statement.

(a) Consistent with 40 CFR1506.8, the Executive Director shall prepare an EIS for draft legislation initiated by NCPC for submission to Congress. The EIS for the proposed legislation shall be included as part of the formal transmittal of NCPC's legislative proposal to Congress.

(b) The requirements of this section shall not apply to legislation Congress directs NCPC to prepare.

Subpart G – Dispute Resolution

§ 601.28 Dispute resolution.

Any disputes arising under this part, shall be resolved, unless otherwise otherwise provided by law or regulation by the parties through interagency, good faith negotiations starting at the working levels of each agency, and if necessary, by elevating such disputes within the respective Agencies. If resolution at higher levels is unsuccessful, the parties may participate in mediation.