



Executive Director's Recommendation

Commission Meeting: September 7, 2017

PROJECT Increasing Effectiveness and Efficiency: Revised <i>Submission Guidelines</i> and <i>National Environmental Policy Act Regulations</i> National Capital Region	NCPC FILE NUMBER 7744
	NCPC MAP FILE NUMBER 00.00()44590
SUBMITTED BY Staff of the National Capital Planning Commission	APPLICANT'S REQUEST Approve the final Submission Guidelines and NEPA Regulations
REVIEW AUTHORITY 40 U.S.C. § 8711 (e)(2) and 8722(a); 42 U.S.C.4321 et. seq.; and 40 C.F.R. § 1505.1	PROPOSED ACTION Approve the final Submission Guidelines and NEPA Regulations
	ACTION ITEM TYPE Staff Presentation

PROJECT SUMMARY

The National Capital Planning Commission (NCPC) is the federal government's planning agency for the National Capital Region. Its mission is to preserve and enhance the extraordinary historical, cultural, and natural resources and federal assets of the National Capital Region to support the needs of the federal government and enrich the lives of the region's visitors, workers, and residents. NCPC's plan and project review function is the predominant focus of the Commission's activities and is core to NCPC fulfilling its mission.

Agencies that are subject to plan and project review must submit development proposals to the Commission by following a process laid out in the Commission's *Submission Guidelines* ("the Guidelines"). These Guidelines describe the content of submissions, submission stages, along with the coordination and review process. The Guidelines are critical to the Commission's ability to carry out its planning and review authorities, but they have not been updated since October 3, 1991. As such, NCPC staff worked to identify opportunities to revise the Guidelines and increase their effectiveness.

The proposed Guidelines update accomplishes three primary objectives:

- 1) Create clear, accessible, and efficient guidelines that are responsive to applicant needs.
- 2) Align NCPC's review stages and National Environmental Policy Act (NEPA) requirements with those of applicant agencies to save time and money in the planning process; and
- 3) Allow staff to exempt from Commission review certain minor projects based on specific criteria where there is no federal interest.

This will result in several positive outcomes for those involved in the review process:

- 1) **Applicants:** the Guidelines are clear and easy-to-use. Clarification of the review stages and better alignment of NCPC's NEPA requirements with those of applicant agencies will allow applicants to make project improvements before more substantial commitments of time and resources have been made.
- 2) **Staff:** distinct review stages will help focus staff analysis, resulting in better guidance to the applicant and more informative recommendations to the Commission. The expanded list of potential review exceptions will also focus staff's review on projects with a federal interest.
- 3) **The Commission:** distinct review stages will allow the Commission to provide more substantive and meaningful guidance earlier in the review process.
- 4) **The Public:** the Guidelines provide an overview of NCPC's authorities and review process, allowing for a clearer understanding of NCPC's authorities and review process, and clarifying the appropriate level of public input at the relevant review stages.

In parallel with the Guidelines update, staff have also undertaken an update of NCPC's *National Environmental Policy Act Regulations* ("the Regulations"). These Regulations set forth the rules that NCPC and applicants follow to ensure compliance with the National Environmental Policy Act (NEPA). The update will increase the efficiency and effectiveness of NCPC's NEPA processes by clearly defining the roles of applicants; aligning the Commission's NEPA review schedule with federal agency applicants' internal project development schedules; and allowing the Commission to co-sign an applicant's decision-making document, rather than prepare another.

The update of the Guidelines and Regulations are proceeding concurrently to ensure that they are coordinated, thereby improving the applicant experience and providing the Commission the information necessary to support its decision-making. Further, the recommendations respond to the Presidential Executive Order on a *Comprehensive Plan for Reorganizing the Executive Branch* by increasing the efficiency and effectiveness of the agency through an improved plan review process. NCPC staff proactively identified opportunities to streamline procedures and realign activities that are more appropriately managed at the local level. The two-part analysis that follows describes the proposed updates to both the Guidelines and the Regulations consistent with these goals.

In May 2017, the Commission authorized release of the draft Guidelines and Regulations for a 45-day public comment period. Two public meetings were held to solicit feedback, and NCPC staff reached out to several applicant agencies for briefings. Individual meetings were held with the District of Columbia Office of Planning, Department of Defense, District of Columbia State Historic Preservation Office, Smithsonian Institution, General Services Administration, the planning directors from area jurisdictions, and the Coordinating Committee. In response to the comments received, the Guidelines and Regulations have been revised where appropriate. Staff now recommends the Commission approve the final Guidelines and Regulations.

KEY INFORMATION

- The Executive Director's Recommendation requests the Commission approve the final *Submission Guidelines* and *National Environmental Policy Act Regulations*.
- In May 2017, the Commission authorized release of the draft Guidelines and Regulations for a 45-day public comment period. Two public meetings were held to solicit feedback, and NCPC staff reached out to several applicant agencies for briefings. In response to the comments received, the Guidelines and Regulations have been revised where appropriate.

Submission Guidelines

- The *Submission Guidelines* guide the plan and project review process by informing applicants of the information necessary to submit for a project, describing how and when NCPC staff and the Commission engage applicants, and outline the steps and questions staff and the Commission will ask at each stage of review.
- The *Submission Guidelines* were last updated on October 3, 1991.
- The proposed Guidelines accomplish three primary objectives:
 1. Create clear, accessible and efficient guidelines responsive to applicant needs.
 2. Align NCPC's review stages and NEPA requirements with those of applicant agencies to save time and money in the planning process.
 3. Allow staff to exempt from Commission review certain minor projects based on specific criteria where there is no federal interest.
- The updated Guidelines result in several positive outcomes for those involved in the review process:
 1. **Applicants** should find the Guidelines clear and easy-to-use. Clarification of the review stages and better alignment of NCPC's NEPA requirements with those of applicant agencies will allow applicants to make project improvements before more substantial commitments of time and resources have been made.
 2. **Staff** should provide better guidance to the applicant and more informative recommendations to the Commission. The expanded list of potential review exceptions will also focus staff's review on projects with a federal interest.
 3. **The Commission** will be able to provide more substantive and meaningful guidance earlier in the review process with distinct review stages.
 4. **The Public** will have a clearer understanding of NCPC's authorities and review process, clarifying the appropriate level of public input at the relevant review stages.

National Environmental Policy Act Regulations

- NCPC has an obligation to satisfy NEPA when approving projects.
- NEPA procedures are coordinated through the *Submission Guidelines* and the project review process.

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- Federal agencies must prepare and adopt their own NEPA guidance.
 - The *Environmental Policies and Procedures (NEPA Regulations)* were last updated on April 1, 2004.
 - Staff has worked with the Council on Environmental Quality (CEQ) to update NCPC's *NEPA Regulations*.
 - Unlike NEPA procedures, which are prepared by individual agencies, National Historic Preservation (NHPA) Section 106 (54 U.S.C. 306108) (Section 106) procedures are determined by the Advisory Council on Historic Preservation so they are not part of this update.
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RECOMMENDATION

The Commission:

Approves the final *Submission Guidelines*.

Approves the final *National Environmental Policy Act Regulations*.

Notes following Commission approval, staff will incorporate any changes as directed by the Commission, and will complete minor editorial updates to the text and graphics, as necessary, to ensure document accuracy and consistency.

Notes the Guidelines and Regulations will be effective 30 days after the notice of final rulemaking is published in the Federal Register.

PROJECT REVIEW TIMELINE

Previous actions	October 1991 – Last revision of the <i>Submission Guidelines</i> April 2004 – Last revision of the <i>Environmental Policies & Procedures</i> May 2017 – Release of draft <i>Submission Guidelines</i> for public comment May 2017 – Release of draft <i>Environmental Policies & Procedures</i> for public comment
Remaining actions (anticipated)	None

PROJECT ANALYSIS

I. Executive Summary

Agencies submit development proposals to the Commission by following a process laid out in the Commission's *Submission Guidelines* ("the Guidelines"). These Guidelines describe the content of submissions, submission stages, along with the coordination and review process. The Guidelines are critical to the Commission's ability to carry out its planning and review authorities, but they have not been updated since October 3, 1991. NCPC staff engaged a consultant to prepare recommendations to update and streamline the Guidelines to ensure they are clear, consistent with agency policy and easily accessible to applicants. Based on outreach to applicants and a detailed assessment of the existing guidelines, staff and the consultant prepared revisions for Commission review.

In parallel with the Guidelines update, staff has also undertaken an update of NCPC's *NEPA Regulations*. These Regulations set forth the rules that NCPC and its applicants must follow to ensure compliance with NEPA. The purpose of the update is to increase the efficiency and effectiveness of NCPC's NEPA processes by clearly defining the roles of applicants; aligning the Commission's NEPA review schedule with federal agency applicant's internal project development schedules; and allowing the Commission to co-sign an applicant's Finding of No Significant Impact (FONSI) or Record of Decision (ROD) rather than prepare its own separate decision-making document.

The update of the Guidelines and the Regulations are proceeding concurrently to ensure that they are coordinated, thereby improving the applicant experience and providing the Commission the information necessary to support its decision-making. Further, the recommendations respond to the Presidential Executive Order on a *Comprehensive Plan for Reorganizing the Executive Branch* by increasing the efficiency and effectiveness of the agency through an improved plan review process.

In May 2017, the Commission authorized release of the draft Guidelines and Regulations for a 45-day public comment period. Two public meetings were held to solicit feedback, and NCPC staff reached out to several applicant agencies for briefings. Approximately 50 comments were received regarding the Guidelines and 100 comments were received regarding the NEPA Regulations. Comments represented federal agencies, local government agencies, community organizations, and individuals. A summary of comments and responses are provided in the appendices. Overall, the feedback received has helped to improve both documents. Staff therefore recommends the **Commission approve the final *Submission Guidelines* and *National Environmental Policy Act Regulations***. Following Commission approval, staff will incorporate any changes as directed by the Commission, and will complete minor editorial updates to the text and graphics, as necessary, to ensure document accuracy and consistency.

II. Analysis – Submission Guidelines

Over the past year, NCPC staff has been focused on improving the plan and project review process. One of the first steps included updating the Executive Director's Recommendation (EDR) format to make it more concise and accessible. Subsequently, staff began work with a consultant to evaluate and update the *Submission Guidelines*. Revising the Guidelines is another important step to make the review process clear, accessible and more efficient, leading to better planning outcomes for the Commission, applicants, staff and the public.

The Commission's responsibilities are largely derived from several major acts, including the National Capital Planning Act, the Commemorative Works Act, and the Foreign Missions Act. Per these Acts, the Commission has responsibility to review and approve a wide range of projects. As a result, the Guidelines form the foundation of the plan and project review process. They are a critical tool of the Commission in fulfilling its review and approval responsibilities.

NCPC's current Guidelines have several components. They provide a general overview of the process, as well as outline the content of submissions for different project types. The Guidelines also describe the submission stages, and the coordination and review process that staff and applicants follow as a project is prepared for Commission action. However, the existing guidelines have a series of challenges. First, the guidelines have not been comprehensively updated since 1991. As such, NCPC staff believes this is an opportunity to evaluate their content, how they work, and improve user-friendliness. Further, the existing guidelines are not clear and well-organized, and this can lead to confusion about what may or may not apply to a project submission. This, in turn, requires additional staff and applicant time in explanation and coordination. Finally, the requirements for the different review stages are the same, and so the distinction between preliminary and final reviews is not clear or purposeful. Coordination with NEPA and Section 106 of the NHPA is directly related to this challenge.

Comments and Revisions

Staff received nearly 50 public comments regarding the draft Guidelines. The General Services Administration; the Department of the Interior (National Park Service); the National Aeronautics and Space Administration; the Smithsonian Institution; the Washington Area Metropolitan Transit Authority; The Committee of 100 on the Federal City; and members of private consulting firms provided feedback. A summary chart of all the comments received and NCPC's response can be found in Appendix A.

A majority of the comments could be grouped into five categories. These include Background/Supporting Information; Alignment and Requirements for Concept Review; NEPA/Section 106 Coordination and Documentation; Submission Requirements; and Other Clarifications/Updates. These are described in more detail in the following analysis:

1. Background and Supporting Information

A number of comments noted that it would be beneficial to have additional information regarding a variety of topics that are related to NCPC's mission and project review responsibilities. These topic areas include NCPC's review authorities; the role of NEPA and Section 106 of the National Historic Preservation Act; the Intergovernmental Referral Process; and the Classified Materials Policy, among others. Staff agrees that the context and information can be helpful to applicant agencies. As a way to help streamline the Guidelines, this additional information will be captured in separate resource guides that explain in more detail these other aspects of NCPC procedures and responsibilities. This allows the Guidelines to focus clearly on the submission requirements. The resource guides will be short and concise documents that provide further information on these and other topics areas.

The new NCPC website will provide an important source of information, including resource guides. Applicants, the public and other stakeholders will have easy access to user-friendly materials regarding a variety of topics related to the submission and review process. In addition, the website will help improve the public participation process through timely updates and details on the Commission process.

2. Concept Review Alignment and Requirements

A number of comments focused on the concept review stage, including its applicability, submission requirements, and alignment with other reviews, such as those of the Commission of Fine Arts. The Guidelines have been clarified to indicate when a concept review might be required. These include projects where several alternatives are under consideration, projects expected to have significant historic resource or environmental impacts, and projects where community concern or controversy is anticipated, among other. In addition, commemorative works will require concept reviews for both the site selection and design stages.

Several comments noted that the level of information available for the concept review stage may vary between projects, and therefore some flexibility may be necessary when projects are early in the development stage. Staff agrees, and therefore proposed adjusting the level of design development for this stage from 10-15% to 10-25%. Regarding the NEPA requirements at this stage, the Guidelines have been revised to state that the NEPA public scoping process shall have been initiated by the Federal Agency applicant or NCPC for a Non-federal Agency applicant. However, if the Federal Agency applicant or NCPC is contemplating the use of a categorical exclusion (CATEX), the initiation of the public scoping process may be deferred until the final decision on use of a CATEX is made.

Additionally, at least one commenter suggested the concept review stage should directly align with the Commission of Fine Arts (CFA) concept review. Staff notes that reviews are intended to align when possible. However, the two processes do vary, as CFA does not have a preliminary review stage. NCPC also has responsibilities to NEPA and Section 106 that do not apply to CFA. At the pre-submission briefing, NCPC staff will work with the applicant to understand the other agency reviews applicable to each submission, and provide guidance in coordinating.

3. NEPA/Section 106 Coordination and Documentation

Several comments requested clarification regarding the NEPA documentation required at each review stage. In particular, some of the language was not as clear or concise as it could be. Staff concurred with these comments, and the Guidelines have been revised for clarity. Information regarding NEPA has also been consolidated within the "NEPA" portion of each submission table. Previously, the information had been included in several locations, which could create confusion.

In response to comments by CEQ, the NEPA documentation required at final review has been updated for those projects where NCPC has an approval authority. In those cases, the decision documents (either record of decision (ROD) or finding of no significant impact (FONSI)) ~~should be submitted in a draft form, not signed as previously indicated.~~ can be submitted either in a draft form or as a signed version.

As noted previously, at the concept stage, the NEPA public scoping process shall have been initiated by the Federal Agency applicant or NCPC for a Non-federal Agency applicant. However, if the Federal Agency applicant or NCPC is contemplating the 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.

Similarly, for the Section 106 process, the consultation process should be initiated. At preliminary review, the draft NEPA document (environmental assessment (EA) or environmental impact statement (EIS)) should be submitted. At this stage, an assessment of effects on historic resources should also be provided, if applicable. At final review, NEPA should be completed, either through a categorical exclusion, finding of no significant impact, or record of decision. The Section 106 process should be completed at this stage, either with a finding of no adverse effects, or a decision document such as a memorandum of agreement or programmatic agreement.

Finally, several comments inquired as to the integration of the Section 106 process with the review stages and NEPA. The submission guidelines have been developed to allow these processes to work in coordination. As described above, the documentation necessary at each stage of review allows coordination to occur, including the necessary public involvement and engagement. The updated NCPC website will also be an important tool for public notification regarding the review stages, including the NEPA and Section 106 steps.

4. Submission Requirements

Several comments were received requesting clarification regarding the submission requirements. Most of these recommendations were incorporated into the revised Guidelines. For example, the stormwater management requirements were updated to reflect that applicants should incorporate state and local standards, as well as indicate compliance with the Energy Independence Security Act (EISA). Requests for submission materials regarding security and programming were also updated in response to public comments. In particular, the Guidelines reflect that NCPC is interested in perimeter security, not internal building security systems. Also, information regarding architectural program should generally be limited to a general summary of major uses and

allocation of space, rather than the detailed analysis that many applicant agencies prepare well in advance of actual planning work.

One comment noted that guidance regarding site acquisitions was omitted. The Guidelines have been updated to reflect the information necessary if a site acquisition may be necessary. Another commenter suggested that applicants may not be able to provide a detailed analysis of a project's compliance with NCPC plans and policies. As such, this submission requirement has been modified to request a more general summary of consistency with NCPC plans and policies.

5. Other Clarifications / Updates

Several other areas of the Guidelines have been clarification or updated. For example, the expiration of the Commission's final approval was not previously tied to any milestone. The Guidelines have been updated to reflect that a project should have initiated construction within that timeframe. Staff has also renamed Chapter Two from "Common Projects" to "Site, Building and Park Projects" to more accurately describe the types of submissions expected under this category.

Several comments related to the installation of antennas, both permanent and temporary. In particular, one suggestion indicated extending the time allowed for temporary antennas from 60 to 90 days. The Guidelines have been updated to reflect this suggestion, recognizing the time it takes to install and remove temporary antenna installations.

In addition, the requirements related to flooding have been updated to better align with applicant agency processes, as well as the stages of NEPA review. References to outdated standards have also been eliminated. Staff believes these changes are also responsive to the recent executive order regarding the environmental review and permitting process for infrastructure.

Staff also reviewed the process for notifying the public regarding review exceptions. Chapter 8 of the Submission Guidelines identifies exceptions that allow staff to exempt a project from Commission review. Generally, this occurs when there are no federal interests or the project is a simple replacement in-kind. In response to comments regarding the transparency of the exception process, staff proposes to list the exceptions on the tentative agenda to allow for public notice. If a member of the public would like to comment on a proposed exception, it would then be moved to an action item for review by the Commission. Otherwise, if no member of the public comments, staff will inform the applicant that the project has qualified for an exception. This process will go into effect upon adoption of the Submission Guidelines. Staff will update NCPC's Procedures for Public Participation document to reflect this process as part of a larger effort to update the procedures in the upcoming year.

Finally, staff notes that the actions that can be delegated to the Chairman or Executive Director will be updated in the future. As these are internal operating procedures, they will undergo a separate review and approval process.

III. Analysis – NEPA Regulations

As noted previously, the Commission's work is guided by environmental and historic preservation laws and regulations. NCPC has a responsibility to comply with both NEPA and Section 106 of the NHPA. Federal agencies must prepare their own NEPA procedures; in contrast, the Advisory Council on Historic Preservation (ACHP) establishes Section 106 procedures. NCPC staff has drafted revised NEPA procedures working in close cooperation with CEQ, and the revised NEPA procedures have been coordinated with the updated Guidelines.

Comments and Revisions

A little under 100 public comments were received regarding the NEPA Regulations. Comments were received from the General Services Administration; the Department of the Interior (National Park Service); the National Aeronautics and Space Administration; the Smithsonian Institution; the Washington Area Metropolitan Transit Authority; the National Trust for Historic Preservation; The Committee of 100 on the Federal City; approximately 21 members of the general public; and two private consulting firms. A summary chart of all the comments received and NCPC's response can be found in Appendix B.

Staff notes that the final regulations have been renamed the *National Environmental Policy Act Regulations*. This title is more descriptive of the true nature of the Regulations as opposed to the previously-named *Environmental Policies and Procedures*. The concept of policies and procedures derived from the name of NCPC's existing regulations. Unlike policies and procedures, the reference to regulations explicitly conveys the intention that the final document is a mandated approach to the implementation of NEPA.

The major comments received can be grouped into five categories. These are described in more detail in the following analysis:

1. Elimination of National Historic Preservation Act (NHPA) Section 106 Requirements

Several comments addressed the elimination of NHPA Section 106 procedures from the Regulations. The National Trust for Historic Preservation generally agreed with the elimination but suggested designating the NEPA Lead and Cooperating Agencies as the Lead and Consulting Parties for the Section 106 process. After review, staff determined it is inappropriate to designate roles for the Section 106 process in its NEPA regulations. ~~To compensate for the elimination, however, a member of the public suggested reference to ACHP guidance for integrating NEPA and the Section 106 processes located on the ACHP website. Staff agrees with this suggestion and added the reference because it reminds agencies of the need to integrate and comply with both processes.~~ The Committee of 100 on the Federal City maintained the elimination sent a negative message about the interconnection between the two processes. Staff notes this was not the intent, as evidenced by the policy set forth in §601.2(d) to integrate the requirements of NEPA with, among others, the requirements of the NHPA.

2. Role of Non-federal Agencies

The role of Non-federal Agencies in the NEPA process generated a number of comments. The Smithsonian Institution (designated a Non-federal Agency in the Regulations) recommended the re-designation of Federal and Non-federal Agencies as Executive and Non-executive Agencies on the theory that this might be less confusing. NCPC declined to make this change because of the repeated use of the term “federal” in the National Capital Planning Act (40 U.S.C. §8701 et seq). However, for clarification purposes, NCPC revised the definition of Non-federal Agencies to indicate this designation applies only for purposes of NEPA.

One member of the public challenged the legality of designating Non-federal Agencies as “Cooperating Agencies” given that the CEQ regulatory definition only designates “federal agencies” as capable of serving in this capacity. Staff notes this statement is only partially correct. The definition of Cooperating Agency in 40 CFR 1508.5 also extends to state or local agencies rendering such agencies eligible to serve as Cooperating Agencies. This renders Cooperating Agency status appropriate for the Government of the District of Columbia and the Maryland National Capital Park and Planning Commission. As to the others listed in the definition -- Smithsonian Institution, the John F. Kennedy Center for the Performing Arts, the National Gallery of Art, the United States Institute of Peace, and private parties or entities undertaking development on federal land – we agree an alternative approach is necessary.

Staff agreed with the same individual’s multiple comments that NCPC does not undertake NEPA “on behalf” of Non-Federal Agencies. We recognize that the NEPA obligation for a Non-federal Agency application belongs to NCPC. We believe a minor wording change to “undertakes NEPA for a Non-federal Agency application” solves this concern.

Turing to an alternative approach for NEPA compliance for Non-federal Agency applications, NCPC is not alone in confronting the issue of Non-federal Agency applications to which NEPA applies because of the federal agency’s approval or permitting authority. Staff looked for similarly situated federal agencies to ascertain how they handle the issue. One federal agency lists in its regulations the information the Non-federal Agency (permittee and owner of the project) must submit to facilitate staff’s preparation of the requisite NEPA document.

Because this approach increased the complexity of the agency’s regulations, and NCPC’s goal is to streamline its regulations consistent with the administration’s articulated regulatory reduction goals, NCPC adopted a modified version of this approach. It proposes to enter into a Memorandum of Agreement (MOA) with Non-federal Agencies specifying, among others, the information the Non-federal Agency must submit to enable preparation of the requisite environmental document by NCPC staff and the timing of the information’s submission. One commenter initially expressed concern that NCPC was abrogating its NEPA responsibilities by entering into a MOA. However, upon further explanation, the commenter later concurred with the approach. NCPC staff considers the MOA an internal operating procedure within its authority to implement. It is also an efficient and effective way to fulfill its NEPA obligation and avoid some of the pitfalls associated with the prior approach of Cooperating Agency status. The problems avoided include budgetary issues if the Non-federal Agency provides money to NCPC to retain a contractor, Non-federal Agency

participation in NCPC's retention of the Non-federal Agency funded contractor, and the potential for two A&E contractors working on different aspects of the same project. To facilitate public awareness, NCPC will post the completed MOA on the NCPC's website.

3. Timing and Sequencing of Submitting NEPA Documents/Co-signing FONSI and RODs

All the government agencies supported NCPC's process change of moving NEPA completion to coincide with the Commission's final approval. There was one concern expressed about the sequencing of NEPA and the Commemorative Works Act's review process, but NCPC believes the comment was the result of a misunderstanding about the need for two NEPA processes addressing site approval and design approval.

Multiple federal agencies also advised against incorporation of a provision allowing NCPC to co-sign another agency's finding of no significant impact (FONSI) or record of decision (ROD). Staff notes that the Regulations render this practice discretionary. However, if both agencies agree on the contents of a FONSI or ROD, it makes no sense for NCPC to prepare a duplicated document for NCPC to sign. However, if the two agencies have different reasons for reaching a FONSI or a ROD, co-signature is not an option, and each agency will have to prepare its own document. Co-signature is also not an option if there is disagreement over the ability to reach a FONSI or ROD. This disagreement points to problems with the NEPA document that must be resolved before the project can be presented to the Commission. Finally, staff notes that co-signing a FONSI or ROD is entirely consistent with the administration's efforts to streamline regulatory processes, especially NEPA.

~~Finally, as noted previously, CEQ indicated that any final decision document (ROD or FONSI) should not be signed until the Commission has taken a final action. As such, the NEPA documentation required at final review has been updated for those projects where NCPC has an approval authority. In those cases, the ROD or FONSI should be submitted in a draft form, not signed as previously indicated.~~

~~Finally, as noted previously, CEQ provided a comment regarding the status of decision documents (ROD or FONSI) at the time of the Commission's final approval. In response to this comment, the regulations state the ROD or FONSI may be submitted in either a draft or signed version at the time of final review. However, if the Commission's action requires changes to those documents, they will need to be updated consistent with that action.~~

4. Use of Another Agency's Categorical Exclusions

Several comments were received regarding the inclusion of five categorical exclusions (CATEXs) that allowed NCPC to use the exclusion of another agency when NCPC had no corresponding CATEX. ~~The CATEXs of concern are found at §§ 601.12(5), (6), (7), (8), and (13) of the Regulations.~~ Several federal agencies supported the concept because it removed the possible need for them to prepare an EA for their project if NCPC had no exclusion it could apply. However,

persons with a sophisticated knowledge of NEPA noted this approach was inconsistent with CEQ's long standing policy to disallow such an approach.

As required, NCPC staff submitted an administrative record to CEQ for all of its proposed CATEXs, most of which are carry-overs from several iterations of prior regulations. The administrative record noted that the five CATEX predicated upon use of another agency's exclusion had not been enlarged in scope and the CATEX continued to be appropriately limited by extraordinary circumstances, the list of which has been significantly increased in the new Regulations.

After further discussion, CEQ has decided to adhere to its long-standing policy to disallow such an approach. Consequently, NCPC has therefore removed all five of the CATEX at issue. Since four of the five CATEX at issue have been put to little use in at least 10 years, staff does not believe its implementation of NEPA will be unduly burdened by this removal.

5. Public Participation/Public Knowledge of Process for Administering CATEX

The Committee of 100 on the Federal City commented as to the silence of the proposed regulations regarding the goals, criteria and process for meaningful public participation. They encouraged the incorporation of meaningful public participation policy and goals to rectify this deficiency. NCPC is fully committed to open government and transparency and believes past actions amply substantiate this commitment, not only in the NEPA and Section 106 processes, but to all of its significant planning activities.

Accordingly, the Regulations clearly articulate a policy of using the NEPA process to "...foster meaningful public involvement in NCPC's decisions." Moreover, throughout the Regulations, there are repeated opportunities for public participation to include in the EIS scoping process with an option for NCPC to conduct a public scoping process for Environmental Assessments as well; in the review of draft Environmental Assessments (EAs) (at NCPC's option) and Environmental Impact Statements (EISs); and in the review of FONSI and RODs. Moreover, at the suggestion of another commenter, documents required to be published in the Federal Register (Notice of Intent to Prepare an EIS and Notice of Availability of an EIS) will also be published on the NCPC website where parties interested in NCPC activities are more likely to go to stay informed of current NCPC events.

The Committee of 100 on the Federal City also expressed concern about the Regulation's silence on the administrative process relative to the application of a CATEX. NCPC notes that among the Commission's official delegated actions is one conferring administrative responsibility for NEPA on the Executive Director. In the future, owing to the recent redesign of NCPC's website, the delegated actions will be listed on the website. NCPC staff notes this responsibility, how and when it is made, and how the public is notified of the decision is set forth in §§ 601.11(c) and 601.12(b) of the Regulations.

IV. Implementation of New Guidelines and Regulations

Upon final approval by the Commission, both the Guidelines and Regulations will take effect and apply to all project submissions moving forward. If an applicant has submitted a project that is still in the review process when the Guidelines and Regulations take effect, staff will work with the applicant to determine next steps in the review process. In general, staff believes the new Guidelines and Regulations will be more advantageous to applicants. The Guidelines and Regulations will be effective 30 days after the notice of final rulemaking is published in the Federal Register.

CONFORMANCE TO EXISTING PLANS, POLICIES AND RELATED GUIDANCE

Comprehensive Plan for the National Capital

The Submission Guidelines and NEPA Regulations are necessary for evaluating development within the National Capital Region for consistency with the policies set forth in the Federal Elements of the *Comprehensive Plan*.

National Historic Preservation Act

NCPC has an obligation to satisfy the National Historic Preservation Act (NHPA) when approving projects. NHPA procedures are coordinated through the *Submission Guidelines* and the project review process. NHPA (Section 106) procedures are determined by the Advisory Council on Historic Preservation. An update to the Submission Guidelines does not sustain characteristics as a federal undertaking. The proposed revisions do not implement, contract, or take other actions that would preclude consideration of the full range of alternatives to avoid or minimize harm to federal historic properties. Consequently, the proposed action does not require review pursuant to the NHPA, Section 106 process.

National Environmental Policy Act

NCPC has an obligation to satisfy the National Environmental Policy Act (NEPA) when approving projects. NEPA procedures are coordinated through the *Submission Guidelines* and the project review process. Further, NCPC must prepare and adopt its own NEPA guidance (*NEPA Regulations*) which are subject to Council of Environmental Quality (CEQ) review and comment.

APPENDICES

- A - Submission Guidelines Public Comments and Responses
- B - NEPA Regulations Public Comments and Responses

ONLINE REFERENCE

The following supporting documents for this project are available online:

- Final Submission Guidelines
- Final NEPA Regulations

Prepared by Matthew Flis and Anne Schuyler
09/07/2017

APPENDIX A

08.28.17

SUBMISSION GUIDELINES COMMENTS & RESPONSES

#7744

	<u>Source</u>	<u>Comment</u>	<u>Staff Response</u>
1	GSA	Recognizing one of the goals of the new Submission Guidelines is to streamline, recommend more context be provided similar to what is included in the current NCPC Submission Guidelines. Overall, the new version seems geared to an audience that is very familiar with the process. Recommend inserting the Introduction Section of the current guidelines, which provides an overview of the Commissions authority and mission.	Staff is developing resource guides that will provide additional information and details regarding a number of topics, including the Commission's review authorities. These guides will explain in more detail the other aspects of NCPC procedures and responsibilities. The resource guides will be available on the website for use by applicants, other agencies, and the public.
2	GSA	We note the revised guidelines have abbreviated or removed guideline headings that are provided in the current guidelines. We recommend for user understanding these sections be incorporated into the revised guidelines either in the body or as an appendix. The information is valuable and provides the user context needed to accurately follow and apply the guidelines. We recommend the following be included as currently written: Projects Requiring Referral to State and Local authorities (including Master Plans), Perimeter Security Projects, Projects that Recognize Private Contributors, Projects within the District of Columbia, and Classified Materials Policy.	Intergovernmental Referrals, Classified Materials, Projects that Recognize Private Contributors and Projects within the District of Columbia (Coordinating Committee) are separate policies from the Guidelines and are not being updated at this time. However, as noted above, staff is developing resource guides for each of these topics that will explain in further detail their role and relationship to project submissions. They will also be available on the website for use by all interested parties.
3	GSA	Page 1, Line 8, The note references the Coordinating Committee and Intergovernmental Referral. As noted above, more context is needed to inform the user of function of the Coordinating Committee and the mechanics of the Intergovernmental Referral process. Additionally for improved readability, recommend each page of the document that references an endnote include a notation that all endnotes are identified in Appendix D.	Per response #2, the resource guides for these topics will provide further information in a concise, easy-to-use form. The endnotes are indicated as an appendix are included on the Table of Contents.
4	GSA	Page 2, Line 21, Site Acquisition is identified as one of the "common projects", however the new submission guidelines do not provide the detailed guidance that is provided in the current guidelines for Site Plans and Development Projects, specifically paragraph D, Review for Plan Conformity and Section 3-Submission stages. Notably missing from the new guidelines is the following: "Location and Program submissions must precede commitments for the acquisition of land to be paid for in whole or in part from Federal or District funds". Unless the guidance has changed, recommend using the current guidance provided for Site Plans and Development Projects as currently written. This guidance is very concise and easy to follow.	The Guidelines have been updated to reflect the information required if a site acquisition may be necessary.
5	GSA	Page 8, Line 18 says, "NCPC staff might recommend a Concept Review for these types of complex and development projects...", then Table 3, page 9, says "Concept review is required for complex projects". Recommend clarification and the addition of the definitions of complex projects and development projects.	The language has been clarified and a list of complex projects is included in Section 2.3.

6	GSA	<p>Page 8, recommend aligning timeframes outline in Table 2 on page 8, Table 3 on page 9 and Table 5 on page 13. Pre-submission review is listed as 0-15% design, Concept Review is listed as 10-15% design and Preliminary Review is listed as 25-35% design, Recommend Concept Review 15-25% design.</p>	<p>The language has been adjusted to show concept review at 10-25% design. This is also in response to several other comments that noted concept review may require more range.</p>
7	GSA	<p>Page, 17 Line 19 says, "Applicants may not lawfully deviate from final plans approved by the Commission when the Commission has an approval authority", recommend this document provide a specific paragraph on the Commission approval authority, much like what is provided in the current guidance. Again, the audience may be new to NCPC and the context is very helpful.</p>	<p>Staff is developing resource guides that will provide additional information and details regarding a number of topics, including the Commission's review authorities, both approval and advisory. These guides explain in more detail the other aspects of NCPC procedures and responsibilities. The resource guides will be available on the website for use by applicants, other agencies, and the public.</p>
8	GSA	<p>Page 9, "<i>Concept Review occurs at the early stages of environmental review and public coordination for the project (e.g., 10-15 percent design development). At Concept Review, the applicant (or NCPC if acting as the lead agency) must have initiated both the NEPA scoping process and Section 106 consultation process for the project.</i>" - Recommend consistent use of the definition of Public Scoping throughout the NCPC guidelines to be consistent with the NEPA Policy, as noted on page 10 of the NEPA Policy, which states, "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." Additionally, the statement that the applicant "must" have initiated the NEPA scoping process is inconsistent with this excerpt also taken from page 9: "If the applicant has a NEPA responsibility, indicate whether the applicant will apply a Categorical Exclusion or pursue an Environmental Assessment (EA) or Environmental Impact Statement (EIS). No other NEPA documents are due at this time." - This excerpt states that it is only necessary to have identified the level of NEPA analysis at the 10-15 percent concept review stage. This is not in alignment with the earlier statement that prescribes that the scoping process must have been initiated. Recommend re-wording for clarity.</p>	<p>The language has been reworded for clarity. At concept review, the applicant should determine whether at CATEX will be pursued, or whether an EA and EIS may be developed. Staff understands this may be subject to change as the project develops. If an EA or EIS is being pursued, the public scoping process should be initiated by the time of the submission.</p>
9	GSA	<p>Page 3, "<i>The timing of the Preliminary Review should coincide with the completion of a draft NEPA document (Environmental Assessment (EA)/Environmental Impact Statement (EIS)) or the selection of a Categorical Exclusion (CATEX) applicable to the project (if not already selected during Concept Review).</i>" - This wording could be changed for clarity. Rather than stating that "the timing should coincide," simply state that the applicant "submit the draft NEPA document with the preliminary review package."</p>	<p>Wording has been adjusted as suggested for clarity.</p>
10	GSA	<p>Page 13, "If the applicant has a NEPA responsibility" - This statement could be confusing to newer NEPA practitioners. This could be interpreted to mean that there are projects that do not require NEPA review. This statement is made throughout the document.</p>	<p>Agency applicants should determine their own NEPA responsibility for each project. NCPC has a NEPA responsibility when it has approval authority for a project. When NCPC has an advisory role, it does not have a NEPA responsibility. See the resource guides for NEPA and NCPC authorities for more information.</p>

11	GSA	<p>Page 18, "<i>The timing of the Final Review coincides with the adoption of a National Environmental Policy Act (NEPA) document and a National Historic Preservation Act Section 106 document if applicable.</i>" - This wording could be changed for clarity. Rather than stating that "the timing should coincide," simply state that the applicant "submit the NEPA document with the final review package."</p>	<p>Wording has been adjusted as suggested for clarity.</p>
12	GSA	<p>Page 27, "<i>The applicant should submit the draft master plan approximately mid-way through the development process. The timing of the Draft Review should coincide with the completion of a draft NEPA document (Environmental Assessment (EA)/Environmental Impact Statement (EIS)).</i>" - Again, simplify this by stating the the draft review package should include the draft EIS or EA.</p>	<p>Wording has been adjusted as suggested for clarity.</p>
13	GSA	<p>Page 31, "<i>The timing of the Final Review should coincide with the adoption of a NEPA document (Environmental Assessment (EA)/Environmental Impact Statement (EIS)) and the conclusion of the Section 106 consultation process.</i>" - This wording can be changed for clarity. Change "timing" and "coincide" to "include the adoption of the NEPA document with the Final Review package."</p>	<p>Wording has been adjusted as suggested for clarity.</p>
14	GSA	<p>Page 52, "<i>The timing of the Preliminary Review should coincide with the completion of a draft NEPA document (Environmental Assessment (EA)/Environmental Impact Statement (EIS)) or the selection of a Categorical Exclusion (CATEX) applicable to the project.</i>" - Same comment as above.</p>	<p>Wording has been adjusted as suggested for clarity.</p>
15	GSA	<p>Page 64, "<i>If the applicant has a NEPA responsibility, indicate whether the applicant will apply a Categorical Exclusion. No other NEPA documents are due at this time.</i>" - This takes place during concept design which could be too early to make a determination of what level of NEPA review is required. The timing of the level of NEPA analysis determination varies from project to project. Could add language to indicate that this determination is subject to change.</p>	<p>The language has been reworded for clarity. At concept review, the applicant should determine whether at CATEX will be pursued, or whether and EA and EIS may be pursued. Staff understands this may be subject to change as the project develops. If an EA or EIS is being pursued, the public scoping process should be initiated by the time of the submission.</p>
16	GSA	<p>Page 11, Recommend adding, "which federal, state and local regulations" after "Identify which" in the Stormwater Management box.</p>	<p>Wording has been adjusted as suggested.</p>

17	GSA	Page 21, Recommend adding this rewritten first bullet in the Stormwater Management box, "A stormwater management narrative explaining how the master plan complies with all applicable federal (1.7" rainfall event per Section 438 of the Energy, Independence and Security Act), state and local requirements (varied based on jurisdiction)."	Wording has been adjusted as suggested.
18	GSA	Page 32, Recommend adding this rewritten first bullet in the Stormwater Management box, "A stormwater management narrative explaining how the master plan complies with all applicable federal (1.7" rainfall event per Section 438 of the Energy, Independence and Security Act), state and local requirements (varied based on jurisdiction)."	Wording has been adjusted as suggested.
19	GSA	Page 47, It appears a bullet common to similar sections in other parts of the document is missing in the Stormwater Management box here. Add..."Description of low impact development strategies, including capacity and size."	Wording has been adjusted as suggested.
20	GSA	Page 65, Recommend adding, "which federal, state and local regulations" after "Identify which" in the Stormwater Management box.	Wording has been adjusted as suggested.
21	GSA	Page 75, Recommend adding this rewritten first bullet in the Stormwater Management box, "A stormwater management narrative explaining how the master plan complies with all applicable federal (1.7" rainfall event per Section 438 of the Energy, Independence and Security Act), state and local requirements (varied based on jurisdiction)."	Wording has been adjusted as suggested.
22	SI	Thank you for the opportunity to comment on the proposed revisions to NCPC's project submission guidelines released for public comment after your May 2017 meeting. We welcome the more user friendly format and offer the following comments for consideration in your final adoption of the guidelines and their application.	Comment noted.

23	SI	<p>Legislative and other Authority: Please include an introductory section or links to describe the statutory authority and any other regulatory basis for what NCPC reviews, similar to what is currently provided. With Executive Orders always coming and going, it would also be helpful to add those that impact your review, to confirm what is in effect, particularly for those of us who are not executive branch agencies and for our AE teams.</p>	<p>Staff is developing resource guides that will provide additional information and details regarding a number of topics, including the Commission's review authorities. These guides will explain the other aspects of NCPC procedures and responsibilities. The resource guides will be available on the website for use by applicants, other agencies, and the public.</p>
24	SI	<p>Proposed NCPC Concept Review (at 10-15% completion) before CFA Concept Review (which would now correspond to NCPC Preliminary Review): This different definition of Concept Design from that of CFA will be very confusing for our staff and consulting architects and difficult to manage. We strongly recommend that NCPC and CFA provide for Concept Design reviews at the same early completion stage of projects.</p>	<p>Reviews are intended to align when possible. However, the NCPC and CFA processes do vary, as CFA does not have a preliminary review stage. NCPC must also satisfy NEPA and Section 106 responsibilities, which may not apply to CFA. At the pre-submission briefing, NCPC staff will work with the applicant to understand the other agency reviews applicable to each submission, and provide guidance in coordinating.</p>
25	SI	<p>For typical projects, we would be unlikely to submit a project to NCPC for Concept stage without also submitting to CFA in the same cycle; our goal is to come to both agencies. It is usually better to have both commissions review the same documents, mockups, models et c. before we move forward with design modifications that take both agencies' comments as well as DC HPO into account. Requiring an NCPC Concept review at a different stage than CFA Concept review would result in extra costs to the Smithsonian for additional submission report preparations, disruption to our project design schedules and scopes, and the huge confusion we guarantee this will cause for our project participants.</p>	<p>See response #24.</p>
26	SI	<p>For our more complex projects, the NCPC Preliminary Design phase often corresponds to a Revised Concept or Updated Concept submission that we tend to make to CFA even if the first Concept was approved, because there are usually some new or evolving items requiring additional feedback before their Final Design review. For less complex projects with limited NCPC issues, a combined NCPC Preliminary and Final is usually developed to a similar level as a Final CFA.</p>	<p>See response #24. NCPC staff will work with applicants to identify if a combined preliminary and final submission is appropriate.</p>
27	SI	<p>For Preliminary Review Requirements for Common Projects: The guidelines require the submission of an Assessment of Effects for Section 106 with the project submission. We do not always do a formal Assessment of Effects (recent examples Bird House and Natural History walkways), particularly if we are pursuing a Determination of No Adverse Effect. We suggest the language be modified to submit an Assessment of Effects, or documentation of the ongoing Section 106 consultation process.</p>	<p>The language has been adjusted. The applicant should provide an assessment of effects, if relevant; or, if no adverse effects are anticipated, documentation of the status of the consultation process.</p>
28	SI	<p>For Final Review Requirements for Common Projects (also Master Plan) : Submission should include final executed Section 106 documentation. Is this documentation required at the date of submission? Or is it acceptable to submit the executed documentation by the Hearing date? Please clarify.</p>	<p>Materials should be provided by the submission deadline. The applicant should speak to the Director of the Urban Design and Plan Review Division if some issues arise with scheduling.</p>

29	SI	<p>Applicant Form : In developing instructions for this, consider requiring that this be completed by the project owner rather than by consulting AEs as it includes information that the Owner rather than AE would generate and provide. Some of the information that you have requested to be in the project report (usually prepared by our AE) may be better furnished by the owner/agency and might be better to include in the application form than in the report. The items that would be better located on the application form include the project budget and funding plan, schedule, the NEPA/Section 106 status, public engagement activities, and coordination with Federal, State and Local Jurisdictions. Sometimes it would not be appropriate at an early stage to release the budget or funding plan to the public and, since NCPC does not approve our budgets, we would expect consideration of this, particularly with projects where there is a donor funding component or great uncertainty or sensitivity about federal appropriations.</p>	<p>The application can be filled out by the project owner or others acting on behalf of the owner. NCPC will leave that decision to the discretion and policy of the applicant agency. Staff recognizes that the status of budget and funding information may not be fully known.</p>
30	SI	<p>Requirement for NCPC Policy Analysis in submissions: We recommend modifying this in favor of NCPC staff and Commission being responsible for assessing compliance of our project with its plans and policies based on the information we provide. Many of our policies are quite general and contained in numerous separate documents. Judging compliance with them may be subjective and is more difficult for organizations like ours who do not have a seat on NCPC and therefore the familiarity that comes from creating your policies and applying them to many projects regularly.</p>	<p>The requirement has been modified to request a more general summary of consistency with NCPC plans and policies in lieu of a detailed policy analysis, which will be prepared by staff as part of the Executive Director's Recommendation.</p>
31	SI	<p>If acknowledgement of NCPC policy compliance were required, we suggest that this become a box on the application filled out by the Owner or a statement in the report that says something like "to the best of our knowledge, this project is consistent with NCPC plans and policies unless noted". Where we have focused on compatibility with a particular NCPC approved plan - such as taking the SW EcoDistrict or National Mall Plan into account, we do of course note that in the project report.</p>	<p>See response #30.</p>
32	SI	<p>Expiration of Final Approval in 5 years: clarify if this pertains to start of construction vs. a Certificate of Occupancy or other completion milestone.</p>	<p>The Guidelines have been clarified to indicate that the approval applies to the initiation of construction.</p>
33	SI	<p>Security: Where a description of this is required in submissions, this should be clarified as pertaining to the Perimeter Security that NCPC reviews. We would not provide information on our collections protection or other security systems and practices to the public; nor are these subject to NCPC review and approval.</p>	<p>The Guidelines have been revised to indicate NCPC is interested in perimeter security, not interior or other building security systems.</p>

34	SI	<p>Program: Where the architectural program is required in a submission report, this should be clarified to be a program summary of major uses and allocations of space, rather than the submission of what for some projects is a multi-volume document with individual room sheets and building system design requirements that are not subject to NCPC review and which may include sensitive information.</p>	<p>The Guidelines have been revised to indicate information regarding architectural program should be limited to a general summary of major uses and allocation of space, rather than the detailed analysis that many applicant agencies prepare well in advance of actual planning work.</p>
35	SI	<p>Antennas: It would be better to have the 60 day temporary period have some leeway to be "seasonal" or otherwise provide for the fact that some of the temporary antennas related to serving summer festivals on the Mall may be here longer than sixty days, as may equipment the Secret Service sometimes installs on our roofs for inaugurations, building dedications or other visits.</p>	<p>The Guidelines have been revised to allow 90 days for temporary antennas to allow for seasonal installations.</p>
36	SI	<p>Master Plan requirements: the Smithsonian will request initial flexibility on the requirement that an approved master plan be in place prior to submission of individual projects. Several projects may require review and approval in advance of a master plan, due to a variety of reasons.</p>	<p>Projects may be submitted outside of the master plan process. However, those projects will require referral (when outside the District of Columbia) which may entail additional review time.</p>
37	SI	<p>NCPC Concept review at 10-15% design may be too early for some projects. Our early design work often involves figuring out complicated programmatic needs and interior space planning issues outside NCPC's review authority and requirements for public input. The NCPC-reviewable part of the project- say the landscape design, storm water management plan and/or building exterior design - may not have advanced at the same pace or may be too preliminary for public release when the overall project is at a 10- 15% design stage. We expect that we will be able to identify the appropriate stage for a concept review in our pre-submission consultation with NCPC staff and request your flexibility, particularly if we need to await presentation of an initial design to our Regents, donors etc. prior to going public.</p>	<p>The range of design for concept review has been adjusted to 10-25% to allow for more flexibility for applicants when developing the project.</p>

38	SI	<p>While it is appropriate to initiate NEPA and Section 106 as early as feasible, if the project issues include those related to aesthetics and historic preservation or to details of the building's engineering design, we may not have the adequate detailed design information to advance these processes as early as called for in your new requirements. For some projects, it may also be difficult prior to completing a Concept Design to define the scope and contract with our AEs for the appropriate level of NEPA, Section 106 and agency staff meeting and submission services, and we need to have a contract and funding in place before initiating these activities. Each project will be different and we expect that those where timing is an issue can be resolved in the pre-submission meeting or phone call.</p>	<p>The range of design for concept review has been adjusted to 10-25% to allow for more flexibility for applicants when developing the project. Regarding NEPA and Section 106, the language has been updated to indicate that at concept review, the applicant should identify whether a CATEX will be pursued, or whether an EA or EIS will be prepared. Regarding Section 106, the consultation process need only be initiated. NCPC staff will work with applicant during the pre-submission briefing, or even early, to discuss the review process.</p>
39	SI	<p>It would be useful if NCPC staff could provide a briefing to a group of our staff from around SI -these projects may come about through groups other than planning and design -- including IT, real estate and business enterprise staff involved in negotiating with outside vendors. Our colleagues will need to understand how your guidelines apply and how to integrate them with the Smithsonian's standards, including those for our internal historic preservation and design review that may be stricter than NCPC's.</p>	<p>The antenna guidelines are substantially similar to those which are already in effect. NCPC staff will schedule time to discuss with SI how they are currently applied.</p>
40	WMATA	<p>What are the levels of design that correspond to final review?</p>	<p>Final design is approximately 50-70 percent design development. This is the level of detail necessary for the Commission to make a final decision, recognizing the project will continue to be refined as the applicant prepares construction drawings and begins implementation.</p>
41	NASA	<p>Who are the points of contact within NCPC staff that they can reach out to?</p>	<p>Any applicant agency can contact the Director of the Urban Design and Plan Review Division to set up a pre-submission briefing.</p>
42	WMATA	<p>It is important to have Section 106 considerations integrated into the NEPA and review processes.</p>	<p>Staff concurs that the integration of Section 106 and NEPA is important, particularly with the large number of historic resources in the National Capital Region. The Guidelines have been structured to support this integrated approach.</p>

43	C100	How will some of these changes will impact the public, and in particular how the public can continued to stay involved/be informed?	The Submission Guidelines and NEPA Regulations allow the review process, NEPA and Section 106 to work in a coordinated fashion. This is intended to provide opportunities for earlier comment on projects, both by the Commission and the public. NCPC staff will also be working on an update to the Public Participation Plan to strengthen engagement opportunities. The new NCPC website will also be a opportunity to receive updates on projects and the Commission's work.
44	C100	Regarding project exceptions, how is "minor" determined?	Minor is determined based upon the facts and circumstances associated with each individual project, and the materials submitted by the applicant.
45	C100	How is the Central Area defined?	The Central Area includes the Shaw and Downtown Urban Renewal Areas, as defined by NCPC and the District. A map and explanation will be available on the authorities resource guide.
46	Public	To what do the percentages refer to for each stage of review?	The percentages are design development, and are indicated as a range, as staff recognizes that some flexibility is necessary and project can vary between each other.
47	Public	Is there a list of Categorical Exclusions?	Yes, a list of categorical exclusions is provided in the NEPA Regulations.
48	Public	How will the transition between old and new submission guidelines be handled?	The Submission Guidelines and NEPA Regulations will be posted for a 30 day final rulemaking, with an effective date. Projects that are in-progress can choose to follow the new guidelines. Staff expects the new guidelines will be more advantageous for most applicants.

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Submitter	Comment	Response
1. The General Services Administration (GSA)	a. § 601.5(3): Amend this section to allow the Lead Agency the discretion to determine whether to invite "interested parties" to participate as a Cooperating Agency. GSA does not extend role to most "interested parties".	This section has been revised to delete the term “interested parties” as CEQ does not include this term in its definition.
	b. § 601.5(13): GSA questions NCPC's authority to make a final determination as to whether the Lead Agency's NEPA document requires updating. It maintains NCPC has only two options: adopt Lead Agency NEPA document or prepare its own.	In addition to preparing its own NEPA document, the National Capital Planning Commission (NCPC or Commission) has the option of declining to entertain the application if it believes an agency's NEPA document is stale. This would not be NCPC's preference, but it is an option. Language of referenced section has been changed to reflect this fact.
	c. § 601.7(a)(6): Does not support concept of NCPC co-signing Lead Agency FONSI or ROD. Recommends language "At the Lead Agency's discretion".	The ability to co-sign another agency’s FONSI or ROD is discretionary as indicated by the use of the word “may”. However, if both agencies agree on the contents of a FONSI or ROD, it makes no sense for NCPC to prepare a duplicate document for NCPC to sign. Obviously, if the two agencies have different reasons for reaching a FONSI or ROD, co-signature is not an option, and each agency will need to prepare and sign its own document. Co-signature is also not an option if there is disagreement over the ability to reach a FONSI or ROD. This disagreement points to problems with the NEPA document that must be resolved before the project can be presented to the

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Submitter	Comment	Response
		Commission. Finally, GSA’s resistance to the approach does not advance the Administration’s goal of streamlining the regulatory process especially NEPA.
	d. § 601.3: Use of the term “Public Scoping” is confusing. Recommends use of the defined term "Scope" in definition section to avoid confusion.	NCPC disagrees that the term "Public Scoping" is confusing. The term has been retained.
	e. §§ 601.9(b)-(c): Initiating the Public Scoping process at concept site review is too early. Public scoping process should be concluded prior to concept design review. Recommend addition of language indicating applicant will advise NCPC of conclusion of the scoping process prior to concept design review of the preferred site.	For a commemorative works application, the NEPA scoping process for a commemorative work is conducted in two stages: scoping for site selection and scoping for design of the commemorative work. Public Scoping for the site is not too early at the concept site review stage.
	f. § 601.16(b): Same comment as (c) above. Recommend addition of language "at the Lead Agency's discretion" at the end of the first sentence in the paragraph.	See response to 1.c above.
	g. § 601.25(d): Same comment as (c) and (f) above. Recommend addition of language "at the Lead Agency's discretion" in the first sentence.	See response to 1.c above.

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Submitter	Comment	Response
2. The Department of Interior and the National Park Service (NPS)	a. Commends NCPC for moving the timing of NEPA completion to coincide with final approval.	No response required.
	b. Advised NPS policies prohibit co-signing of FONSI's.	See response to 1.c above.
	c. § 601.12(m): Supports NCPC use of another agency's CATEX when NCPC lacks an applicable CATEX.	Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEXs. NCPC has complied with this request.
3. NASA Goddard (NASA)	Asked general questions about Master Plan preparation process.	No response required. Staff agreed to speak off-line with NASA regarding the Master Plan Process.
4. Smithsonian Institution	a. § 601.3: Replace the term "Federal Agency" and "Non-federal Agency" with "Executive Agency" and "Non-executive Agency" to avoid confusion.	NCPC disagrees with changing the term as suggested. The use of the term "Executive Agency" and "Non-executive Agency" is inconsistent with the terminology of the National Capital Planning Act (40 U.S.C. § 8701 et seq.) which consistently uses the term "federal" to refer to federal agencies. However, changes have been made to the definition of Non-federal Agencies to indicate this designation only applies for purposes of NCPC's NEPA regulations.
	b. § 601.3: 601.5(b): Supports the concept of a Memorandum of Understanding (MOU).	No response necessary. Note: The term MOU has been replaced with the term "Memorandum of Agreement" (MOA) as part of the revisions

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		made following closure of the public comment period. NCPC believes the term MOA is more indicative of a binding agreement.
	c. § 601.7(c): Indicates it would not be cost efficient to require NCPC retention of a contractor funded by Smithsonian to undertake NEPA work. A contractor working outside Smithsonian's A&E team adds unnecessary complexity, is likely to delay projects, increases project costs, and strains the resources of both Smithsonian and NCPC staffs.	The referenced provision has been eliminated. The revised treatment of Non-federal Agency applications (described in 8.j below) eliminates the need for a NCPC-retained contractor funded by the Smithsonian.
	d. § 601.11(b): The ability to apply a CATEX in circumstances where the Section 106 process has resolved significant impacts suffers from a timing defect. It may not be possible to resolve impacts on historic resources at the stage when a decision on a CATEX must be made (Concept Review per Submission Guidelines). Suggests adding language to the section so it reads as follows: "A reasonable likelihood of significant impacts on sensitive resources unless the impact has been or is reasonably likely to be resolved through another process to include, without limitation, Section 106 of the NHPA . . . "	The recommended change has been made albeit in slightly revised form to address a CEQ comment.

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Submitter	Comment	Response
5. Washington Metropolitan Transit Authority (WMATA)	a. §§ 601.7(a)(6), 601.16(b), and 601.25(d): WMATA relies on the sponsoring agency to undertake NEPA and NHPA section 106 processes. It cannot advise on sponsoring agency's position on co-signing FONSI's or RODs.	NCPC understands WMATA's inability to commit to this approach. However, please see response to 1.c above.
	b. § 601.7(c): Raised the issue of NCPC's expectations regarding technical and financial resources contributed by Non-federal Agency.	When WMATA undertakes projects on a federal agency's property, the federal agency is responsible for preparation of the NEPA document. When WMATA submits an application to NCPC pursuant to its organic authority (D.C. ST § 9-1107.01.14(a)), NCPC's role is advisory. An advisory role does not trigger NEPA.
	c. Questioned how to coordinate NEPA and the National Historic Preservation (NHPA) Section 106 process. Frequently sees alternative development not reflected in Section 106 process.	NCPC has declined to reference NHPA regulations in its NEPA regulations. For information on how to coordinate the two processes, WMATA is advised to visit the Advisory Council on Historic Preservation's (ACHP) website where there is a guidance document on integrating NEPA and Section 106 of the NHPA.
6. National Trust for Historic Preservation	a. §§ 601.5 and 601.7: Generally agrees with elimination of NHPA regulations except it recommends adding language that makes the Lead Agency for NEPA also the Lead Agency for the Section 106 process and a Cooperating Agency for the NEPA process also a Consulting Party for the Section 106 process.	NCPC believes it is inappropriate to assign NHPA Section 106 roles in its NEPA regulations. This is not where impacted parties and members of the public would look for guidance on NHPA Section 106 roles.

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	<p>b. Notes a discrepancy between the number of CATEX referenced in the section-by-section analysis of the Federal Register notice (10) and a list of 18 CATEX in the proposed regulations. Requests clarification.</p>	<p>The number of CATEXs in the Notice of Proposed Rulemaking is 18. The reference to 10 in the Preamble of the Federal Register Notice is a typographical error. However, in the final regulations, the number has been reduced to 13 as all CATEXs relying on the CATEX of another agency have been deleted. See response to 6.c below.</p>
	<p>c. § 601.12(e): Recommends deletion of this CATEX. Reliance on a District EA as the basis for applying a CATEX may allow massive District projects to proceed without the benefit of a stringent environmental review.</p>	<p>Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEXs. NCPC has complied with this request.</p>
	<p>d. § 601.12(j): To ensure that all the standards for applying the applicable CATEX apply, use the word "and" between each condition. Also, replace the phrase "at the Facility" with a reference to "traffic in the surrounding area."</p>	<p>Language to the introductory paragraph has been added stating the CATEX only applies "when all of the following apply." (Note: All of the CATEXs have been renumbered using numerals versus alphabetic letters to accommodate the introductory paragraph.) The term "at the Facility" has been replaced with the phrase "in the vicinity of the facility" at the recommendation of CEQ.</p>

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	<p>§ 601.11(b)(2): Objects to this extraordinary circumstance that negates the ability to apply a CATEX when "there is a reasonable likelihood of significant environmental impacts unless the impacts have been resolved through another process to include...Section 106." Resolution is a regulatory term under Section 106 and refers to a MOA or PA which in no way ensures elimination of significant environmental impacts on sensitive resources. Also, the existence of a signed MOA or PA in itself may not be sufficient to resolve effects under Section 106 regardless of the magnitude of harm or destruction to historic resources caused by the project. Recommend replacing the word "resolve" with "negated" or "reduced to an insignificant level."</p>	<p>The Word "resolved" has been eliminated and phrase "avoided, minimized, or mitigated" used instead. Also, the comment reflects a misunderstanding of how this section works. If one of the enumerated environmentally sensitive resources is present, a CATEX cannot be applied. The one exception is historic resources. If these are the only environmentally sensitive resources implicated, and impacts can be avoided, minimized, or mitigated through the Section 106 process, then a NEPA CATEX may be applied. The idea is to streamline the NEPA process and avoid duplication.</p>
	<p>f. § 601.19(d): The list of characteristics that indicate significant impacts requiring an EIS should be separated by the word "or" to ensure each item by itself characterizes a significant impact.</p>	<p>The phrase "at least one" has been inserted to make clear that each item itself is sufficient to trigger an EIS.</p>
<p>7. The Committee of 100 on the Federal City (Committee of 100)</p>	<p>a. Suggests elimination of NHPA procedures adversely impacts the interconnectedness between NEPA and historic preservation and sends a message that NEPA and NHPA are separate, sequential processes. Where possible, underscore the connection between the two.</p>	<p>NCPC's decision to eliminate NHPA references is not intended to slight the historic preservation process. Section 601.2(d) articulates a clear policy of integrating NEPA and NHPA. Further, this section includes an endnote to a reference to ACHP's guidance document on integrating NEPA and NHPA.</p>

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	b. The proposed rule is silent on NCPC's administrative processes, criteria, and procedures for triggering a CATEX. No indication of level at which decision is made, how the decision is made and how or if the public is involved. Better approach is to spell process out.	Among the Commission's official delegations is one conferring administrative responsibility for NEPA on the Executive Director. In the future, owing to a redesign of NCPC's website, the delegations will be listed on the website. The Executive Director's decision, how and when it is made, and how the public is notified of the decision is set forth in §§ 601.11(c) and 601.12(b).
	c. The proposed regulations are silent on goals, criteria, and processes for a meaningful public role. Encourage incorporation of meaningful public participation policy and goals.	NCPC believes there is ample opportunity for public involvement in the NEPA process incorporated into the regulations. See, §§ 601.2(h), 601.15(b)-(d), 601.16(c), 601.23(a)-(c), 601.24((b), and 601.25(b).
8. Unaffiliated Member of the Public	a. § 601.2(d): Add reference to CEQ Handbook on integrating NEPA and NHPA.	Although an end note referring parties to the ACHP website was originally added, CEQ recommended its deletion.
	b. § 601.2: Add new paragraph in the referenced section as follows: "use where helpful and appropriate NEPA guidance documents".	Although an end note referring parties to the CEQ website was originally added, CEQ recommended its deletion.
	c. § 601.2(h): Add the following language at the end of the sentence "and assure orderly and effective NCPC decision-making." as this is another important purpose of NEPA.	The recommended language has been added.

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	d. § 601.3: The definition of a CATEX should be revised to state that if there are extraordinary circumstances present, a CATEX cannot be applied.	The definition of a CATEX has been revised in response to the recommendation. The definition of extraordinary circumstances has also been revised to reflect this fact. Further, § 601.11 has been revised to state a CATEX may not be applied if an extraordinary circumstance applies.
	e. § 601.3: Certain of the agencies defined as Non-federal are considered Federal Agencies for some purposes and Non-federal Agencies for others. To avoid confusion, the regulations should specify NCPC considers them Non-federal for purposes of NEPA.	The recommended language has been added.
	f. § 601.3: NCPC should maintain on its website an on-going list of Non-federal Agencies for the purposes of NEPA. This will keep the public informed of what agencies NCPC is treating as Non-federal Agencies.	NCPC believes it has defined all Non-federal Agencies. The language "without limitation" was added as a safeguard. In the event new Non-federal Agencies are identified in the future, NCPC will provide website notification.
	g. § 601.3: NCPC should commit to make all NOAs available on the NCPC website in addition to publication in the Federal Register.	The recommended reference was not made in response to a CEQ recommendation. However, as a practical matter, the NOA will be placed on the NCPC website.

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	h. NCPC should provide notice on its website of an NOI with a link to the Federal Register site for the NOI.	Reference to website posting added to §§ 601.15(c) and 601.23(b)(2).
	i. § 601.3: Add a definition of "purpose and need" to the regulations since this informs evaluation of alternatives and selection of the acceptable alternatives. Recommended language (which deviates slightly from CEQ definition) "the underlying purpose and need to which the agency is responding in proposing the project and alternatives including the proposed action; what the agency hopes to accomplish by the action."	The CEQ definition of purpose and need has been added to the definition section with a slight revision requested by CEQ.
	j. § 601.7(c): The cited section designates a Non-federal Agency as a Cooperating Agency. This is contrary to CEQ regulations. NCPC must reconsider how it wants to treat Non-federal Agencies.	Two identified Non-federal Agencies - the District of Columbia Government and the Maryland National Capital Parks and Planning Commission - are eligible for Cooperating Agency status pursuant to 40 C.F.R. § 1508.5. The comment is correct that other identified Non-federal Agencies do not qualify for this status. Accordingly, NCPC proposes to revise its approach for these non-qualifying agencies to enter into a MOA (renamed from a MOU) with NCPC. The MOA will specify, among others, what information the Non-federal Agency must provide to NCPC and the timing for the submission. NCPC will use this information to produce its NEPA document.

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	k. §§ 601.5 and 601.7: All materials regarding Lead and Cooperating Agencies should be grouped together. This requires changes to the referenced sections.	Due to the change in the treatment of Non-federal Agencies, materials regarding Lead and Cooperating Agencies are now grouped together.
	l. §§ 601.5(a)(11) and 601.5(b)(3): Reports on mitigation measures should be placed on NCPC's website.	The recommended change has been made.
	m. Cites the following provisions as inconsistent with NCPC's approach to serving as Lead Agency for Non-federal Agency applications: allowing an MOU between NCPC and a Non-federal Agency; allowing the Non-federal Agency to serve as a Cooperating Agency; allowing the Non-federal Agency to participate in selection of a contractor to prepare a NEPA document; and in the event of contractor preparation of a NEPA document, failing to state NCPC's need to comply with certain review standards. Notes it is also incorrect to state NCPC is serving as Lead Agency on behalf of a Non-federal Agency.	Changes made to address all concerns. See response to 8.j above.

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	n. § 601.5(b)(1): Recommends addition of the following language: "The request to enter into a project specific MOU shall be made after a determination that the project does not meet the terms of an NCPC Categorical Exclusion and that extraordinary circumstances are not present and applicable."	The need to determine the non-applicability of a CATEX before embarking on the preparation of a MOA is already referenced. See § 601.5 (b)(1) (proposed regulations) and § 601.5 (b)(2) (final regulations).
	o. § 601.7(c): Because Non-federal Agency funding of an EIS and assistance in selection of a contractor to prepare an EIS is inconsistent with CEQ Regulations (40 CFR 1506.5), these references must be eliminated.	See response to 8.j above.
	p. §§ 601.6(a) and 601.6(b): In the former section change "escalating" to "elevating" and in latter section change "CEQ's determination" to "CEQ's recommendation."	The first recommended changes was made, but CEQ objected to the second. Thus, he word "determination" remains.
	q. § 601.7(a): Revise to read: "NCPC shall be given the opportunity to act as Cooperating Agency" to afford it discretion to serve as a Cooperating Agency.	The recommended change has not been made because, as pointed out by CEQ, CEQ regulations require NCPC to be a Cooperating Agency.
	r. § 601.7(a)(2): Revise the reference in the first sentence regarding signature of a MOA to read "NCPC will sign a MOA when it agrees to terms satisfactory to NCPC."	The recommended change has been made.

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	s. § 601.7(a)(2): Revise the last sentence of the section to read, "The request to enter into a project specific MOU shall be made after a determination that the project does not meet the terms of an NCPC Categorical Exclusion and that extraordinary circumstances are not present and applicable."	See response to 8.n above.
	t. § 601.7(b): Revise the last sentence of the referenced section with language in comment 8.p above.	The recommended change has been made.
	u. § 601.8: There are problems with this section. It should be divided into two separate sections -- one for Federal Agency applicants and one for Non-federal Agency applications. The legal inaccuracy is language regarding Non-federal Agency satisfaction of NEPA obligations when a Non-federal Agency has no such obligation.	The restructuring of the relationship between NCPC and a Non-federal Agency applicant eliminates the need for a two section approach. Clarifying language in various sections regarding relationship between NCPC and Non-federal Agency applicants responds to concerns.
	v. § 601.8(c): Under a two section approach recommended in 8.u above, this section should expressly state scoping is conducted by the Federal Agency with NCPC as a Cooperating Agency and reference Subpart B (Lead and Cooperating Agencies).	The two section recommendation was determined to be unnecessary. Therefore, the recommended reference is not needed.
	w. § 601.8(c): This section requires documentation of a CATEX determination, but it	The language of § 601.9(a) has been revised to clarify only GSA and NPS are applicants under the cited section.

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	is not clear if the Federal Agency is making the determination.	
	x. Related to the above comment, concern is expressed about NCPC’s use of another agency’s CATEX. As this is not permitted by CEQ, the regulations must address how the NEPA responsibility will be handled when a federal agency has a CATEX but NCPC does not.	Language that the Lead Agency shall prepare an EA under the circumstances outlined has been added to § 601.5(a)(6).
	y. § 601.8(e): The reference to Lead Agency is contrary to all previous references to applicant in § 601.8, and comment on completion of Section 106 is inconsistent with NCPC approach to not interrelate NEPA and NHPA policies.	The referenced section has been revised to use the word “applicant” and the reference to NHPA has been eliminated.
	z. Reiterates recommendation of two separate sections addressing the submission requirements for Federal Agencies and NCPC.	The restructuring of relationship between NCPC and Non-federal Agency applicant eliminates the need for this approach.
	aa. § 601.8(f): Finds this section confusing and inconsistent with CEQ requirements. Suggests way to revise section to ensure compliance with CEQ requirements.	Since NCPC embarked upon revisions to its NEPA Regulations, CEQ issued additional guidance on environmental review of proposed agency emergency response actions under NEPA. The commenter points out the new recommended language for Agency NEPA

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		regulations, and it has been incorporated into the document.
	bb. § 601.9: Recommends this section be revised to improve clarity to include who is responsible for the scoping process, indicate GSA or NPS must include NCPC as a Cooperating Agency, and whether GSA or NPS has a CATEX, but NCPC does not.	Clarification has been added on Scoping. NCPC disagrees reference is needed to inclusion of NCPC as a Cooperating Agency. Lead and Cooperating Agency status is determined in §§ 601.4(a) and 601.7(a). Issue of CATEX is moot. Section 601.14(d) identifies a CWA application as typically requiring an EA. The likelihood that a CWA project would qualify for a CATEX is virtually nil.
	cc. § 601.9(c)(2): The text should require the applicant to address conditions referenced in its EA or EIS.	Clarifying language has been added.
	dd. §§ 601.8(e) and 601.9(e): Commission request for changes at final approval could result in inconsistency between the final ROD and FONSI and the revised project. Commission changes will need to be incorporated into a revised final ROD/FONSI.	CEQ expressed a similar concern regarding the submission of a signed FONSI or ROD. In response, §§ 601.7, 601.8(e), 601.9(e), 601.16(a) and (e), and 601.25(b), (d) and (f) have been revised. Pursuant to the revisions, in the event a ROD or FONSI is signed prior to Commission final action, if the Commission's final action necessitates changes to the signed document, the appropriate party will revise the document.

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	ee. § 601.10: Suggests generalized standards listed in this section can be problematic and lead to application of a CATEX even if the action is not among those listed as eligible for a CATEX. Suggests qualifying language.	Clarifying language has been added to § 601.12(a).
	ff. § 601.1: Finds the unique circumstances listed in this section appropriate but recommends addition of a catchall provision and provides recommended language.	The recommended language has been added.
	gg. Approach to CATEX is inconsistent with CEQ guidance because there is no indication of an administrative record and NCPC includes the ability to rely on federal agency applicants CATEX when NCPC lacks one that is applicable.	Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEX. NCPC has complied with this request.
	hh. § 601.12(d): Not self-evident how adopting an element of the Comprehensive Plan does not have significant effect on the environment.	The policies of the Comprehensive Plan lack specificity to evaluate their precise impact utilizing the NEPA process. Further, NCPC provided an administrative record to CEQ for all enumerated CATEX. Based on this record, CEQ approved the subject CATEX.
	ii. § 601.12(e): Relies on the CATEX of another agency which is prohibited by CEQ. Also exempts from environmental review actions within the Central Employment Area. This means NCPC is relying on a non-existent environmental assessment to permit application of a CATEX.	Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEXs. NCPC has complied with this request.

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	jj. § 601.12(f): Relies on the findings of another agency without an independent assessment by NCPC. Inconsistent with CEQ guidance that permits use of another agency's expertise but with independent evaluation by the action agency.	Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEXs. NCPC has complied with this request.
	kk. § 601.12(g): Similar comment to 8.ii and jj above. Also inconsistent with Lead Agency approach specified in the proposed regulations.	Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEXs. NCPC has complied with this request.
	ll. § 601.11(h): Specifies appropriate conditions but then relies on provision of District of Columbia statute which does not require an environmental assessment to apply CATEX.	Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEXs. NCPC has complied with this request.
	mm. § 601.11(j): Not clear if this CATEX applies to both federal and District projects; lumps new construction building improvements together without reference to an administrative record that demonstrates they are equal; unusual to consider community controversy as an environmental issue.	This CATEX applies to both federal and District Government projects. Clarifying language has been added. NCPC provided an administrative record to CEQ for all enumerated CATEX. Based on this record, CEQ approved the subject CATEX. Qualifying language has been added to specify, among others, community controversy must relate to environmental concerns.
	nn. § 601.11(k): Cannot locate referenced statute. Should assure statute is still valid and applicable.	The statute cited is incorrect due to a typographical error. The correct citation is 8124.

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	oo. § 601.11(m): CEQ prohibits agencies from relying on the CATEX of another agency to support a decision not to prepare an EA or an EIS.	Based on comments received objecting to this approach, CEQ advised NCPC to delete this and other similar CATEXs. NCPC has complied with this request.
	pp. § 601.12(a): Delete the word "include" in the opening paragraph of the CATEX section as this implies there may be other CATEX not on the list, whereas only listed CATEX may be utilized.	The recommended change has been made.
	qq. § 601.15(a): Add the word "purpose" to the phrase "need for the proposed action."	The recommended change has been made.
	rr. § 601.15(d): Add the word "minimum" before the number of days for the public comment period to allow flexibility.	At CEQ's request, the reference to a time period has been deleted as public scoping and a public scoping meeting is an optional requirement for an EA. This means NCPC can determine what it believes to be the appropriate length of time for advance notice of a public comment period and public meeting notice for EA scoping.
	ss. § 601.16: Because NCPC must evaluate the adequacy of the EA as well as the FONSI, this section should be reworded to reflect the dual evaluation.	Section 601.16 addresses the FONSI prepared by NCPC. When NCPC serves as Lead Agency, there is no need to evaluate its own FONSI. Sections 601.7(5) and (6) address NCPC's obligations regarding a Lead Agency's NEPA document and FONSI/ROD when NCPC serves as a Cooperating Agency.

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	tt. § 601.17(a): A supplement should be considered if either (1) or (2) pertains. Change word "and" following (1) to "or."	The recommended change has been made.
	uu. § 601.18: Use of phrase "on behalf of" is incorrect.	The phrase "on behalf of" has been replaced with the word "for."
	vv. § 601.19(d)(1): Any change to the monumental core is serious. Recommends changing the word "substantial" to serious.	The recommended change has been made.
	ww. § 601.19(d)((d): Join the three clauses with the word "or" as the presence of any one of the three factors generally triggers an EIS	Recommended change made. See response to 6.f above.
	xx. § 601.23(b)(2): In addition to the Federal Register, an NOI should be placed on NCPC's website with a link to the Federal Register site where the NOI can be found. Language to this effect should be added to the regulations.	The recommended change has been made.
	yy. § 601.25(c): Consider whether it is appropriate to add an exception to the requirement that decisions must be made at a public meeting for national security sensitive projects.	NCPC's Classified Material Policy addresses how the Commission review and decision-making process are altered when classified and controlled unclassified material are submitted as part of the application. This policy would

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		control under the circumstances stated in the comment.
	zz. § 601.26(a): Subsections (1) and (2) should be joined by an "or" not "and".	The recommended change has been made.
	aaa. § 601.28: Change the words "shall resort to mediation" to "shall participate in mediation".	CEQ advises mediation is only an option if the parties mutually agree. This means NCPC cannot compel another federal agency to participate in mediation. Instead of the recommended change, a change more responsive to CEQ's comment has been made. .
	bbb. Suggest a careful proof of final document before final notice of rule is published.	Agree.
9. Multiple Unaffiliated Members of the Public	General comments in similar form supporting environmental protection and protection of federal land.	No response necessary.

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10. Louis Berger Group and Jacobs	Asked how NEPA would work for a two stage planning process where a federal agency prepares a general development plan and completes NEPA, and then after a ROD is issued by the federal agency, a developer prepares a detailed development plan. Asked if additional NEPA work would be required at the second stage. Indicated a flow chart addressing the NEPA process for this type of scenario be incorporated into the regulations.	The question was based on a hypothetical example. NCPC prefers to deal with this issue when it arises in the context of a particular application.