

# Review of Projects on Lands Acquired Under the Capper-Cramton Act



Northwest Branch Trail



Indian Creek Stream Valley Park



## Overview

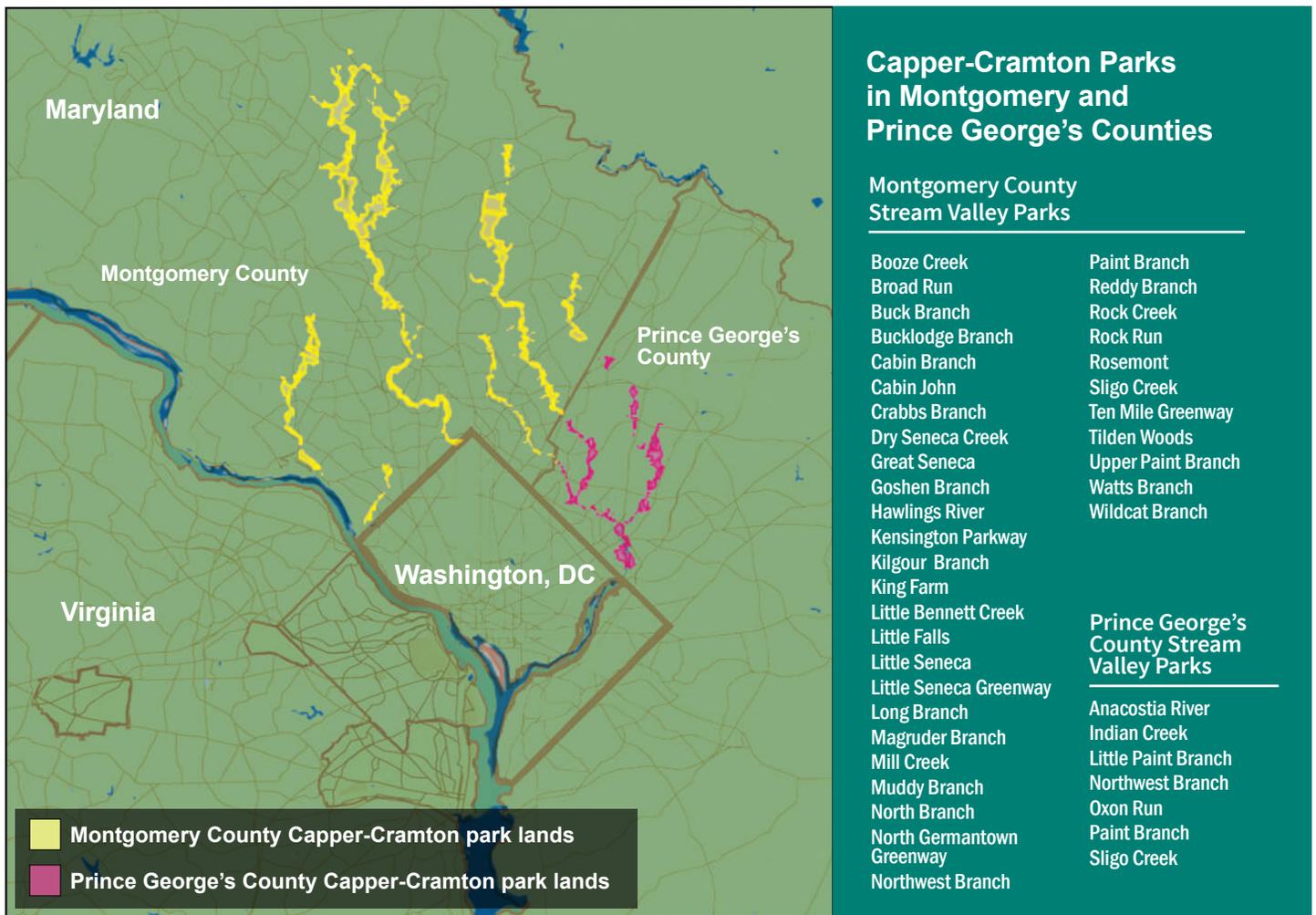
The Capper-Cramton Act (CCA) of 1930 (46 Stat. 482) was enacted for the acquisition, establishment, and development of the George Washington Memorial Parkway and stream valley parks in Maryland and Virginia to create a comprehensive park, parkway, and playground system in the National Capital.<sup>1</sup> In addition to authorizing funding for acquisition, the act granted the National Capital Park and Planning Commission, now the National Capital Planning Commission (NCPC), review authority to approve any Capper-Cramton park development or management plan in order to ensure the protection and preservation of the region’s valuable watersheds and parklands.

Subsequent amendments to the Capper-Cramton Act<sup>2</sup> allocated funds for the acquisition and extension of this park and parkway system in Maryland and Virginia. Title to lands acquired with such funds or lands donated to the United States as Capper Cramton land is vested in the state in which it is located. The Maryland-National Capital Park and Planning Commission (M-NCPPC) utilized Capper-Cramton funds to protect stream valleys in parts of Montgomery and Prince George’s Counties. Similarly, the District of Columbia used federal funds to develop recreation centers, playgrounds, and park systems. There is no evidence that Virginia utilized Capper-Cramton funds to acquire stream valley parks under the CCA. Today, over 10,000 acres of Capper-Cramton land have been established and preserved as a result of the act. This resource guide is for general information purposes, and is not a regulatory document.

## Capper-Cramton Land

Based on the terms of the act as amended in 1946 and 1952, in Maryland and Virginia, Capper-Cramton lands consist of lands designated by the act and acquired with federal funds. Capper-Cramton lands also include lands in Maryland donated to the United States with the intention that they be added to lands previously acquired. Capper-Cramton lands do not include designated lands never acquired with federal funds or lands directly donated to any of the governing jurisdictions listed in the act, such as the M-NCPPC, even if such lands are located inside of the “taking lines” in stream valleys.

1 National Park Service, “Capper-Cramton Act”  
<https://www.nps.gov/oxhi/learn/management/upload/CapperCActwBold.pdf>  
 2 The Capper-Cramton Act was amended in 1946 [60 Stat. 960], 1952 [66 Stat. 781, 791], and 1958 [72 Stat. 705]



Capper Cramton lands include the George Washington Memorial Parkway in Virginia, (not shown on the map), Rock Creek Park, Anacostia watershed stream valleys, including the Anacostia River, Indian Creek, Paint Branch, Little Paint Branch, the Northwest Branch, and Sligo Creek. Other stream valley acquisitions include Cabin John Creek, Little Falls Branch, Willet Run, and Oxon Run.

Lands acquired in Washington with CCA funds are not considered Capper-Cramton lands. Instead, in accordance with the 1924 Act, as amended, the CCA placed District parks under the jurisdiction of either the Chief of Engineers of the United States Army or, if developed for playground purposes, the District of Columbia Commissioners. In 1933 President Franklin D. Roosevelt signed Executive Order 6166 which subsequently transferred jurisdiction of the lands under the jurisdiction of the Chief Engineer to the National Park Service (NPS). Thus, NPS exercises authority over District parklands acquired with Capper-Cramton funds. NCPC reviews these federal lands under its National Capital Planning Act authority.

## NCPC Authority on Capper-Cramton Lands

NCPC's authority on Capper-Cramton lands derives from the CCA, as amended, and the contractual terms and conditions of mandated agreements entered into between NCPC and the designated park authority in Maryland or Virginia. For the reason stated above, NCPC possesses no authority over District land acquired with Capper-Cramton funds. Furthermore, since there is no evidence of Capper-Cramton lands in Virginia, NCPC never entered into an agreement with any Virginia park authority.

The amended act authorized NCPC to approve the development of Capper-Cramton lands in Maryland. It also called for agreements between NCPC and M-NCPPC to flesh out the financial, development, and management terms for the lands.

NCPC and M-NCPPC entered into an agreement on November 19, 1931, with later amendments.<sup>3</sup> This agreement was approved by the President of the United States,<sup>4</sup> the Governor of the State of Maryland, the President of the Board of County Commissioners of Montgomery County, and the Clerk of the Board of County Commissioners of Montgomery County.<sup>5</sup> Section 5 of the agreement requires title to lands acquired with Capper-Cramton funds to vest in the State of Maryland; prohibits in whole or in part, the conveyance, sale, lease, exchange or use or development of lands acquired with Capper-Cramton funds for other than park purposes; and requires Capper-Cramton lands to be developed in accordance with plans approved by NCPC.

NCPC has fairly consistently interpreted “park purposes” to mean projects that provide public benefits such as improving the water quality of streams, along with improving park accessibility and park resources. Examples include restoring wetlands and meadow areas in a stream valley park, stormwater management, improvements to park access and the trail network, and additions of or improvements to more active recreational uses such as playgrounds. NCPC’s review will also look to guidance from the federal Park & Open Space Element, which also includes several policies related to projects on Capper-Cramton land.

NCPC’s longstanding practice to treat Maryland Capper-Cramton applications as approval of development plans implies a Capper-Cramton park development plan is not static but can change over time at which point a new development plan must be submitted to NCPC for approval.

## The Review Process

The NCPC review process for projects on Capper Cramton land is not unlike the review process for building, site, and park projects in the region. The specific submission process is discussed in detail in NCPC’s Submission Guidelines. The review process generally follows four basic steps:

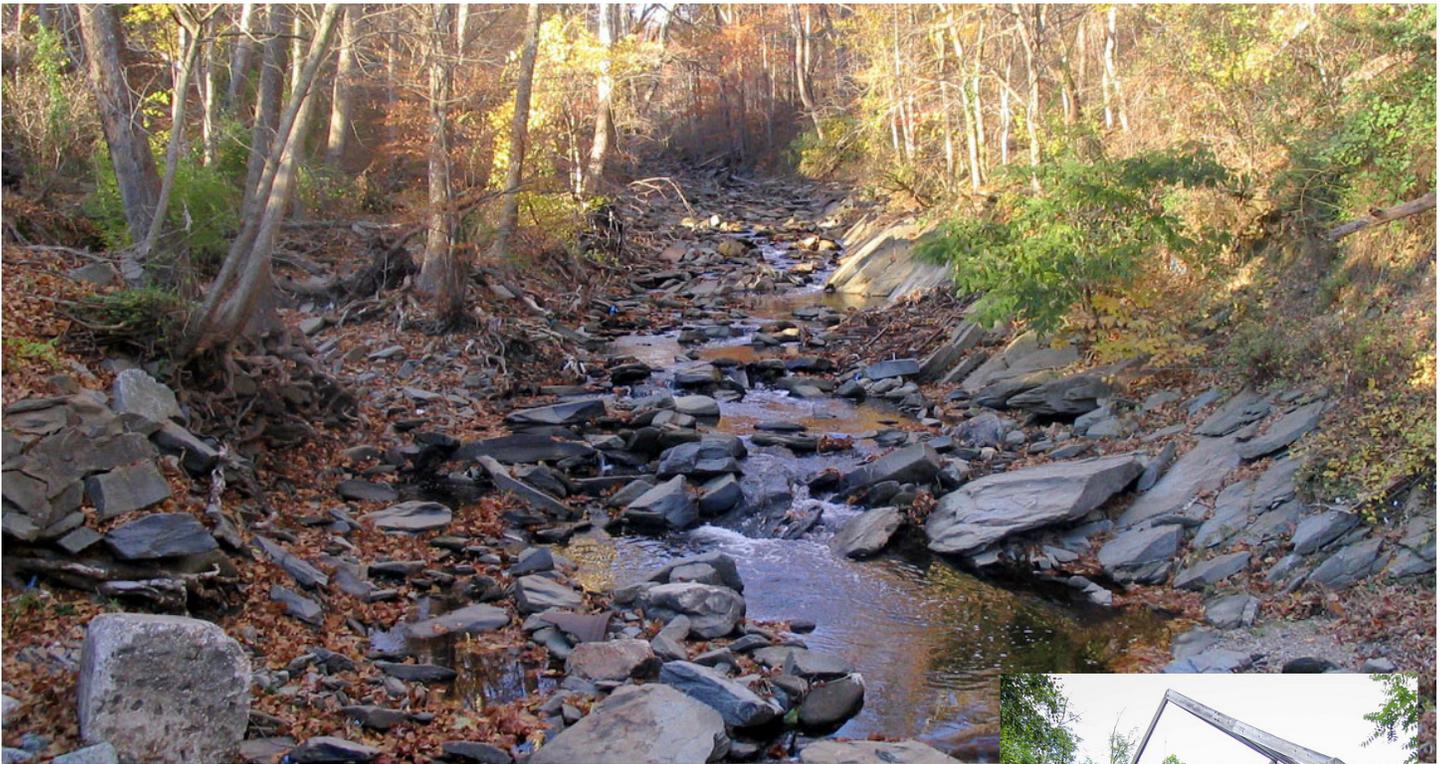


Depending on the nature of the project, all four steps may not be necessary, or may be combined. Each step is designed to provide NCPC staff and the Commission with increasingly detailed information as the project moves forward.

M-NCPPC, as the project applicant, should conduct early consultation with NCPC staff, including a pre-submission briefing where parties discuss the project, the review process, and any potential issues. When possible, NCPC staff will provide comments on proposed projects as they move through the M-NCPPC review process, prior to the project’s submission to NCPC.

As the federal planning agency for the National Capital Region, NCPC is subject to a series of laws and policies that regulate federal development actions and play a critical role in the agency’s review. Paramount among these are the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA). These two laws are intended to protect environmental and historic resources. Since the CCA requires NCPC approval of development plans, it triggers NCPC’s NEPA and NHPA obligations. NEPA and NHPA require federal agencies to consider the potential environmental and historic resource impacts of projects prior to taking an action. See NCPC’s Environmental and Historic Preservation Compliance Resource Guide for more information. Each of the four review steps are aligned with different phases of the NEPA and NHPA process. Staff will work with the applicant during the pre-submission briefing to discuss this process in more detail.

3 Pub. L. No. 71-284, ch. 354, 46 Stat. 482 (1930), as amended by Pub. L. No.79-699, ch. 919, 60 Stat. 960 (1946), Pub. L. No. 82-592, § 10, 66 Stat. 791 (1952), and Pub. L. No. 85-707, 72 Stat. 705 (1958).  
4 Sec 3 of the 1924 legislation creating the National Capital Park Commission required any agreement between NCPC regarding parkland development in the states of Maryland and Virginia to be signed by the President of the United States, among others. June 6, 1924, Pub. L. No. 68-202, ch. 270, 43 Stat 46, 464 (1924).  
5 Any amendment to the agreement would require the approval of all the signatories to the original agreement.



Little Falls Stream Valley Park

## Applicant Resources

Amended Capper-Cramton Act

<https://www.ncpc.gov/about/authorities/cca/>

NCPC's Environmental and Historic Preservation Compliance Resource Guide

<https://www.ncpc.gov/review/guides/nepa/>

NCPC Submission Guidelines

<https://www.ncpc.gov/review/guidelines/>

Parks & Open Space Element

<https://www.ncpc.gov/initiatives/openspace/>

Maryland-National Capital Park and Planning Commission

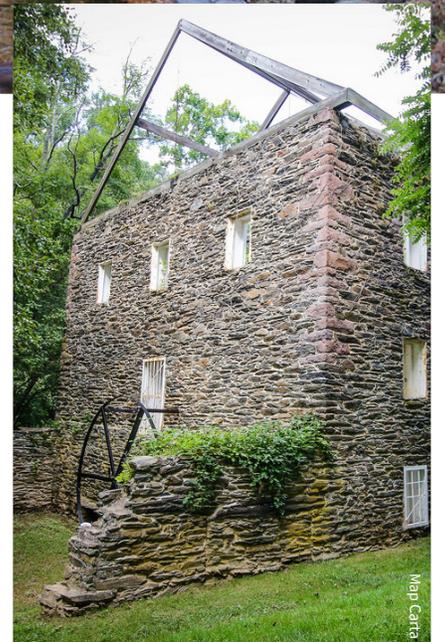
<http://www.mncppc.org/>

National Park Service, "Capper-Cramton Act"

<https://www.nps.gov/oxhi/learn/management/upload/CapperCActwBold.pdf>

Capper-Cramton Map

<https://www.ncpc.gov/maps/capper-cramton/>



Bucklodge Branch Stream Valley Park

## Review of Projects on District Land



Martin Luther King Jr. Memorial Library



Franklin School



Carnegie Library

### Overview

Most of the plans and projects reviewed by the Commission occur on federal land, but within the District of Columbia, NCPC has the authority to review projects on land owned or administered by the District Government. NCPC has an approval action for its review of District projects in the Central Area and provides advisory comments on all other District projects. NCPC seeks to ensure that projects on District-owned land do not negatively impact the many federal interests in the District, including the presence of nationally-significant resources and diversity of federal landholdings. This resource guide is for general information purposes, and is not a regulatory document.

### District Projects in the National Capital Planning Act

The National Capital Planning Act of 1952 (40 U.S.C. §§ 8701 et seq.) established NCPC as the central planning agency for the federal government in the National Capital Region and conferred zoning authority on NCPC for federal land. The law also defined many of the core responsibilities of the Commission, including preparation of the Federal Elements of the *Comprehensive Plan for the National Capital*, review of plans and projects for federal property, and preparation of the Federal Capital Improvements Program, among others. Those responsibilities were expanded by amendment in 1974 to include zoning review of projects on District-owned land.

The 1974 amendment recognized that development of District-owned land is not subject to local zoning, and accordingly established parameters for the Commission to review District projects. The review of projects was to include without limitation buildings, uses, structures, and signage on District-owned land. Depending on the project's location, the Commission was granted the authority to either approve or provide recommendations on the project. In the Central Area, which is currently defined by the boundaries of the Downtown and Shaw Urban Renewal Areas, the Commission exercises an approval authority, while the Commission provides advisory recommendations in the rest of the District.

## NCPC Review Interest

A range of District agencies manage land held by the District government. In addition, certain agencies manage and administer land held under jurisdictional transfer from the federal government to the District: for example, sites have been transferred jurisdictionally for park purposes. Although the underlying ownership is still with the U.S. Government, these lands also fall under this review authority. The District agency managing the land is independently responsible for submitting projects for NCPC review, including proposed buildings, uses, structures, or signage. As with all projects reviewed by NCPC, Commission review focuses on issues of federal interest. For District projects, those issues are largely defined in the Federal Elements of the *Comprehensive Plan for the National Capital* and the Height of Buildings Act (D.C. Code § 6-6010.5 (West 2001)).

In general, federal interests tend to be strongest in the L'Enfant City, which is largely encompassed by the Central Area, though District projects on land throughout the city may lie within or adjacent to federal interest areas, including federal land or viewsheds important to the character of the city. Further, as noted above, many District projects occur on federal land administered by District agencies, which, by nature of the underlying land ownership, may be of special interest to NCPC. Review exceptions may be issued for District projects outside of the monumental core of the city, consistent with the criteria for exceptions identified in the NCPC Submission Guidelines.

## Federal Environmental and Historic Preservation Compliance

District projects that occur in the Central Area are subject to NCPC approval, which means that applicants are required to complete federal environmental and historic preservation compliance, pursuant to the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (Section 106). If NCPC does not have a categorical exclusion for the project, the District agency will need to complete an environmental assessment or environmental impact statement to fulfill its NEPA obligation, and consultation is required to meet Section 106 requirements. Examples of District projects in the Central Area that have triggered compliance include rehabilitation efforts at the Martin Luther King Jr. Memorial Library, the Franklin School, and the Carnegie Library. More information on federal compliance processes for District agencies can be found in the Environmental and Historic Preservation Compliance Resource Guide.

The process for submitting a District project for NCPC review is outlined in the Building, Site, and Park Projects section of the NCPC Submission Guidelines, including submission stages and application requirements.

## Applicant Resources

Central Area Map: <https://www.ncpc.gov/maps/central-area/>

L'Enfant City Map: <https://www.ncpc.gov/maps/lenfant-city/>

NCPC Submission Guidelines: <https://www.ncpc.gov/review/guidelines/>

Environmental and Historic Preservation Compliance Resource Guide: <https://www.ncpc.gov/review/guides/nepa/>

DC Office of Zoning, Zoning Regulations of 2016: <https://dcoz.dc.gov/zrr/zr16>

# Environmental and Historic Preservation Compliance

## Overview

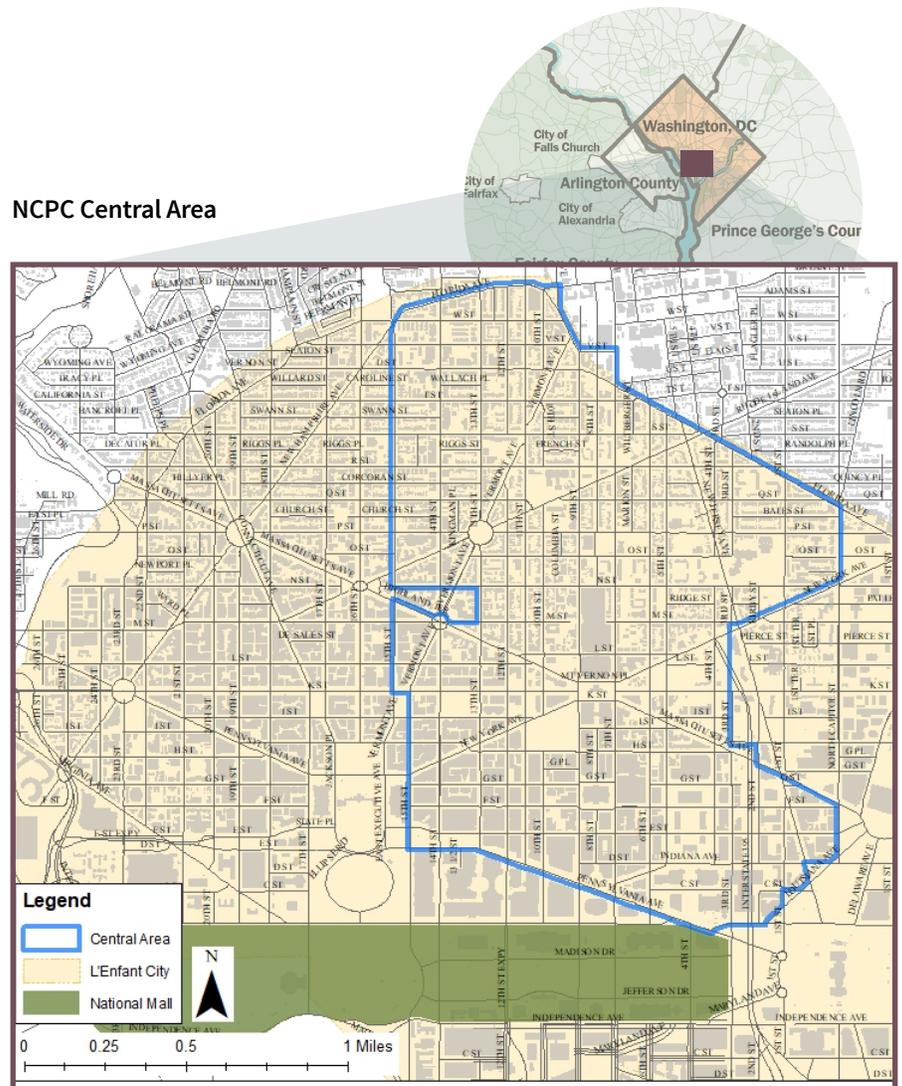
As a federal agency, the National Capital Planning Commission (NCPC) and many of its federal agency applicants are subject to a series of laws and policies that regulate federal development actions. Paramount among these are the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). These two laws are intended to protect environmental and historic resources and form the cornerstone of responsible planning in the federal government. Any action or undertaking by a federal agency conducted with federal funding, or requiring a federal permit, license, or approval, is required to undergo analysis and assessment under these laws. Accordingly, NCPC has an independent responsibility to fulfill the requirements of NEPA and NHPA for any project where the Commission has approval authority, regardless of whether the applicant has a NEPA or NHPA responsibility. This guide is not a regulatory document.

## When does NCPC have a NEPA or NHPA responsibility?

NCPC has a NEPA/NHPA responsibility when the Commission exercises its approval authority. NCPC has approval authority for, among others:

1. Projects on federal land in Washington, DC, regardless of the applicant;
2. Projects on District land within the Central Area (right);
3. Projects on land in Maryland and Virginia purchased with Capper-Cramton funds;
4. Commemorative works on land administered by the National Park Service or the General Services Administration in Washington, DC and the environs; and
5. Transfers of jurisdiction in Washington, DC between federal agencies, and between federal agencies and the District government.

NCPC Central Area



NEPA and NHPA do not apply when the Commission exercises its advisory authority. NCPC has advisory authority, among others, for master plans on federal land in the National Capital Region (NCR); projects on federal land in the portions of Maryland and Virginia within the NCR; and projects on District-owned land outside the Central Area. It is important to note, however, that there are benefits to performing a NEPA analysis when developing a master plan:

1. NCPC requires an environmental, historic resource, and transportation management analysis for master plan submissions, which would typically be prepared as part of NEPA compliance.
2. NCPC will allow the NEPA analysis for an approved master plan to apply to future individual master plan projects, as long as it contains adequate details regarding the projects and circumstances have not changed significantly since the master plan was approved.

## National Environmental Policy Act

NEPA requires federal agencies to consider the potential environmental impacts of their projects prior to taking an action, which can be done in one of three ways.

1. **Environmental Assessment:** The first is an environmental assessment (EA). An EA is a tool to help determine if an action would result in either positive or negative consequences across a range of project-specific environmental impact topics, such as vegetation, hydrology, and viewsheds. It is the appropriate NEPA pathway for projects that would result in no significant impact to the environment, which means either negligible adverse impacts that could be mitigated through certain actions, or no adverse impacts at all. A finding of no significant impact (FONSI) document is completed to closeout an EA process, which outlines the findings of the EA.
2. **Environmental Impact Statement:** If it is determined that more significant impacts may exist, an environmental impact statement (EIS) is the appropriate NEPA analysis tool. An EIS includes a more in-depth analysis that outlines the extent and magnitude of any likely adverse impacts. Like an EA, an EIS is also organized around project-specific environmental impact topics. Major federal actions typically fall into this category and require a full disclosure of potential impacts. Upon the completion of an EIS, a record of decision (ROD) must be prepared, which documents the findings of the EIS, identifies the preferred alternative, and provides an overview of measures being taken to avoid, minimize, and/or mitigate environmental impacts.
3. **Categorical Exclusion:** The third NEPA pathway is a categorical exclusion (CATEX). Certain categories of actions are eligible for an exclusion from analysis under NEPA because it has been determined that this type of action does not have a significant effect on the human environment. Each federal agency maintains its own list of categorical exclusions, which are developed in coordination with the federal Council on Environmental Quality (CEQ). If an action would typically qualify for a CATEX, but involves extraordinary circumstances as defined by the federal agency, further environmental studies may be needed to determine the appropriate NEPA pathway. Extraordinary circumstances may include environmentally controversial actions, actions with an extensive scope of magnitude, etc.



## **NCPC's Role in the NEPA Process**

NCPC will act as a cooperating agency in the NEPA process for projects on federal land where NCPC has an approval authority and the applicant is a federal agency. In these situations, the federal applicant, which also has a NEPA responsibility, will serve as the lead agency. A cooperating agency serves to support a lead agency in the completion of NEPA (technical expertise), and is a signatory on a FONSI or ROD.

If the applicant is a non-federal agency (e.g., a District agency, the Smithsonian Institution, the Kennedy Center, the National Gallery of Art, or the U.S. Institute of Peace), it will not have an individual NEPA responsibility and NCPC will serve as the lead agency. If NCPC does not have a CATEX for the type of project submitted, an EA or EIS must be completed. In such a case, NCPC will serve as the lead agency and will manage the NEPA process in coordination with the applicant. A memorandum of understanding (MOU) may be prepared to outline the terms of such an arrangement—either at the project level or to provide a larger framework for interagency cooperation on NEPA. The MOU at a minimum should specify project information; roles and responsibilities; project timelines and schedules; principle contacts and contact information; and a mechanism for solving disputes. For example, NCPC and the Smithsonian Institution entered into an agreement in December 2018 that outlines a joint approach to NEPA for all Smithsonian projects.

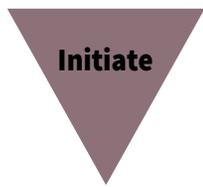
## **Public Involvement in NEPA**

Public involvement is a cornerstone of NEPA, and therefore, the compliance process typically includes several opportunities to engage the public. Per CEQ guidance on the implementation of NEPA, agencies are required to provide meaningful opportunities for public participation, but the extent of public involvement depends on the specific NEPA regulations developed by the lead agency. In general, the public has an opportunity to engage during the early scoping process, and with the release of draft documents. NCPC's environmental policies and procedures requires a public comment period for both an EA and an EIS. The length of the public comment period for an EA is at NCPC's discretion and the length of the public comment period for an EIS is 45 days.

## **National Historic Preservation Act**

The NHPA is legislation intended to preserve historical and archaeological sites in the United States. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Under Section 106 of the NHPA, federal agencies are required to consult with State or Tribal Historic Preservation Offices (SHPO[s]/THPO[s]) and other affected agencies, parties, and individuals for projects, activities, or programs that qualify as an “undertaking.” Regulations published by the Advisory Council on Historic Preservation define an undertaking as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency including “...those requiring a federal permit, license or approval.” Based on this definition, similar to NEPA, NCPC has a NHPA responsibility when it exercises approval authority.

The Section 106 process includes four steps, depending on the extent of the impacts.



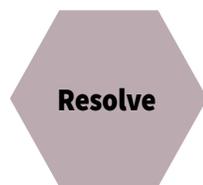
1. **Initiate:** The first step is initiating the process, which is required of all subject projects. In this step, the agency must determine whether its project could affect historic properties, which include any properties listed in the National Register of Historic Places (NRHP) or that meet the criteria for the NRHP. The agency must include SHPOs, THPOs, the public, and any other potential consulting parties in this effort. If it is determined that the undertaking would not affect historic properties, the agency has no further Section 106 obligations. If the undertaking may affect historic properties, it moves to the second step.



2. **Identify:** The second step is identification of historic properties within a defined area known as the area of potential effect. During this step, the agency must work with all knowledgeable parties (including the SHPO/THPO) and/or conduct studies to determine any properties that are listed in the NRHP and evaluate any unlisted properties for historic significance. If the agency finds that no historic properties are present or affected and provides documentation to the SHPO/THPO, the federal agency may proceed with the undertaking. It is important to note that the SHPO/THPO has 30 days to object to a finding that no historic properties are affected. If properties would be affected, or the SHPO/THPO objects, the agency must move on to step three.



3. **Assess:** Step three requires that the agency works with the SHPO/THPO to assess the extent of adverse effects on historic properties. If parties agree that there would be no adverse effect, the agency may proceed with the undertaking. If there is an adverse effect, a larger consultation process is required, which seeks to avoid, minimize, or mitigate the effect.



4. **Resolve:** In step four of the Section 106 process, the federal agency must work to resolve any adverse effects. This is conducted in close coordination with the SHPO/THPO, as well as any other consulting parties, who typically conduct a series of meetings to come to agreed-upon terms for the avoidance, minimization, or mitigation of any adverse effects. A programmatic agreement or memorandum of agreement is prepared at the conclusion of this process, which formally defines the measures the agency must take to proceed with the undertaking.

### NCPC'S role in the NHPA Process

For federal projects that require NCPC review, NCPC will serve as a consulting party in the Section 106 process. NCPC is able to designate the applicant federal agency as the lead for Section 106 compliance and will generally serve as a signatory to the process if the Commission has approval authority on the project. If the applicant is not a federal agency, NCPC will serve as the lead agency for Section 106. The Smithsonian Institution is an exception to this rule, as federal law requires the Smithsonian to comply with NHPA for all of its projects that require NCPC approval.

It is important to note that these are general guidelines that govern the application of NHPA for NCPC, and exceptions may exist. For example, NCPC may determine that it should be the lead in the Section 106 process if it has a separate and distinct obligation from that of the applicant. Consultation with NCPC staff is important to determine the appropriate approach to Section 106, and to help streamline the application process for Commission review.

## Local Historic Districts and Landmarks

In addition to Section 106 reviews, some projects submitted to NCPC may require additional historic preservation related reviews if the project is located within a locally designated historic district or is individually designated as a local historic landmark. The applicant should work with local historic preservation staff, usually housed in the locality’s planning office, to determine if their project requires local historic preservation reviews. In the District of Columbia, the DC State Historic Preservation Office also provides professional staff assistance to the District’s Historic Preservation Review Board, which reviews projects listed on the District’s Inventory of Historic Places.



## NEPA and NHPA alignment with project submission stages

When projects that require NCPC approval are submitted for review, the NEPA/NHPA process must at a minimum have been initiated. The NEPA/NHPA requirement differs based on submission stage, which is outlined in the table below.

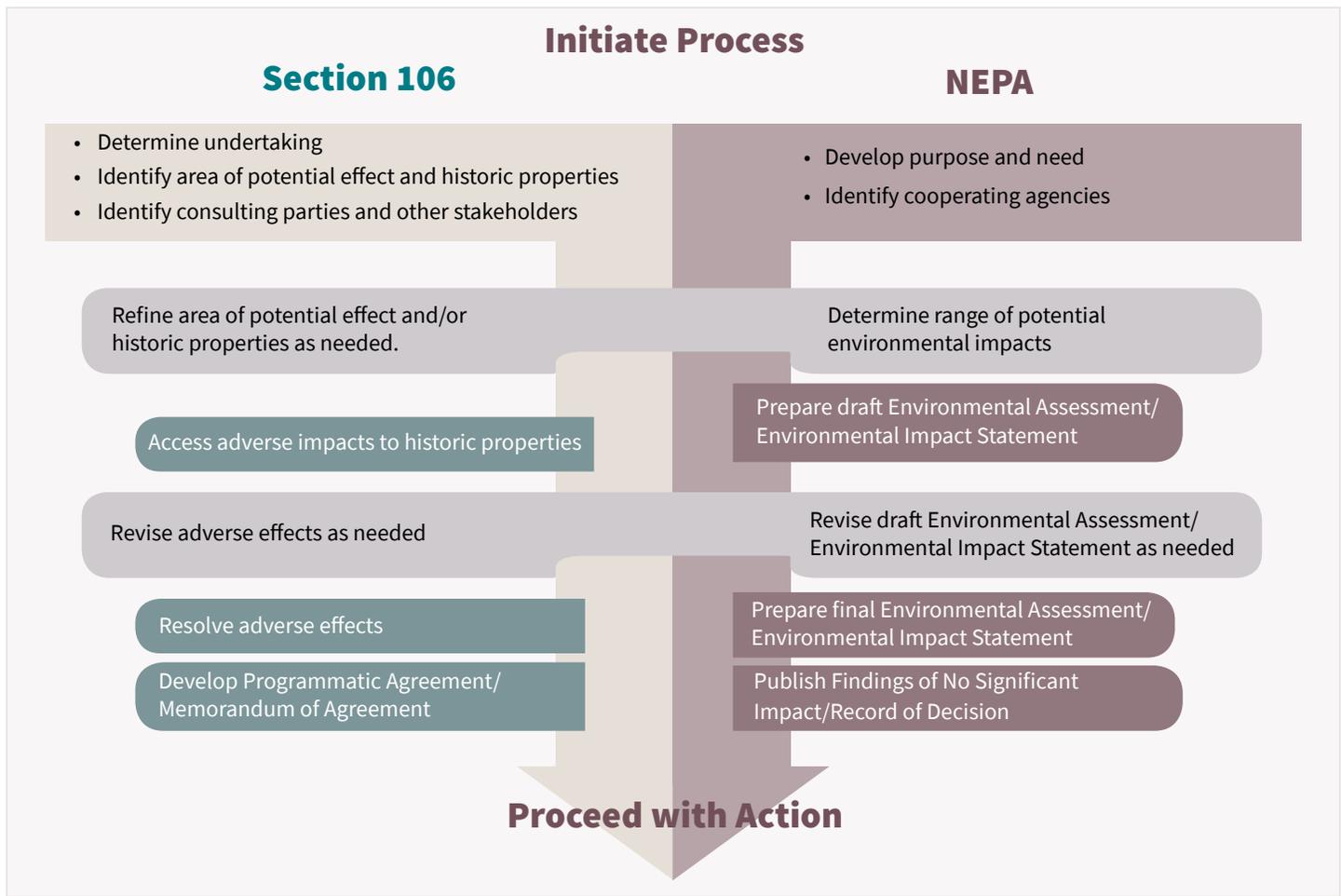
### NEPA and NHPA Requirements for NCPC Project Submissions

Submission Stage	NEPA and NHPA Requirements
Concept	At the time of concept review, the applicant (or NCPC if NCPC is the lead agency) must have initiated both the NEPA scoping process and the Section 106 consultation process for the project. For commemorative works, this includes two distinct NEPA scoping processes—for site and design. The NEPA and NHPA information available at the time of submission, including a decision to apply a categorical exclusion, must be provided to the Commission to facilitate the Commission’s Concept Review and provide for meaningful Commission comments and direction.
Preliminary	Applicants (or NCPC if NCPC is the lead agency) must have issued or published its draft environmental document (i.e., Environmental Assessment or Environmental Impact Statement) and initiated the requisite public comment period. The applicant (or NCPC if NCPC is the lead agency) also must have issued its Assessment of Effects for the Section 106 consultation process. The NEPA and NHPA information must be provided to the Commission to facilitate the Commission’s Preliminary Review and the provision of meaningful Commission comments and direction.
Final	The final NEPA document (EA or EIS) and determination (Finding of No Significant Impact or Record of Decision) resulting from the environmental document must be completed. The Section 106 consultation process must be complete and final documentation for the process executed.

## Integration of NEPA and NHPA

NEPA and Section 106 of NHPA share some common elements, and coordination among similar steps can help streamline the compliance process. NHPA regulations encourage federal agencies to consider their “Section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that can meet the purposes and requirements of both statutes in a timely and effective manner.”

NCPC has generally followed the process outlined in the following diagram where applicable. It is, however, important to note that a streamlined process may not be appropriate for projects with complicated environmental or historic preservation issues. For more information, see *A Handbook for Integrating NEPA and Section 106*, which is a joint publication from the CEQ and the Advisory Council on Historic Preservation.



## Applicant Resources

### NCPC’s Legislative Authorities:

National Environmental Policy Act: <https://www.ncpc.gov/about/authorities/nepa/>

National Historic Preservation Act: <https://www.ncpc.gov/about/authorities/nhpa/>

### Council on Environmental Quality and Advisory Council on Historic Preservation:

NEPA and NHPA – A Handbook for Integrating NEPA and Section 106: [https://www.achp.gov/sites/default/files/2017-02/NEPA\\_NHPA\\_Section\\_106\\_Handbook\\_Mar2013\\_0.pdf](https://www.achp.gov/sites/default/files/2017-02/NEPA_NHPA_Section_106_Handbook_Mar2013_0.pdf)

DC Historic Preservation Office: <https://planning.dc.gov/page/historic-preservation-office>.

### National Capital Region Jurisdictions:

Arlington County: <https://projects.arlingtonva.us/plans-studies/historic-preservation/>

City of Alexandria: <https://www.alexandriava.gov/Preservation>

Fairfax County: <https://www.fairfaxcounty.gov/planning-zoning/historic>

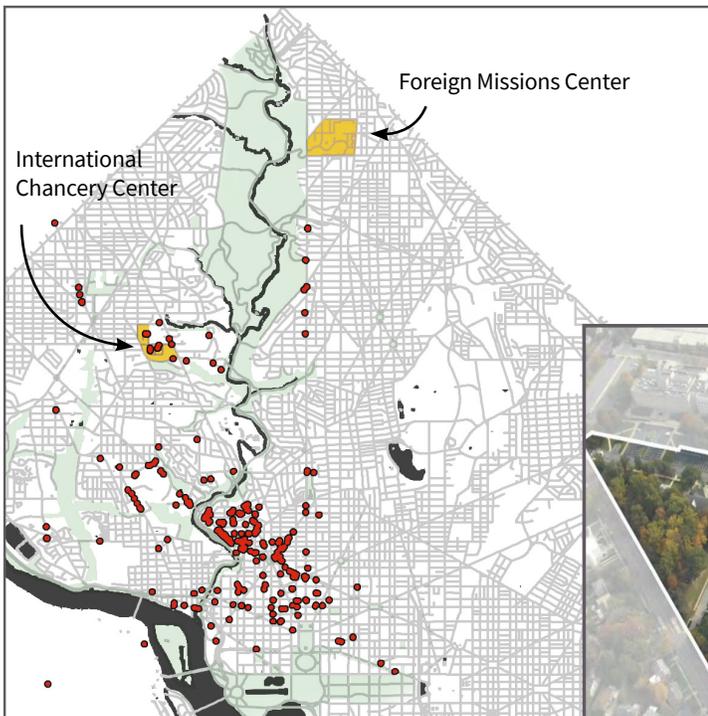
Loudon County: <https://www.loudoun.gov/heritagecommission>

Prince William County: <http://www.pwcgov.org/government/dept/publicworks/hp/Pages/default.aspx>

Montgomery County: <http://montgomeryplanning.org/planning/historic/>

Prince Georges County: <http://www.pgparcs.com/469/Historic-Preservation-Commission>

# Review of Foreign Missions in Washington



Foreign Missions represented by red dots on the map are concentrated in northwest Washington, DC



Embassy of the People's Republic of China, International Chancery Center



Foreign Missions Center on the former Walter Reed campus.



Embassy Row, Massachusetts Avenue, NW

## Overview

The United States maintains diplomatic relations with 191 of the 195 independent states in the world, and as the diplomatic center of the United States, Washington, DC has approximately 185 countries operating foreign missions within its boundary.<sup>1,2</sup> These missions are vital to the United States government in assisting diplomatic relations with international institutions, organizations, and states. Foreign missions help promote peace and stability, and bring nations together to address global challenges. Foreign mission development can exist in several forms. The facilities that house diplomatic functions—office space where the mission is conducted (the chancery), and the residence of the ambassador—are commonly referred to collectively as embassies.

The Foreign Missions & International Organizations Element of the *Comprehensive Plan for the National Capital* provides a policy framework for the United States to fulfill its international obligation to assist foreign governments and international organizations in obtaining suitable locations for their foreign missions in Washington, DC. This in turn supports efficient functioning of diplomatic and international activities. The element also includes policies to ensure that foreign missions promote the prestigious nature of the diplomatic mission, contribute to the city, and acknowledge the unique characteristics of Washington's neighborhoods. This resource guide is for general information purposes, and is not a regulatory document.

1 U.S. Department of State, Bureau of Intelligence and Research, Independent States in the World, March 2013.  
2 U.S. Department of State, Office of Foreign Missions, data received November 2013.

Foreign mission development in Washington, DC occurs on both federal and private land. The different laws and memorandum of agreements that guide foreign mission development are described below.

## Review of Foreign Missions on Private Land

The Foreign Missions Act (FMA) of 1982 reaffirms the federal government’s jurisdiction over the operation of foreign missions and international organizations in the United States. It affirms a policy of support and facilitation of secure and efficient operation of U.S. missions abroad and foreign missions and international organizations in the United States. It also establishes the review process for foreign mission development on private land in Washington, DC. Pursuant to the FMA, the District of Columbia Foreign Mission Board of Zoning Adjustment (FMBZA) reviews foreign missions projects on private land such as chanceries and annexes. NCPC’s Executive Director sits on the FMBZA, along with the three District of Columbia Board of Zoning Adjustment members and the National Park Service representative from the District of Columbia Zoning Commission.

The FMA requires the FMBZA to review the location, replacement, or expansion of chanceries and apply six decision-making criteria that include: facilitating foreign missions in the U.S., historic preservation, the municipal and federal interests, adequacy of security, and parking. The FMBZA uses these criteria to either “disapprove” or “not disapprove” the project.

## Review of Foreign Missions on Federal Land

There are two chancery enclaves located on large tracts of federal land in Washington, DC: the International Chancery Center (ICC), located at Van Ness Street and Connecticut Avenue, NW, and the Foreign Missions Center (FMC), located at 16th Street and Alaska Avenue, NW. The International Center Act, enacted in October 1968, guides NCPC review of foreign missions at the ICC, while a Memorandum of Agreement (MOA), signed in February 2017 between the Department of State/ Office of Foreign Missions (DOS) and NCPC, guides Commission review of foreign missions at the FMC.

### International Chancery Center

The International Center Act authorized the creation of the International Chancery Center. The Act authorized NCPC to review and approve the development of individual foreign missions at the ICC based on a project’s conformance with development controls devised by NCPC in conjunction with the DOS. The development controls regulate the location, height, bulk, and number of stories of proposed chanceries. NCPC has amended these development controls many times since their initial adoption to reflect the evolving needs of foreign mission development.

Because NCPC has an approval authority for projects at the ICC, NCPC must comply with the requirements of the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA). The DOS developed an Environmental Impact Statement (EIS) for the development of the ICC in 1976 and a supplement in 1981, and uses these documents to meet its NEPA responsibility. NCPC has used these documents or its own categorical exclusions to meet its NEPA responsibility for projects located at the ICC.

The Department of State did not conduct Section 106 analysis when it developed the 1976 EIS. The EIS noted that the ICC site has the potential to yield unidentified archaeological resources, which requires an archaeological assessment with a GIS analysis, and an evaluation of the above-ground built resources. These components which the Department of State is looking to fund would inform a Determination of Eligibility for the entire ICC campus. In lieu of a campus Determination of Eligibility, NCPC initiates Section 106 directly with the DC State Historic Preservation Office (SHPO) for individual projects.



## Foreign Missions Center

The acquisition by DOS of a 32-acre portion of the former Walter Reed Army Medical Center campus allowed for the creation of a second chancery enclave in Washington, DC known as the Foreign Missions Center (FMC). Because the International Center Act and ICC Development Controls apply only to the ICC, DOS and NCPC developed an MOA to establish a review process for chancery development on individual lots at the FMC. The MOA requires NCPC to analyze individual chancery projects using the same six FMA decision-making criteria used by the FMBZA. Also, like the FMBZA, NCPC must either “disapprove” or “not disapprove” the project. Land at the FMC that is developed with infrastructure projects and the Memorial Chapel (i.e., roadways, pathways, sidewalks, landscaped areas) not governed by are the MOA. Instead, these projects must be reviewed and approved by NCPC in accordance with authority derived from the National Capital Planning Act.



Memorial Chapel

Following acquisition of the FMC site, DOS developed and approved a master plan governing development at the FMC. Going forward with chancery development, DOS will use this master plan to govern leasing and development of individual sites (the EIS process included the development of formal development controls which foreign missions must follow to preclude or minimize adverse environmental impacts.). NCPC will use the DOS EIS, for which it was a consulting party, or its own categorical exclusions as applicable to meet its NEPA obligation resulting from approval of FMC infrastructure projects. NCPC does not have NEPA (or NHPA) responsibility for individual chancery projects at the FMC because it does not approve these projects.

Both DOS and NCPC have a NHPA obligation although NCPC’s obligation is limited to infrastructure projects. A programming agreement was developed between NCPC, Department of State, DC SHPO, and the Advisory Council on Historic Preservation and sets forth a process for compliance with NHPA at the FMC.

## Applicant Resources

U.S. Department of State, Bureau of Intelligence and Research, Independent States in the World, March 2019  
<http://www.state.gov/s/inr/rls/4250.htm>

Comprehensive Plan for the National Capital: Foreign Missions & International Organizations Element  
[https://www.ncpc.gov/docs/05\\_CP\\_2016\\_Foreign\\_Missions\\_&\\_International\\_Organizations\\_Element\\_2.29.16.pdf](https://www.ncpc.gov/docs/05_CP_2016_Foreign_Missions_&_International_Organizations_Element_2.29.16.pdf)

Embassies and Foreign Missions Topic Page: <https://www.ncpc.gov/topics/embassies/>

Foreign Mission Memorandum of Agreement  
[https://www.ncpc.gov/docs/MOU\\_NCPC\\_and\\_DOS\\_Foreign\\_Missions.pdf](https://www.ncpc.gov/docs/MOU_NCPC_and_DOS_Foreign_Missions.pdf)

NCPC Review Authorities (See Foreign Missions) Foreign Missions Board of Zoning Adjustment (DC):  
<https://www.ncpc.gov/review/authorities/fma/>

DC Office of Zoning, Foreign Missions: <https://dcoz.dc.gov/node/1357496>

Purchase or Lease of Foreign Mission Property: <https://www.state.gov/purchase-or-lease-of-foreign-mission-property/>



# Review of Amendments to the Highway Plan

## Overview

While Pierre L'Enfant's plan of the City of Washington is generally recognized as the foundation for the city's urban form, it was the Highway Plan that helped implement that form throughout the city. In response to rapid, disorganized development outside the L'Enfant City in the latter half of the 1800's, which was a contrast to the coherent grid in the central city, Congress passed the Highway Act of 1893. This act authorized the federally controlled District of Columbia government to develop a Highway Plan that would provide an organized framework for the orderly development of streets outside the L'Enfant City. The District government selected Olmsted and Associates as lead developer for the plan. The Olmsted and Associates plan proposed the extension of many of the L'Enfant streets from the city's urban core, while suggesting more curvilinear streets or parkways in areas with challenging topography.

Congress began to implement the plan in 1899 through the extension and widening of several existing streets. The responsibility for plan implementation and modification was transferred to the District government in 1914, which became a shared responsibility with the predecessor agency to the National Capital Planning Commission (NCP) in the 1920s. As the city developed and its road network expanded, the District government updated the plan and recorded any revisions on a document known as the Map of the Permanent System of Highways of the District of Columbia. The 1922 version of this map below displays both constructed and planned roadways throughout the



Map of the Permanent System of Highways of the District of Columbia (1922)



Fort Totten



Piney Branch Bridge



16th Street, NW

city at that time. The last comprehensive Highway Plan map was created in 1968. Since then, revisions to the plan are processed by the District government as Highway Plan amendments, which are recorded in the land records maintained by the DC Office of the Surveyor.

## Highway Plan Amendments

Many of the streets envisioned in the original Olmsted and Associates plan were constructed over the years, helping to shape the form of Washington outside of the L'Enfant City. However, as the city became more developed, plans for many streets envisioned in the Highway Plan were impeded by physical improvements on proposed rights-of-way or conflicted with the existing street grid. These unbuilt roads (many of which exist on private property) are still retained as paper streets in the land records held by the DC Surveyor. An amendment to the Highway Plan is required to modify or abandon any such paper street, which requires an affected landowner to submit an application to the DC Office of the Surveyor.

Pursuant to DC Code § 9-103.02, the District government must submit any amendments to the Highway Plan to NCPC for review and approval. The Commission makes a determination on any proposed amendment, which is then returned to the DC Surveyor in writing, who records the approved amendment in the land records. It is important to note that NCPC's Highway Plan amendment approval process is distinct from its advisory review process for street and alley closures, under which NCPC submits comments for consideration by the Council of the District of Columbia pursuant to DC Code § 9-202.02.

## NCPC Review of Highway Plan Amendments

NCPC is most interested in the protection of built or planned rights of way in the L'Enfant City. Because the Highway Plan was created to guide street development outside this area, staff has generally determined that Highway Plan amendments do not present issues of federal interest, particularly as they occur on private property. The exception to this may be in instances where such amendments relate to planned roadways that lie adjacent to federal properties or provide access to federal facilities. Because the Commission must provide a finding on Highway Plan amendments in writing, the Commission must take an official action on these submissions. Accordingly, any such amendment cannot be approved by delegated action to the Executive Director or Chairman but must be considered during a regular monthly Commission meeting. This resource guide is for general information purposes, and is not a regulatory document.

## Applicant Resources

Office of the Surveyor: <https://dcra.dc.gov/surveyors>



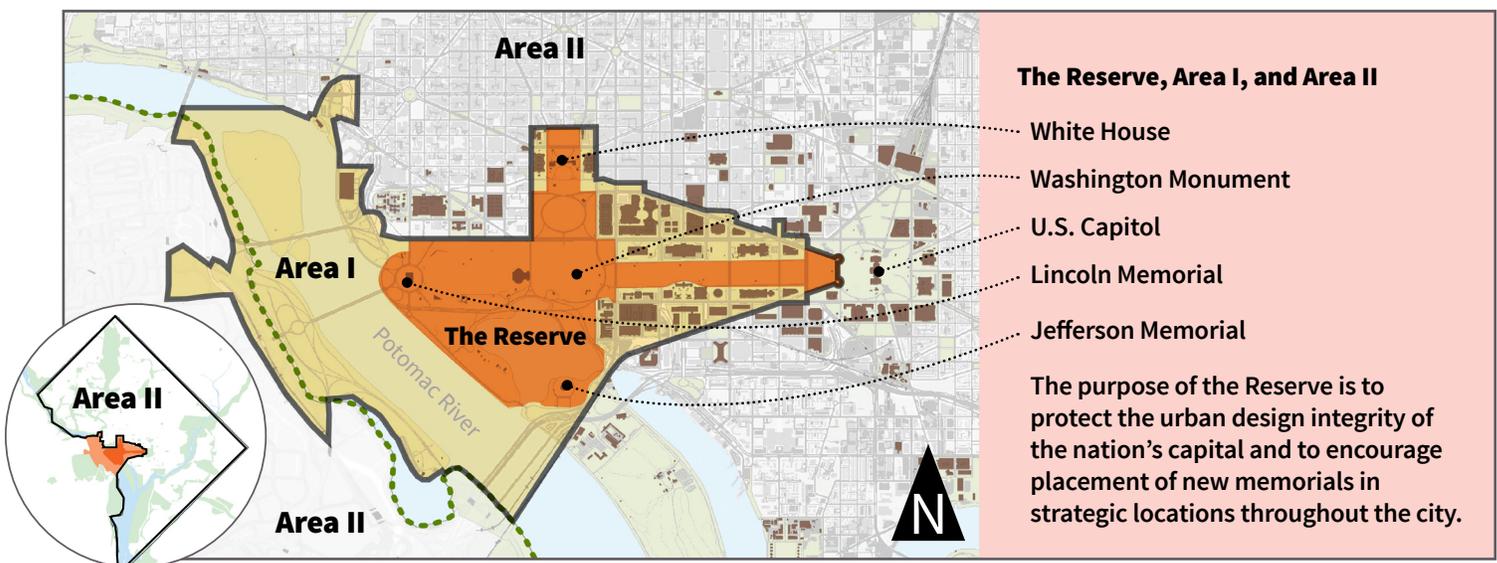
# Memorial Site Selection & Design Review

## Overview

Commemorative works, including monuments and memorials, are important elements of the National Capital Region’s landscape and often are located among iconic buildings, structures, and open spaces. There are hundreds of commemorative works on federal land, representing a number of themes, ranging from military events to individuals such as presidents. The Commemorative Works Act of 1986 (CWA), as amended, provides a framework and guides decision making regarding memorial authorization, siting, and design on land under the jurisdiction of either the National Park Service (NPS) or the U.S. General Services Administration (GSA) in Washington, DC and its environs.<sup>1</sup> Under CWA, Congress authorizes each new commemorative work by separate law, usually in response to a request by a committed citizens group.<sup>2</sup> The law authorizes the group to become the memorial sponsor and establish a commemorative work to a specific subject. Memorials authorized by Congress are required to comply with CWA, unless Congress explicitly grants an exemption from CWA or provisions within it. The purpose of this resource guide is to explain the site selection and design review process and the roles of the agencies involved in the process.

## Commemorative Works Act

The intent of CWA is to preserve the integrity of the Plan of the City of Washington (L’Enfant and McMillan Plans) and protect and maintain open space in the nation’s capital. Under the provisions of CWA, the National Capital Planning Commission (NCPC or the Commission) and the Commission of Fine Arts (CFA) have approval authority over the site and design of new memorials. CWA established the National Capital Memorial Advisory Commission (NCMAC) to advise the Secretary of the Interior and the Administrator of GSA, Congress, and memorial sponsors on topics relating to commemoration. Memorial sponsors consult with NCMAC during the site selection and design review process.



- 1 The CWA defines Washington, DC and the environs as “those lands and properties administered by the National Park Service and the General Services Administration in the Reserve, Area I, and Area II.” Generally speaking, this includes Washington, DC and adjacent lands across the Potomac River in Virginia that were originally part of the District of Columbia before being ceded to Virginia in 1847.
- 2 This guide does not detail the legislative process to authorize memorials under the Commemorative Works Act. Information on the legislative process and the National Capital Memorial Advisory Commission is available from the National Park Service - National Capital Region.

In 2003, Congress passed amendments to CWA that established the Reserve on the cross-axis of the National Mall where no new commemorative works can be located. The White House, Washington Monument, and Jefferson Memorial define the Reserve's north-south axis. The U.S. Capitol, Washington Monument, and the Lincoln Memorial define the east-west axis of the Reserve. Congress found that this cross axis along the National Mall was a completed work of civic art and new commemorative works are prohibited from locating in the Reserve. In addition, Congress designated Area I, which generally constitutes federally owned land surrounding the Reserve, for a limited number of memorials or commemorative works of preeminent historical and lasting significance to the United States.

In order to locate a memorial in Area I, a memorial sponsor is required to consult with NCMAC. Acting on advice provided by NCMAC, the Secretary of the Interior or Administrator of GSA, as appropriate, must determine whether the commemorative work is of preeminent historical and lasting significance to the United States and if so, recommends that Congress authorize locating the memorial in Area I. The location of a commemorative work in Area I is deemed to be authorized only if the recommendation is approved by law.

## Agency Roles

The agencies involved with the planning, design, and review of memorials have different roles and responsibilities. These roles are described below.

### **National Capital Memorial Advisory Commission**

The National Capital Memorial Advisory Commission advises Congress, the Secretary of the Interior, and Administrator of GSA on matters related to commemoration. NCMAC provides recommendations to Congress regarding proposed legislation authorizing memorials. When sponsors seek Area I authorization, NCMAC makes recommendations to the Secretary of the Interior or Administrator of GSA with respect to preeminent and lasting historical significance to the nation. NCMAC provides comments to memorial sponsors during the site selection process. Prior to CFA and NCPC final approval, memorial sponsors consult with NCMAC on the memorial design. NCMAC also serves as a general source of information regarding establishment of memorials in Washington, DC and its environs. In addition to NCPC, CFA, NPS, and GSA representatives, other NCMAC members include the Architect of the Capitol, the Chairman of the American Battle Monuments Commission, the Mayor of the District of Columbia, and the Secretary of Defense. The National Park Service provides staff to NCMAC.

### **National Capital Planning Commission**

NCPC provides planning guidance for federal land and buildings in Washington and the environs. NCPC's review of memorials covers site planning and development implications and focuses on issues related to access and circulation, program, land use, viewsheds, historic preservation, design, and landscape elements. NCPC approves sites and designs for new commemorative works and the NCPC Chairman is a member of NCMAC.

### **Commission of Fine Arts**

CFA advises the government on matters of aesthetics and design, including the location and design of statues, memorials, and public buildings erected by the federal and District governments in the nation's capital. In reviewing memorials, CFA considers whether a proposed design is in keeping with such criteria as aesthetic merit, compatibility with and protection of historic structures and landscapes, best professional practices, and the advancement of the design of the capital city. CFA approves sites and designs for new commemorative works and the CFA Chairman is a member of NCMAC.

### **National Park Service**

While memorial sponsors consider sites under both NPS and GSA jurisdiction, NPS typically has the lead in assisting sponsors with memorial proposals in Washington and its environs. NPS, on behalf of the memorial sponsor, submits applications for memorials proposed on land under the jurisdiction of NPS to NCPC and CFA for review and approval. NPS, on behalf of the Secretary of the Interior, reviews and approves sites and designs, and issues construction permits. When a memorial is built on NPS land, NPS maintains and interprets the memorial in perpetuity. The NPS Director is the NCMAC Chairman.

## U.S. General Services Administration

GSA can also take the lead in working with the memorial sponsor on the site selection and design review process when the preferred site or sites are under GSA jurisdiction. In such cases, GSA submits applications to NCPC and CFA for review and approval. After construction, the memorial is typically transferred to NPS for maintenance and interpretation. The Commissioner of Public Buildings Service, representing the Administrator, serves on NCMAC.



The *2M Plan* guided the location of the American Veterans Disabled for Life Memorial (dedicated October 2014).

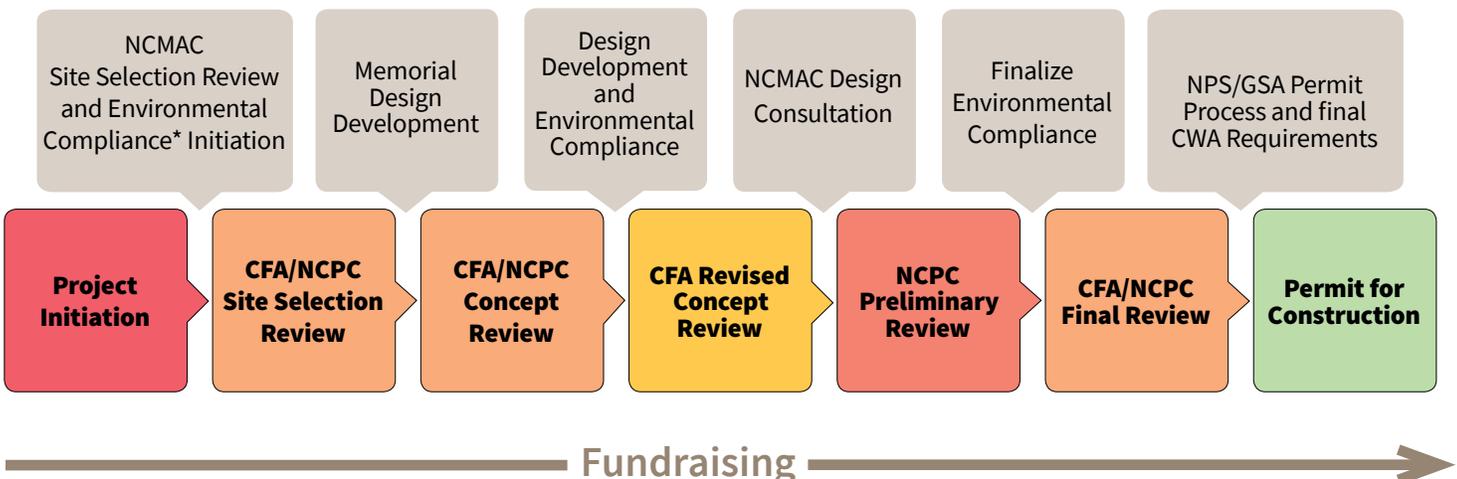
### Memorials and Museums Master Plan

The *Memorials and Museums Master Plan* (2M Plan), developed by NCPC in partnership with CFA and NCMAC, provides guidance regarding memorial location and design. The 2M Plan identifies potential memorial sites in Washington, DC and Virginia. The plan includes an evaluation of each site and information on scale of site, transit connections, historic resources, and neighborhood setting.

The plan is a tool for memorial sponsors and agencies to use when evaluating whether a project is suitable for a particular location and to identify planning and design issues for specific sites. Since its initial adoption in 2001, the 2M Plan has guided the site selection of several memorials. However, a memorial sponsor is not required to select a site in the 2M Plan and a few recently established memorials were located on other sites.

## Commemorative Works: Site Selection and Design Review Process

After Congress authorizes a memorial on federal land, and the President signs the bill into law, memorial sponsors must gain site and design approval from NCPC and CFA. Generally, under CWA, the legislative authority for a memorial expires seven years after its enactment or seven years after a congressional enactment authorizing a memorial in Area I. Memorial sponsors work with NPS (or occasionally GSA depending on the jurisdiction of the sites under consideration) during the site selection and design review process. For purposes of this resource guide, “NPS/GSA” refers to the agency involved. NPS/GSA is the applicant to NCPC and CFA on behalf of the memorial sponsor. NPS/GSA coordinate meetings and consultation with NCPC and CFA to discuss site selection and memorial design.



\*Environmental Compliance includes the National Environmental Policy Act and National Historic Preservation Act.

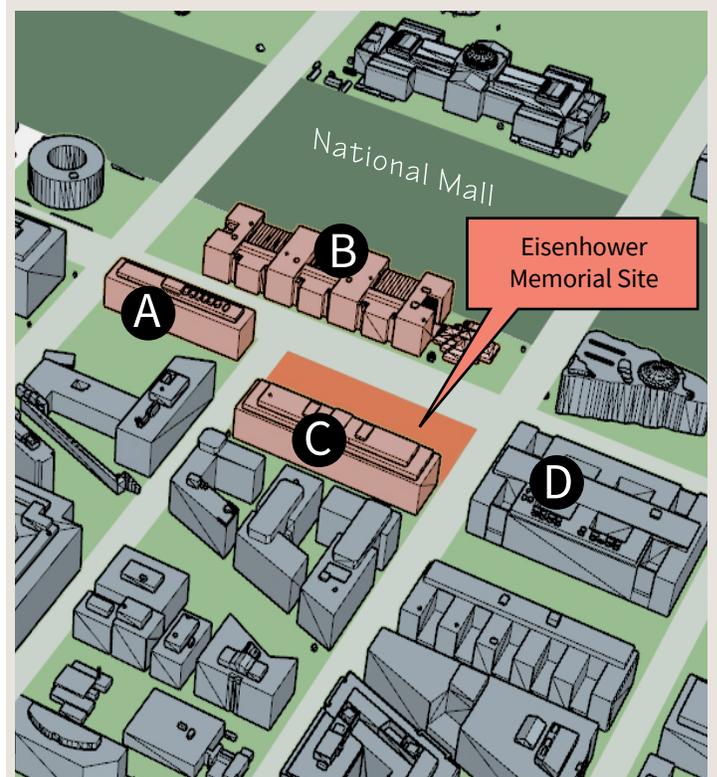
The complexity of the project will determine the number of reviews NCPC and CFA conduct at each stage. Both commissions have to approve the project and there may be multiple concept level reviews to address commission concerns, and to achieve agreement. In cases when there are differences between NCPC and CFA, NPS/GSA and the sponsor consult with NCPC and CFA staff to determine how to reconcile the issues to the satisfaction of both commissions. At times, additional reviews may be needed by one commission to resolve a specific planning or design issue prior to moving forward with subsequent stages of the review process.

## Project Initiation

During project initiation memorial sponsors, in consultation with NPS/GSA, develop the program including the scale, scope, and nature of the proposed memorial. Based on the program, size of the planned memorial, and its subject, certain sites identified in the 2M Plan may be more suitable for the commemorative work. Memorial sponsors conduct a review of the 2M Plan and identify potential sites for the memorial. Memorial sponsors are not limited to sites in the 2M Plan as other NPS and GSA land may be possible for commemorative use.

In considering potential locations, memorial sponsors should consider the CWA criteria that state “to the maximum extent possible that a commemorative work shall be located in surroundings that are relevant to the subject of the work. When considering sites, thematic and geographic context of nearby memorials, buildings, parks, and civic landmarks can establish a nexus to the proposed commemorative work.”

Memorial sponsors, in coordination with NPS/GSA, are encouraged early in the project initiation phase to meet with NCPC and CFA staff, as well as the appropriate State Historic Preservation Officer, to discuss potential sites, the initial program, and identify potential issues such as impacts to open space, historic properties, and infrastructure requirements. NCPC’s Submission Guidelines call for a pre-submission briefing at this stage. More information on the pre-submission briefing can be found on NCPC’s website.



### Eisenhower Memorial

The Eisenhower Memorial site is near several agencies and institutions that relate to Dwight D. Eisenhower’s legacy including the (A) Wilbur Wright Building, headquarters of the Federal Aviation Administration; (B) the National Air and Space Museum; (C) the Lyndon B. Johnson Department of Education Building; and (D) the Voice of America Building.

## National Capital Memorial Advisory Commission Site Selection Review

Following the early consultation with NCPC and CFA staff, the memorial sponsor is responsible for preparing a site selection study to investigate potential sites for the memorial based on program, anticipated size, and thematic connections. NCMAC will review the site selection study prior to NCPC and CFA and provide comments on the sites under consideration. Depending on the complexity of the project, NCMAC may conduct multiple reviews of the site selection study prior to reviews at NCPC and CFA. The site selection study often includes historical context and background, as well as the memorial sponsor’s goals and objectives or vision for the memorial. Memorial sponsors typically develop a list of specific criteria as part of the site selection study to apply to 2M Plan sites (or other sites) to assist in identifying a suitable location.

## Concept Review of Site Selection

The concept review of site selection includes the formal beginning of the environmental and historic preservation review processes. Prior to submitting to NCPC and CFA for review, the memorial sponsor and NPS/GSA initiate the scoping process under the National Environmental Policy Act (NEPA) and the consultation process under Section 106 of the National Historic Preservation Act. The NCPC Environmental and Historic Preservation Compliance Resource Guide includes an overview and information on both processes. Information specific to NCPC's NEPA process can be found in its NEPA Regulations (1 C.F.R. 601). The purpose of the NEPA scoping meeting is to introduce the project to the public and request comments on the potential sites under consideration. A separate NEPA scoping process takes place for the memorial design during the commemorative design stage. Before formal review at NCPC or CFA, the memorial sponsor and NPS/GSA initiate Section 106 consultation with the appropriate State Historic Preservation Officer.

Both NCPC and CFA will complete concept level reviews and provide comments on the alternative sites under consideration. As part of the memorial sponsor's submission, the site selection study should highlight the opportunities and challenges of a commemorative work at each proposed site as well as a proposed memorial program. At this time, the memorial sponsor often provides initial memorial design ideas so that NCPC and CFA have an understanding of the relationship between potential sites and designs.

NCPC review generally provides a series of comments on the range of sites, helps identify any major planning issues of concern, and an analysis of the consistency of the proposed sites with NCPC policies and plans. The commemorative works section of NCPC's submission guidelines describes the primary issues of concern at this stage of review. The Federal Elements of the *Comprehensive Plan for the National Capital* provide policies that NCPC will apply in its review. For example, NCPC would be interested in the relationship of the surrounding land uses to the proposed memorial including the transportation network. The Visitors & Commemoration and Parks & Open Space Elements include specific policies that apply to commemorative works.

CFA will review and provide comments on the site selection study, leading to an initial endorsement of a site or sites. Generally, at this stage of review CFA's comments focus on the suitability of sites in relation to the memorial subject, the site's context, and proposed design ideas. During the site selection review process, NCPC and CFA may develop criteria or guidelines specific to each site that are mutually agreed upon to ensure that the design of the commemorative work carries out the purposes of CWA.

## Memorial Design Development

Following NCPC and CFA review and an analysis of the public comments received from the NEPA/106 processes, the memorial sponsor, in consultation with NPS/GSA, determines the preferred site or sites to carry forward through design development. Depending on the complexity of the memorial project and subject, there may be times when multiple sites are carried forward into the design stage. As approval of both NCPC and CFA is required under CWA, the memorial sponsor and NPS/GSA ideally prefer the support of both reviewing agencies for the same site or sites prior to moving forward to the concept review for the memorial design. Therefore, there may be multiple site selection concept reviews at NCPC and/or CFA to achieve consensus on the preferred site or sites.

## Concept Review of Commemorative Design

Following the site selection reviews at NCPC and CFA, the memorial sponsor develops design alternatives or proposals that respond to the site or sites under consideration. While developing design alternatives, the memorial sponsor and NPS/GSA initiate the NEPA scoping process and Section 106 consultation specific to the memorial design. This includes an additional NEPA scoping meeting and hosting Section 106 consulting parties meetings. Both processes must be initiated prior to submitting to NCPC and CFA for concept review.

The memorial sponsor and NPS/GSA submit the preferred site(s) and proposed design alternatives to NCPC and CFA for review and comment. During its review, NCPC will endorse a site and provide comments on the memorial design alternatives. NCPC's comments tend to focus on urban design, site planning, and historic preservation at this stage of review. CFA's comments focus on aesthetics, design, and how the proposal fits within the larger context of the capital city. The intent of NCPC and CFA comments is to assist the memorial sponsor in selecting a preferred design alternative for further refinement.

During this stage, NCPC, as part of the NEPA process, may establish guidelines for the memorial sponsor and NPS/GSA to follow in preparing its preliminary and final plans for the commemorative design.

## **Design Development and Environmental Compliance**

At the conclusion of the design concept review, the memorial sponsor considers all the comments received including those from NCPC, CFA, the public, and the Section 106 consulting parties and identifies a preferred alternative for further development. The memorial sponsor advances the proposed design in light of the comments and design guidelines, if any apply.

Prior to submitting the preliminary design to NCPC for approval, NPS/GSA must issue the NEPA document, most likely an environmental assessment but possibly a draft environmental impact statement, for public comment. In addition, NPS/GSA must issue its Section 106 assessment of effects report prior to submitting the preliminary memorial plans for NCPC's review. In preparing the assessment of effects report, the memorial sponsor and NPS/GSA continue consultation with the Section 106 consulting parties to evaluate the potential effects of the proposed memorial on historic properties.

## **Revised Concept Review**

As the memorial sponsor advances the commemorative design, NPS/GSA may submit revised concept plans to CFA for review and comment. NPS/GSA may submit revised concept plans to CFA on multiple occasions to address a range of design topics and elements. Revised concept reviews at CFA typically cover the artwork, landscape plans, architectural details and materials, inscriptions, lighting, interpretative program, or other subjects as needed.

## **Preliminary Review of Site Selection and Commemorative Design**

During NCPC's review of the preliminary plans, the Commission focuses on the project's consistency with Commission plans and policies as well as any comments the Commission provided during concept review. During review of the preliminary plans, the Commission often considers the program, site context, scale of the proposal, viewsheds, impacts on historic properties, and circulation or access to the memorial. As part of the review, the Commission will provide comments, requests, or recommendations to address in the preparation of the final memorial plans.

## **National Capital Memorial Advisory Commission Commemorative Design Consultation**

The CWA also requires NCMAC consultation on the memorial design at some point before a final design is submitted to CFA and NCPC. This consultation would typically occur during the development of the concept design and coincides with the NCPC preliminary review. However, the NCMAC consultation on the memorial design may also be completed after NCPC's preliminary review, but before the final review of the memorial design.

## **Final Environmental Compliance**

The memorial sponsor continues design refinements in response to the preliminary review at NCPC, revised concept review at CFA, comments from Section 106 consulting parties, and public comments from the NEPA process. Additional Section 106 consultation meetings may be required. If the Section 106 consultation concludes with an adverse effect determination, the memorial sponsor, NPS/GSA, NCPC, the State Historic Preservation Officer, and the consulting parties will be required to negotiate a Memorandum of Agreement (MOA) or Programmatic Agreement (PA). With the final plans, NPS/GSA must submit the final executed documentation of the Section 106 process. The determination (finding of no significant impact or record of decision) resulting from the NEPA document must be submitted in accordance with NPS/GSA regulations.

## Final Review of Site Selection and Commemorative Design

During the final review, NCPC will confirm the design details advanced since the preliminary review as well as responses to Commission comments or recommendations. Following the Commission's final approval of the site and memorial design, NCPC will issue its final NEPA documentation to satisfy the Commission's responsibility.

CFA will also complete a final review during this stage. Once the memorial sponsor receives final approval from NCPC and CFA the site selection and design review process is complete. NPS/GSA and the memorial sponsor typically continue to consult with CFA staff and sometimes CFA members after final approval to ensure that details of the construction, such as lettering, artwork, or materials choices, are consistent with the approved design. At times, NCPC staff or NCPC Commissioners may participate in these consultations as well.

If substantial changes are made to the design of a commemorative work following final approval, the memorial sponsor and NPS/GSA must re-submit an application of the revised design to both NCPC and CFA.

## NPS/GSA Permit Process

Following the conclusion of the site selection and design review process, the memorial sponsor continues to work with NPS/GSA to obtain construction permits and obtain approval from the Secretary of the Interior or the Administrator of GSA. The memorial sponsor prepares construction documentation for NPS/GSA review. In addition, prior to issuance of a construction permit, the memorial sponsor must show sufficient funds are available to construct the project. Funding must include the donation required by CWA equal to 10 percent of the total estimated cost of construction to offset the costs of perpetual maintenance and preservation of the memorial. This donation is not required when a federal department or agency constructs the memorial and less than 50 percent of the funding is provided by private sources.

## Applicant Resources

### National Capital Planning Commission

Commemoration Topic Page: <https://www.ncpc.gov/topics/commemoration/>

Submission Guidelines: <https://www.ncpc.gov/review/guidelines/>

Environmental and Historic Preservation Compliance Resource Guide: <https://www.ncpc.gov/review/guides/nepa/>

Memorials & Museums Master Plan: <https://www.ncpc.gov/plans/memorials/>

NEPA Regulations: <https://www.ncpc.gov/about/authorities/nepa/>

Visitors & Commemoration Element, Comprehensive Plan: <https://www.ncpc.gov/plans/compplan/>

### Commission of Fine Arts

Design Topics: Memorials: <https://www.cfa.gov/about-cfa/design-topics/national-memorials>

Submission Requirements: <https://www.cfa.gov/project-review/government>

### National Park Service

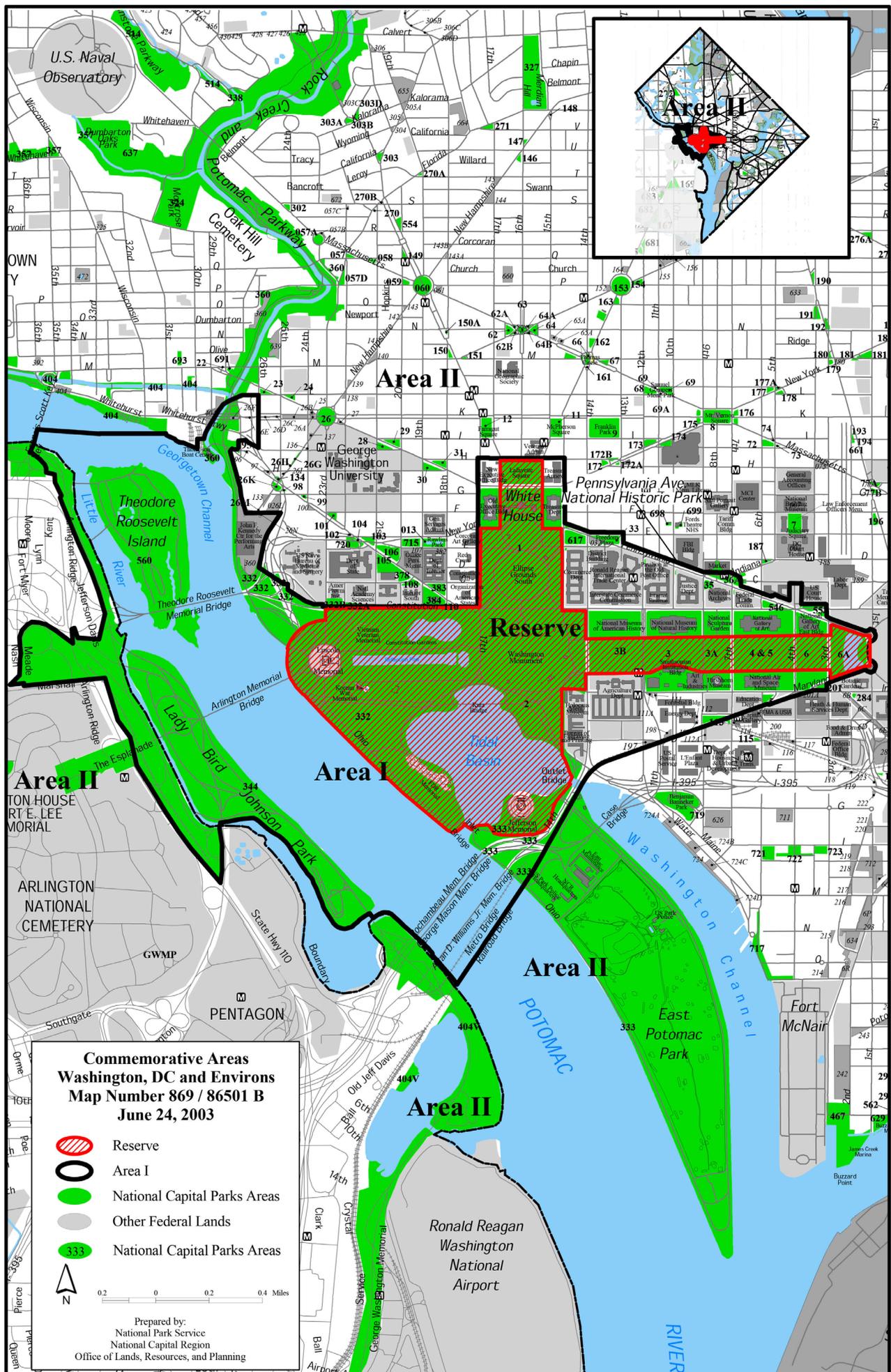
National Regional Office: <https://www.nps.gov/orgs/1465/index.htm>

National Capital Memorial Advisory Commission: <https://parkplanning.nps.gov/projectHome.cfm?projectID=44217>

Commemorative Areas Washington, DC and Environs Map: [https://www.ncpc.gov/docs/Reserve\\_Area\\_Map\\_June2003.pdf](https://www.ncpc.gov/docs/Reserve_Area_Map_June2003.pdf)

Candidate Sites Map: <http://www.ncpc.gov/maps/monuments-memorials/>





# Review of Projects from the Metropolitan Washington Airports Authority

## Overview

The Metropolitan Washington Airports Authority (MWAA) holds operating responsibility for both Washington Dulles International Airport (Dulles Airport) and Ronald Reagan Washington National Airport (National Airport) in Virginia under a long-term lease from the United States. The law that authorized this transfer of responsibility, the Metropolitan Washington Airports Act of 1986 (49 U.S.C. §§ 49101-49112), recognized the historic importance of these facilities and/or their visual prominence, and accordingly required that MWAA consult with the National Capital Planning Commission (NCPC) before undertaking any major alterations to the exterior of the main terminal at Dulles Airport (Below, left), and development that would alter the skyline of National Airport (Below, right) when viewed from the opposing shoreline on the Potomac River or from the George Washington Memorial Parkway. In 1988 NCPC and MWAA entered into a memorandum of understanding (MOU) to guide the consultation process between the two agencies. This guide is intended to outline the specifics of the MOU and clarify NCPC's review interest. This resource guide is for general information purposes, and is not a regulatory document.



Dulles Airport Main Terminal



National Airport skyline

## MWAA Memorandum of Understanding

The MOU between MWAA and NCPC details a process for advisory NCPC review of certain projects at Dulles and National Airports consistent with the legal requirements in 49 U.S.C. § 49111(d). The MOU notes the historic significance of the main terminal at Dulles Airport, the visual character and quality of the Dulles Access Road, the highly visible location of National Airport on the Potomac River, as well as the Commission's interest in determining potential impacts of plans on federal activities or interests in the nation's capital. It also describes the shared interest between MWAA and NCPC to establish an effective working relationship and coordinate their respective planning activities and concerns.

To meet the long-term needs of both agencies, and in recognition of the significance of the airports, the MOU establishes a framework for the review of several projects by NCPC, including the following:

- Development proposals in certain defined areas within or adjacent to the Dulles Access Road with major views of the tower and main terminal building, as described in the MOU;
- Proposed revisions to the master plans for both airports, and
- Preliminary site and building plans for construction projects at Dulles Airport that would alter the exterior or significantly impact views of the terminal building, and at National Airport for any project that would alter the airport skyline when viewed from the opposing shoreline on the Potomac River or from the George Washington Memorial Parkway.

The MOU also provides for NCPC review of final site and building plans if there have been any changes in the plans, or upon Commission request.<sup>1</sup>

## NCPC Review Interest

Per the MOU, in review of applicable development proposals, master plans, and site and building plans, the Commission will focus specifically on the impacts to views of Dulles Airport's tower and main terminal building, and the impacts of the National Airport skyline on views from the George Washington Memorial Parkway and the opposing shoreline of the Potomac River. Federal sites along the opposing shoreline with the most direct visual connection to National Airport include the Monumental Core, East Potomac Park, and Joint Base Anacostia-Bolling. Depending on the nature of the proposals and plans, these federal sites may also include portions of Shepherd Parkway, Oxon Cove Park & Oxon Hill Farm, and possible others. Accordingly, NCPC review will focus closely on the impacts to these areas. Because NCPC's review purview relates only to the main terminal and tower at Dulles, NCPC review at this airport will be more targeted to sites on airport property, such as the future Dulles International Airport Metrorail station.<sup>2</sup>

## Applicant Resources

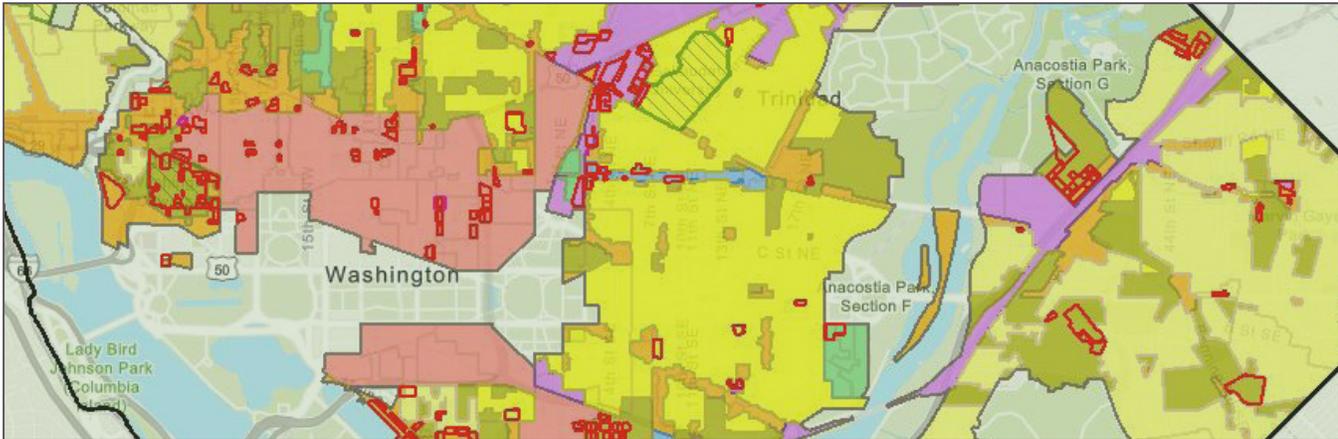
NCPC Review Authorities: <https://www.ncpc.gov/review/authorities/misc/>

Memorandum of Understanding by and between NCPC and MWAA:  
[https://www.ncpc.gov/docs/MOU\\_NCPC\\_MWAA\\_November\\_8\\_1988.pdf](https://www.ncpc.gov/docs/MOU_NCPC_MWAA_November_8_1988.pdf)

Metropolitan Washington Airports Act of 1986: <https://www.congress.gov/bill/99th-congress/house-bill/5398>

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- 1 The MOU provides more extensive guidance regarding collaboration between MWAA and NCPC, including amendments to the *Comprehensive Plan for the National Capital: Federal Elements*. The intent of this guide is to focus on the review implications, so some unrelated stipulations were excluded.
  - 2 Note that NCPC's review authority for MWAA projects as described in the MOU is independent of its review authority on Metrorail projects under the Washington Metropolitan Area Transit Authority Compact or other separate authorities. While MWAA is leading construction of Phase II of the Silver Line (with a Dulles Airport station), once completed, the transit line will be operated as part of the Metrorail system.

# Limited Review of Development on Private Land in Washington



## Overview

While the majority of the National Capital Planning Commission’s (NCPCC) plan review authorities relate to the review of projects and master plans on federal and District owned land, there are a few circumstances where NCPCC conducts an advisory review and provides comments on development projects and regulations for private land in Washington, DC. These include:

1. Amendments of the District Zoning Regulations and Maps
2. Site and building plans for private land in specific areas of federal interest
3. Site and building plans for private land on Pennsylvania Avenue between 1st and 15th Streets, NW
4. Development of air rights above or below public streets or alleys in the District of Columbia
5. The platting and subdividing of lands

This resource guide is for general information purposes, and is not a regulatory document.

## What is NCPCC’s interest in reviewing development projects and regulations for private land?

NCPCC’s mission is to protect the natural, historic, and cultural resources of the National Capital Region and the property of the federal government so that it can perform its diverse set of missions. Protecting the form, character, and experience of the nation’s capital is important, particularly within the historic L’Enfant City. This includes the views and settings of the U.S. Capitol, White House, and National Mall; nationally significant civic spaces and institutions; national memorials and parks; and those streets, avenues, and reservations that link these national resources and reflect the fundamental design framework of the original city plan. Of equal importance is ensuring that the federal government, the largest property owner in Washington, DC, is able to achieve its missions, provide secure and appropriate workplaces, enhance public open spaces, and conduct a variety of operations.

Within Washington, private and federal land are often located adjacent to one another. To ensure federal interests are protected when development occurs on private land, NCPC reviews certain projects and regulations on private land in accordance with federal law or through an agreement with the District of Columbia's government.

## What are the five project types and regulatory processes where NCPC reviews development on private land?

### 1. Amendments to District Zoning Regulations and Maps

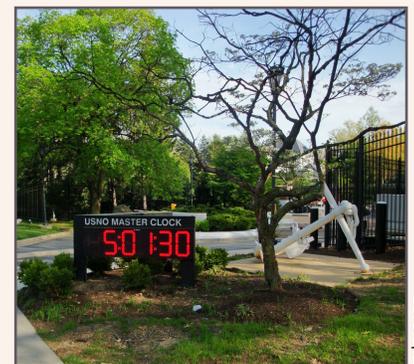
In accordance with the National Capital Planning Act, NCPC reviews any proposed zoning or map amendments to the District of Columbia's zoning regulations. This includes comprehensive updates to the zoning regulations (most recently the 2016 update) or individual map and text amendments. Most often, the District of Columbia Zoning Commission (ZC) refers amendments to NCPC as part of a proposed planned unit development (PUD) project. This referral occurs after the ZC has taken preliminary action on the zoning case and before it takes final action. The District of Columbia Board of Zoning Adjustment (BZA) refers specific projects as well. NCPC reviews zoning and map amendments for any potential impacts to the federal interest and consistency with the Comprehensive Plan's federal elements.

### 2. Site and building plans for private land in specific areas of federal interest

Since there are many areas in the city where private, District, and federal lands abut or are in close proximity to one another, the District has included special provisions in the zoning regulations that allow NCPC to comment on private development in areas sensitive to federal interests. Development projects in five defined areas are referred to NCPC for review and comment before they are heard at the ZC public hearing.

#### Naval Observatory (Subtitle D)

The Naval Observatory is a federal installation that is home to the Vice President of the United States. It also hosts operations that sustain the atomic clock, which provides the time standard for the United States. Projects in the zoning districts surrounding this facility (R-11, R-12, R-13, RA-6, and MU-27) require special review and are referred by the BZA to NCPC for comment. For projects in the R-11, R-12 and R-13 zones, NCPC uses *DC Zoning Regulations Subtitle D § 5203.1 (a)* for its analysis. For projects in the MU-27 zone, NCPC uses *Subtitle G § 1202.1(a)* for its analysis. NCPC analyzes any proposed development for impacts regarding views to the facility, light pollution, security, and transportation/access.



#### Independence Avenue Sub Area (Subtitle I)

The Independence Avenue Sub-Area zones (D-4 and D-8) are part of the overall downtown zoning district and cover Independence Avenue between 6th and 12th Streets, SW. If any federal land on Independence Avenue becomes private in the future, the ZC will refer individual development projects to NCPC for comment before granting approval. NCPC's interest in development on Independence Avenue is to protect the viewshed along the avenue and views to and from the National Mall.



## Southeast Federal Center (Subtitle K)

The former Southeast Federal Center (SEFC), now known as The Yards, is a large, multi-stage redevelopment project located in Southeast Washington, DC between the Washington Navy Yard and Nationals Park. The land was once part of the historic Washington Navy Yard and until redevelopment was controlled by the General Services Administration. The SEFC is divided into four zoning districts, which were established to “...provide for the development of a vibrant, urban, mixed-use, waterfront neighborhood, offering a combination of uses that will attract residents, office workers, and visitors from across the District of Columbia and beyond.” (*DC Zoning Regulations Subtitle K § 200.1 and 200.2*). The ZC refers development projects in these zones to NCPC early in the design review process. NCPC’s interest in this area is due to its adjacency to the Washington Navy Yard and Anacostia River. NCPC analyzes development proposals for their consistency with the SEFC Master Plan and any impacts to the Navy Yard.



Panoramic Photo

## Capitol Gateway (Subtitle K)

The Capitol Gateway zones regulate development around the South Capitol Street corridor, between M Street and the Anacostia waterfront. The ZC will refer projects located in the CG-5 zone and projects “... abutting South Capitol Street, other than renovation or replacement of an existing row dwelling within Squares 653 or 655.” (*DC Zoning Regulations Subtitle K § 512.1(a)*). NCPC focuses its analysis on protecting the viewshed of the South Capitol Street corridor and views to and from the waterfront. The regulations require buildings proposed along South Capitol Street to be set back from the property line with upper-story setbacks to frame the view of the U.S. Capitol.



## Union Station North Zone (Subtitle K)

The Union Station North (USN) Zone is included in the DC Zoning Regulations to “...implement the Comprehensive Plan by ensuring that development of the air rights is not inconsistent with the goals and policies of the Comprehensive Plan including: creation of ...an active streetscape connection between west...and east of the railroad; infill of an underutilized property; and preservation and enhancement of Union Station.”

For projects in the USN zone, NCPC uses *DC Zoning Regulations Subtitle K § 316.1* and *§ 317.1* for its analysis. Union Station is an important historic landmark. NCPC analyzes any proposed development located nearby to ensure that views of the station and its setting are preserved.



Washington DC Economic Partnership

### 3. Site and building plans for private land on Pennsylvania Avenue between 1st and 15th Streets, NW

Federal law 40 U.S.C. 6702(d) grants NCPC responsibility for ensuring that development within the Pennsylvania Avenue Development Corporation boundary (largely Pennsylvania Avenue between 1st and 15th Streets, NW) is carried out in accordance with the 1974 Pennsylvania Avenue Development Corporation Plan. A Memorandum of Agreement (61 FR 41789) entered into on August 12, 1996 between NCPC, the National Park Service, and the General Services Administration outlines the process by which the parties review and certify building permits within this area. The District Department of Consumer and Regulatory Affairs (DCRA) refers projects in this area to NCPC after the applicant submits them to DCRA for permitting. NCPC reviews the projects for their conformity to the Square Guidelines in the Pennsylvania Avenue Plan, which serve as specific development guidelines for each square.



### 4. Development of air rights above or below public streets or alleys in the District of Columbia

NCPC is required under the District of Columbia Public Space Utilization Act of 1968 to provide advice and recommendations on the development of air rights above or below public streets or alleys in the District of Columbia as described and defined in Subtitle G §700.2 of the DC Zoning Regulations (2016). NCPC's primary concern is the protection of L'Enfant Street rights of way and maintaining alleys that support federal uses. These projects are rare and often accompany zoning case referrals.

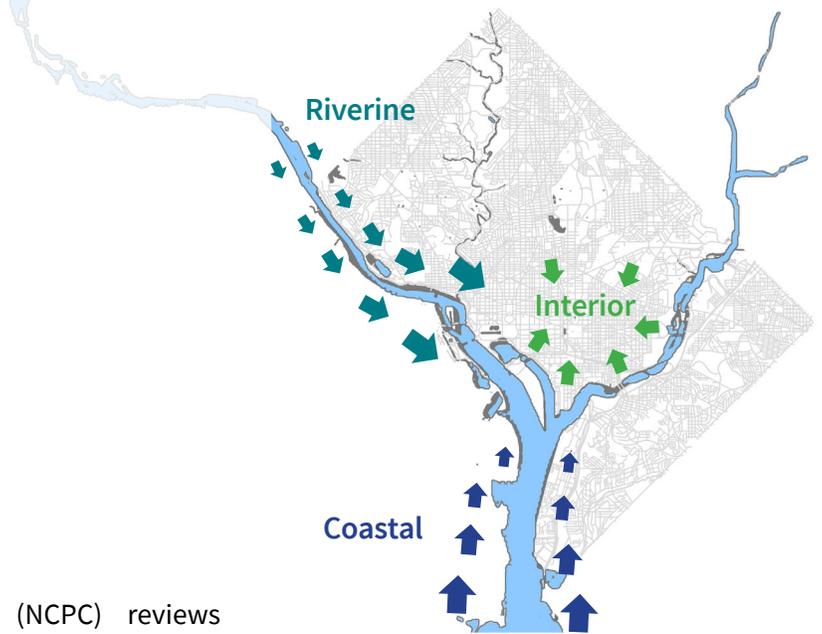
### 5. The platting and subdividing of lands

In accordance with the National Capital Planning Act (40 U.S.C §8735), the Council of the District of Columbia submits to NCPC any proposed change in, or addition to, the regulations or general orders regulating the platting and subdividing of lands and grounds in Washington. NCPC must provide a report and recommendation before the Council adopts the change or addition.

## Applicant Resources

DC Office of Zoning, Zoning Regulations of 2016: <https://dcoz.dc.gov/zrr/zr16>

# Projects in Floodplains



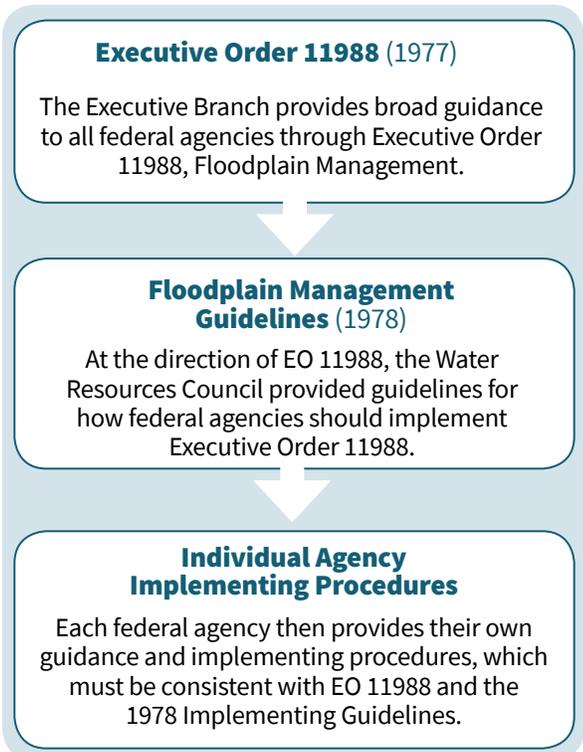
## Overview

The National Capital Planning Commission (NCPC) reviews applications for development within the National Capital Region (NCR), including review for compliance with applicable environmental requirements, such as protecting floodplains. In addition to the environmental benefits that result from protecting floodplains, review of projects in floodplains can also decrease risk to proposed facilities as flooding can severely damage property, infrastructure, and assets, and impact agency missions and operations. Because of the significant federal assets in the NCR, geography of the region, and potential impacts from flooding, consideration of floodplain management is important part of NCPC’s project review process. This guide is meant to assist project applicants, NCPC staff, and the public in understanding NCPC’s review process for projects in floodplains. This resource guide is for general information purposes, and is not a regulatory document.

**The NCR is vulnerable to three types of flooding.** Riverine, or freshwater floods, occur when heavy rainfall or snowmelt in the Potomac River Basin increases water levels downstream, sometimes hours or days later. Interior, or flash, floods are caused by heavy rainfall that can’t be absorbed by the ground, and then overwhelm drainage systems. Coastal floods occur from inundation related to high tides and from coastal storms (including hurricanes) that drive storm surge and waves upriver from the Atlantic Ocean and Chesapeake Bay.

## Legislation and NCPC Authorities

There are multiple levels of federal guidance for floodplain development, starting with Executive Order (EO) 11988 from 1977. As shown in the adjacent chart, the guidance becomes more specific, but must always be consistent with the guidance “above” it. Every federal agency, including NCPC, has its own guidance and implementing procedures for how to review proposed actions in floodplains. For federal agencies, their implementing procedures typically occur in the context of the agency’s National Environmental Policy Act (NEPA) processes. In rare cases where NEPA review is not required but the proposed action is in a floodplain, federal agencies must still comply with EO 11988 and their own agency implementing guidance.



## Executive Order 11988, Floodplain Management (1977)

Executive Order 11988 requires federal agencies to “avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid the direct or indirect support of floodplain development whenever there is a practicable alternative.”

EO 11988 describes in broad terms how agencies should evaluate potential effects of any actions it may take in a floodplain, and requires federal agencies to prescribe procedures to implement the policies and requirements of the EO. A key section of the EO provides the overarching policy to which the *Floodplain Management Guidelines* and individual agency procedures adhere:

*“If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires sitting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.”*

## Floodplain Management Guidelines (1978)

The *Floodplain Management Guidelines*, also called implementing guidelines in this document, were created by the Water Resources Council in 1978 to further describe how agencies should apply EO 11988. One of the primary contributions of the Floodplain Management Guidelines was the introduction of an eight-step process outlining how agencies should make decisions on proposed actions in or affecting floodplains. Implementing procedures for individual federal agencies use some version of the eight-step process.

## Individual Agency Implementing Procedures

Most agencies in the NCR have their own implementing procedures for complying with EO 11988 and the *Floodplain Management Guidelines*. The guidance used by the National Park Service is “Director’s Order 77-2” and “Procedural Manual 77-2.” The General Services Administration’s guidance is “The Floodplain Management Desk Guide.” These documents, which are subject to change, can provide additional context for the floodplain-related materials submitted by applicants.

Federal agencies revise their implementing procedures on occasion to reflect new information. Agencies may identify more conservative floodplain elevations than specified in EO 11988 in their implementing procedures to reflect their mission and interests.

Other executive orders addressing flood risk management include EO 13690, issued in 2015 and later revoked by EO 13807, issued in 2017. The floodplain elevations established in EO 13807 are the same as in EO 11988.

## NCPC Implementing Procedures (1981)

As a federal agency, NCPC has its own implementing procedures for EO 11988. These do not supersede other federal agency guidance. Projects submitted by federal applicants use the applicant agency’s own implementing procedures for the projects and apply them in the context of their NEPA process.

Projects submitted by non-federal applicants that require NCPC’s approval authority (advisory authority is not included) are subject to NCPC’s implementing procedures. Examples of these types of projects include, but are not limited to, projects from the Smithsonian Institution, the Kennedy Center, and projects on District land within the Central Area.

## Key Definitions and Maps

EO 11988 defines a floodplain as “the lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands, including at a minimum, that are subject to one percent or greater chance of flooding in any given year.”

The *Floodplain Management Guidelines* make a distinction between non-critical actions and critical actions. Critical actions are defined as any activity for which even a slight chance of flooding would be too great. Examples of critical actions include construction of or substantial improvements to schools, hospitals, fuel storage facilities, museums, and facilities that store irreplaceable records or archaeological artifacts. For critical actions, the floodplain of concern is the more extensive 500-year floodplain rather than the 100-year floodplain.

### For Non-Critical Actions

1 % annual chance  
(100-year) floodplain

### For Critical Actions

0.2 % annual chance  
(500-year) floodplain

The Federal Emergency Management Agency (FEMA) prepares Flood Insurance Rate Maps (FIRMs) to identify floodplains. To determine whether an area is in the 1 percent annual chance (100-year) or 0.2 percent annual chance (500-year) floodplain, agencies should use FEMA’s Flood Insurance Rate Maps (FIRMs). The *Floodplain Management Guidelines* specify that federal agencies should use the FIRMs to determine if their proposed action is in the 1 percent annual chance or 0.2 percent annual chance floodplain.

## Information Needed From Federal and Non-Federal Applicants

When a project is in a floodplain, applicants must respond to the “Flooding” sections of the Submission Guidelines to ensure that NCPC staff has the information it needs to review the project for consistency with the Comprehensive Plan’s policies on floodplains, which can be found in the Federal Environment Element, specifically in Section D, policies FE.D.1-6. These policies are based upon the federal guidance referenced above.

In most cases, federal applicants will already have materials related to their proposed action in a floodplain that will satisfy NCPC’s submission guidelines requirements. For many agencies, the analysis is integrated into their NEPA process. The exact materials provided to NCPC will vary by agency because every individual agency develops its own implementing procedures and guidance for floodplain actions.



Flood Risk Management Planning  
Resources for Washington, DC



January 2018

## Flood Insurance Rate Maps

Flood Insurance Rate Maps (FIRMs), based on historic flood data, are limited in their ability to evaluate future flood risk, which may be impacted by changes in land use within the watershed and changes in precipitation and sea level. While only FIRMs can be used to satisfy the requirements of EO 11988, NCPC encourages applicants to use other tools and resources to better understand and effectively respond to expected increases in future flood risk that may affect their proposed action. Many of the region’s most useful tools for this purpose are described in *Flood Risk Management Planning Resources for Washington, DC*, published jointly by NCPC and the DC Silver Jackets in 2018.

Based on applicant agency NEPA processes, and their own implementing guidance, NCPC staff can expect to have the following floodplain related documents during each review stage.

NCPC Review Stage	Pre-Submission Briefing	Concept	Preliminary	Final
NPS	No information required, but useful to have site plan with floodplains noted.	No Documents	Draft FSOF	FSOF
GSA		Public Notice	Draft JONPA	JONPA
Army		Public Notice	Draft FSOF	FSOF
Navy		Public Notice	Draft FSOF	FSOF
USAF		Public Notice	Draft FSOF	FSOF
USACE		Public Notice	Draft FSOF	FSOF

FSOF = Floodplain Statement of Findings      JONPA = Justification of No Practical Alternative

If the applicant is non-federal, and NCPC is the NEPA lead, the applicant must follow NCPC’s Implementing Procedures, which requires documentation of any action proposed in a floodplain. If NCPC, as a federal agency, has approval authority for (and not just advise or comment on) a project from a non-federal applicant, that project must also comply with EO 11988. In addition, the applicant is also required to provide the information requested in the submission guidelines (note that most are available in the materials produced for compliance with NCPC’s implementing procedures).

## Federal Guidance, Building Codes, and Local Standards

In addition to the federal framework for floodplain management established by EO 11988 and its implementing guidelines, there are local building and design codes and zoning laws that federal and local agencies use to manage flood risk throughout the NCR. Although federal agencies do not have to comply with local standards, many agencies voluntarily comply with nationally recognized building and design standards, such as the International Code Council (ICC) and its family of codes, including the International Building Code (IBC). “ASCE 24-14 Flood Resistant Design and Construction,” a referenced standard in the IBC, provides minimum requirements for design and construction of structures in flood hazard areas.

The General Services Administration (GSA), the Department of Defense (DOD), the National Park Service (NPS), the Army Corps of Engineers (USACE), the Air Force (USAF) and the District Department of Energy and the Environment (DOEE) follow International Building Code design standards. While DOEE adopted IBC into their Construction Codes (12 DCMR), federal agencies like GSA, NPS, and DOD incorporate the codes into facilities standards to require them for design and construction of agency facilities. GSA incorporates the IBC into its Public Building Service Facilities Standards (PBS 100), NPS incorporates IBC into its Design Standards and DOD incorporates it into its Unified Facilities Criteria (UFC 1-200-0-1). DOEE’s Flood Hazard Rules (20 DCMR Chapter 31) regulate activities and development in the District’s Special Flood Hazard Area and require any project in the flood hazard area to be reviewed by the DC Department of Consumer and Regulatory Affairs and DOEE before a permit is issued. DC Zoning Regulations (Title 11, Chapter 11) also prohibit certain uses and activities in the 100-year floodplain.

## Applicant Resources

Executive Order 11988, Floodplain Management (1977)

<https://www.archives.gov/federal-register/codification/executive-order/11988.html>

Floodplain Management Guidelines (1978)

[https://www.ncpc.gov/docs/EO\\_11988\\_Implementing\\_Guidelines\\_1978.pdf](https://www.ncpc.gov/docs/EO_11988_Implementing_Guidelines_1978.pdf)

FEMA's Flood Insurance Rate Maps (FIRMs)

<https://msc.fema.gov/portal/search>

NCPC Implementing Procedures (1981)

[https://www.ncpc.gov/docs/EO11988\\_NCPC\\_Implementing\\_Procedures.pdf](https://www.ncpc.gov/docs/EO11988_NCPC_Implementing_Procedures.pdf)

NCPC's Review Authorities

<https://www.ncpc.gov/review/overview/>

NCPC Submission Guidelines

<https://www.ncpc.gov/review/guidelines/>

Comprehensive Plan for the National Capital (2016)

<https://www.ncpc.gov/plans/compplan/>

Federal Environment Element (2016)

[https://www.ncpc.gov/docs/07\\_2016\\_Environment\\_Element\\_2.29.16.pdf](https://www.ncpc.gov/docs/07_2016_Environment_Element_2.29.16.pdf)

Flood Risk Management Planning Resources for Washington, DC (2018)

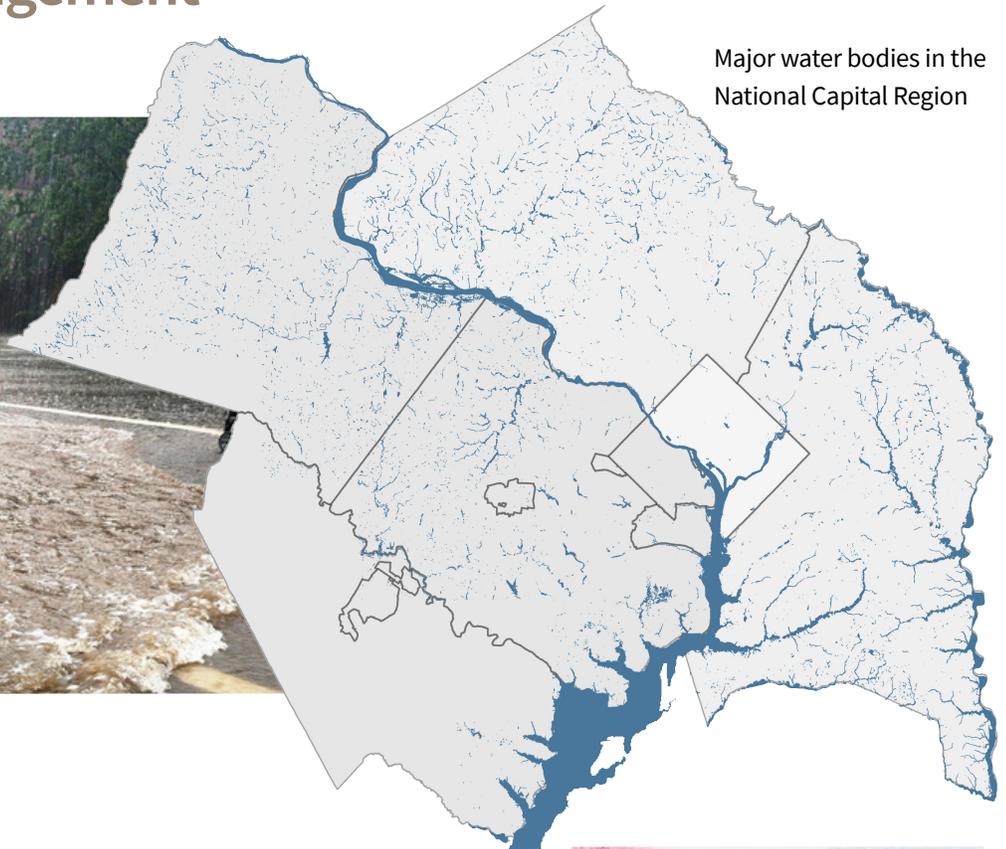
[https://www.ncpc.gov/docs/Flood\\_Risk\\_Management\\_Planning\\_Resources\\_January\\_2018.pdf](https://www.ncpc.gov/docs/Flood_Risk_Management_Planning_Resources_January_2018.pdf)

NCPC Flooding and Resilience Topic Page

<https://www.ncpc.gov/topics/flooding/>



# Stormwater Management



Major water bodies in the National Capital Region

## Overview

Federal and local government agencies in the National Capital Region (NCR) have developed strict regulations to reduce water quality problems from stormwater runoff. The NCR features major water bodies such as the Potomac and Anacostia Rivers, Rock Creek, and their tributaries which flow to the Chesapeake Bay. Stormwater management is a key issue in the National Capital Planning Commission's (NCPC) plan review process to improve the region's water quality and reduce interior flooding. It also has implications for site design.

Federal agencies are required to meet both federal and applicable state and local stormwater requirements. NCPC reviews plans in the District of Columbia, Maryland, and Virginia. Each jurisdiction has different performance requirements to limit the quantity of stormwater that can leave a project site. At the same time, they share a similar goal of protecting and preserving both on-site and downstream water resources. In addition, all requirements provide common stormwater management practices to achieve retention requirements. This resource guide outlines the region's varied stormwater regulations and federal requirements, and explains how they relate to NCPC's review process. Identifying opportunities to integrate stormwater management practices early into the site and building design process, and using it as a landscape design tool, creates a better site plan and can help streamline NCPC's review process. This resource guide is for general information purposes, and is not a regulatory document.



### **Stormwater Management Technologies**

Green infrastructure, low impact development, and environmental site design mimic the natural hydrologic cycle of infiltration, evaporation/transpiration, and re-use of rainfall. Some examples include bioretention areas, rain gardens, swales, porous pavement, trees, cisterns, and green roofs.

## Legislation and NCPC Authorities

As shown in the chart below, there are two primary authorities for stormwater management: the Clean Water Act (CWA) and Section 438 of the Energy Independence and Security Act (EISA).

- The CWA, enacted in 1972, delegates responsibilities to each state to manage local requirements for stormwater. Compliance with local regulations stems from the CWA. As a result, the District Department of Energy and Environment (DOEE), the Maryland Department of the Environment (MDE), and the Virginia Department of Environmental Quality (VDEQ) administer local stormwater management regulations for projects located in Washington, Maryland, and Virginia, respectively.
- In 2007 Congress enacted EISA, which requires federal agencies to reduce stormwater runoff from federal projects to protect water resources. In 2009, President Obama signed Executive Order (EO) 13514 “Federal Leadership in Environmental, Energy, and Economic Performance,” calling upon all federal agencies to “lead by example” to address a wide range of environmental issues, including stormwater runoff. In 2015 this EO was revoked and replaced by EO 13693 “Planning for Federal Sustainability in the Next Decade.” EO 13693 directed federal agencies to improve agency water use efficiency and management by installing appropriate green infrastructure features on federally owned property. In 2018, President Trump issued EO 13834 “Efficient Federal Operations.” Referencing the requirements of EISA, this order requires federal agencies to reduce potable and non-potable water consumption and comply with stormwater management requirements.

## Federal Requirements

### Section 438 of the Energy Independence and Security Act

Congress enacted EISA in recognition that stormwater runoff in urban and developing areas is one of the leading sources of water pollution in the United States. The intent of this legislation is to require federal agencies to maintain or restore pre-development site hydrology to the maximum extent technically feasible during the development or re-development process. Federal agencies can comply with EISA by using a variety of stormwater management practices, including green infrastructure or low impact development. For additional information on Section 438 of EISA and for a copy of the technical guidance, see: <https://www.epa.gov/nps/stormwater-management-federal-facilities-under-section-438-energy-independence-and-security-act>.

The retention volume required under EISA is often more stringent than local requirements. Unlike local regulations, there is no regulatory agency that reviews EISA compliance, so each agency is independently responsible for ensuring compliance. EISA is self-regulating and relies on a project’s professional engineer to review the final design and construction documents.

### Federal Requirements

Regulations	Guidelines	Stormwater Review Trigger (Land Disturbance)	Project Types	Off Site Retention Allowed?	Stormwater Retention Volume Standard	Quantity Control Requirements Detention Standards
Section 438 of the Energy Independence and Security Act of 2007	2009 technical guidance on implementing the stormwater runoff requirements for federal projects under Section 438 of the EISA	≥ 5,000 SF	1. Development 2. Redevelopment	No, retention volume must be provided using on-site management practices	1.7” (95th percentile rainfall event)	2- and 10-year frequency (EPA)

Each federal agency has an individual responsibility to comply with CWA, EISA, and EO 13834. By complying with local regulations, federal agencies are complying with the CWA. NCPC facilitates compliance by ensuring federal agencies are working with the appropriate regulatory agencies.

## Section 438 Implementation Process

### 1. Determine Applicability Requirement:

Apply to all federal projects with a footprint greater than 5,000 square feet.

### 2. Establish Design Objective:

Maintain or restore pre-development hydrology

#### OPTIONS

1. Total volume of rainfall from 95th percentile storm is to be managed on-site.
2. Determine pre-development hydrology based on site-specific conditions and local meteorology by using continuous simulation modeling techniques, published data, studies, or other established tools. Determine water volume to be managed on-site.

Design water volume to be retained.

### 3. Evaluate Design Options

Meet design objective to the maximum extent technically feasible (METF).

Design water volume to be retained

#### TYPICAL ON-SITE DESIGN OPTIONS

- Bio-retention areas
- Permeable pavements
- Cisterns/recycling
- Green roofs

Use any combination of on-site options to achieve the design objective to the METF.

Document site-specific constraints, for example:

- Retaining stormwater on-site would adversely impact receiving water flows.
- Site has shallow bedrock, contaminated soils, high ground water, underground facilities or utilities.
- Soil infiltration capacity is limited.
- Site is too small to infiltrate significant volume.
- Non-potable water demand (for irrigation, toilets, wash water, etc.) is too small to warrant water harvesting and reuse systems.
- Structural, plumbing, or other modifications to existing buildings to manage stormwater are infeasible.
- State or local requirements restrict water harvesting.
- State or local requirements restrict the use of green infrastructure/low impact development.

### 4. Make Selection

Selected on-site design options

- Remaining water volume?
- off-site options (optional)
- Selected off-site design options

### 5. Finalize Design and Estimate Cost

## The Clean Water Act

The CWA includes provisions that regulate the discharge of pollutants into waters of the United States, a term defined largely by case law. For stormwater management, the two most important provisions are the National Pollutant Discharge Elimination System Stormwater Program (NPDES) and Impaired Waters Total Maximum Daily Load (TMDL). State regulations generally integrate requirements of NPDES and TMDL permits.



When several stormwater management regulations apply, applicants should use the most stringent set of regulations.

## Local Stormwater Management Regulations

In addition to federal regulations, applicants must comply with the applicable state stormwater rules based on the project location. Projects in Washington, DC, Maryland, or Virginia must comply with stormwater management regulations administered either by the DDOE, MDE, or VDEQ, respectively. Applicants should work with the relevant permitting agency, depending on the project location, to determine applicable local stormwater regulations. Links to each agency are located under applicant resources.

## How does NCPC review overlap with local and federal stormwater management requirements?

In early project stages, including the environmental compliance process and concept design review, NCPC staff encourages applicants to identify opportunities to integrate stormwater management practices into the landscape and building design to address local and federal requirements. In review of preliminary submissions, NCPC staff will confirm that the applicant is devising a stormwater management approach and has begun working with the applicable permitting agency (DOEE, MDE, or VEDQ) based on the project location. At final approval, NCPC expects a more detailed stormwater management plan with general concurrence from the permitting agency. See the NCPC Submission Guidelines for more information on stormwater management requirements for each stage of project review.

With respect to federal standards, NCPC requires a technical memo explaining how the project meets Section 438/EISA requirements to the maximum extent technically feasible, and what kind of low impact design practices are implemented.

## Applicant Resources

**State of Maryland**, Maryland Department of the Environment <https://mde.maryland.gov/Pages/index.aspx>

**The Commonwealth of Virginia**, Virginia Department of Environmental Quality <https://www.deq.virginia.gov/>

**District Department of Energy and Environment** <https://doee.dc.gov/>

### Federal Regulations

**Stormwater Rule:** Stormwater Management for Federal Facilities under Section 438 of the Energy Independence and Security Act <https://www.epa.gov/nps/stormwater-management-federal-facilities-under-section-438-energy-independence-and-security-act>

**Design Guidance:** Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act <https://www.epa.gov/sites/production/files/2015-09/documents/eisa-438.pdf>

Submission Guidelines: <https://www.ncpc.gov/review/guidelines/>

# Review of Projects from the Washington Metropolitan Area Transit Authority

## Overview

In accordance with the Washington Metropolitan Area Transit Authority (WMATA or Authority) Compact,<sup>1</sup> the National Capital Planning Commission (NCPC) receives notice and has an opportunity to comment on WMATA's mass transit plan and amendments. WMATA plans reviewed by the Commission per this agreement have ranged from major projects, such as the placement and design of Metrorail stations and route alignments, to relatively small-scale projects, like the reconfiguration of parking areas.<sup>2</sup> Depending on the complexity of the project and level of federal interest, the Commission will either review the project in an open session or on its consent calendar. Minor projects may be delegated to the Executive Director.



## WMATA Compact

WMATA is the multi-jurisdictional government agency that operates certain rail and bus service in the greater Washington area. The agency was created as part of an agreement between the District of Columbia, Maryland, and Virginia to plan, develop, finance, and operate the region's mass transit system, including Metrorail and Metrobus. The WMATA Compact, the guiding document for WMATA, sets the terms of the agreement, including the planning of the mass transit resource system. In particular, the Compact requires that WMATA develop and adopt a mass transit plan, which should "include one or more plans designating:

- The transit facilities to be provided by the Authority, including the locations of terminals, stations, platforms, parking facilities and the character and nature thereof;
- The design and location of such facilities;
- Whether such facilities are to be constructed or acquired by lease, purchase, or condemnation;
- A timetable for the provision of such facilities;
- The anticipated capital costs;
- Estimated operating expenses and revenues relating thereto; and
- The various other factors and considerations, which... justify and require the projects therein proposed."

<sup>1</sup> As amended and codified in DC Code § 9-1107.01

<sup>2</sup> Note that while the Commission is provided an advisory review opportunity over WMATA projects, if a submitted project relates to WMATA activities but occurs on federal land in the District, the applicant would be the federal agency and the Commission would exercise its approval authority over the WMATA project on federal land.

Per the stipulations outlined in the Compact, any alterations, revisions, or amendments to the plan must be forwarded to certain agencies for review, including NCPC. Though all such modifications to the plan are submitted to NCPC, because of its mission, NCPC is most interested in amendments that propose alterations, revisions, or amendments to the design, location, and character of transit facilities, such as terminals, stations, platforms, and parking facilities. Other modifications to the plan, such as those related to funding and revenue are outside of the purview of NCPC.

## NCPC Review Interest

Consistent with WMATA’s procedure for comment on Mass Transit Plan amendments, WMATA forwards all projects relating to the design, location, and character of facilities throughout the Metro system to the Commission for comment. Staff will determine if Commission review and comment is required, or if the project falls within the exception criteria described in Chapter 8 of the NCPC Submission Guidelines. Any comments from the Commission will serve as official correspondence to inform the WMATA Compact Public Hearing process.

In general, the Commission has the strongest interest in Metro projects proposed within the L’Enfant City, or on or adjacent to federal property. However, certain other major modifications, such as the establishment of new Metrorail transit lines, changes to existing Metrorail transit lines, or development of new Metrorail stations, have a strong nexus with the federal interest, which includes the orderly development of the National Capital, regional sustainability, multimodal transportation, and other principles described in NCPC’s plans and policies. Consequently, WMATA should expect that NCPC will comment on these projects.

The extent of NCPC comment may vary—ranging from delegated actions by the NCPC Executive Director to review by the Commission at one of its monthly public meetings. As with all projects reviewed by NCPC, the Commission will comment on the consistency of WMATA projects with the Federal Elements of the Comprehensive Plan for the National Capital and other areas of federal interest. The appropriate level of NCPC review must be determined by NCPC staff upon notification of the project. Should staff determine that there is no federal interest, the agency will issue an exception letter.

**Metrorail Transit System**



## Applicant Resources

Washington Metropolitan Area Transit Authority Compact

[https://www.wmata.com/about/board/upload/Compact\\_Annotated\\_2009\\_final.pdf](https://www.wmata.com/about/board/upload/Compact_Annotated_2009_final.pdf)

