

The Committee of 100 on the Federal City



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Founded 1923

July 10, 2017

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Anne R. Schuyler
General Counsel
National Capital Planning Commission
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Washington, DC 20004
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Dear Ms. Schuyler:

The Committee of 100 on the Federal City is pleased to comment on The National Capital Planning Commission's (NCPC) recent proposed revisions to 1 CFR Chapter VI and draft Submission Guidelines both for NCPC's administrative responsibilities under the National Environmental Policy Act (NEPA).

We compliment the Commission and Commission staff on a well-executed effort. Both the revised rule and draft submission guidelines are clear, informative, and will improve greatly your important and complex stewardship mission in our nation's capital and adjoining jurisdictions. Simply put, this effort should serve well your many constituencies and your responsibilities under law. Congratulations.

The Committee of 100 has no detailed or specific comments on either draft – primarily as the effort has been well executed as we note above. Rather, we wish to raise three, broad public policy issues about which we have concerns or on which we ask the Commission to focus more expansively or clearly in either the draft rule or the guidelines or both.

1. Loss of a More Robust Relationship with Historic Preservation and the National Historic Preservation Act (NHPA). In the Supplementary Information Section at the beginning of the draft regulation, you explain clearly and logically why references to and connection with Section 106 of NHPA have been significantly “dialed down” from the current rule. And while the rationale makes sense both in terms of clarity and elimination of duplication, the policy message

(whether intentional or no) runs counter to current trends in environmental law, regulation, administration, and popular culture. In the years since passage of the NHPA (1966) and NEPA (1969), professional, legal, and public understanding of the interconnectedness between our nation's material heritage and the natural environment has grown closer and is increasingly permeable. So much so that in many instances the distinction is largely nonexistent for many communities or interests.

We know you are well aware of this national trend, but the implicit message in the draft rule (and to some extent in the guidelines) may run counter to this and seemingly enforce a retrenchment of the two policies (NEPA and NHPA) as sequential (usually NEPA compliance first – then NHPA), separate, and/or unrelated. Please give serious consideration to this implicit message and, wherever practicable, underscore explicitly and prominently the larger public policy goal and evolving national interconnectedness trend in the final rule and administrative guidance. Put the Commission squarely in the local forefront of this issue. As many have come to believe, “It’s really all one.”

2. CATEX Administration. Without Categorical Exclusions, environmental compliance bogs down irreparably at the federal, state, tribal, and local government levels. CATEX’s are fundamental to cost-effective government – now more so than ever. The efficacy and wisdom of the specific proposed changes to CATEX criteria in §601.12 of the draft rule (dropping some current and amending or adding new) are best judged by the Commission and Commission staff based on what we presume to be hard-won battles and experience. However, we observe that both the guidelines and the proposed rule are largely silent on NCPC’s own administrative processes, criteria, and procedures for triggering a CATEX. The administrative aspects (what triggers a CATEX, at what Commission level the decision is made, what the internal process for doing so, and how (and if) the public is involved) are all noticeably absent from the current drafts. Management by “situational administrative habit” has its benefits both in terms of speed and flexibility – particularly in “good” political times. However, in a more problematic environment, a process and criteria spelled out in administrative procedure or (better) in regulation can better withstand challenge. Too, it is always preferable in the name of transparency to spell out “how something works”. We recommend your considering this in your current efforts to revise the rule or the submission guidelines or both.

3. Public Involvement. The two drafts are largely silent on goals, criteria, and processes for meaningful public role in the NEPA processes under the Commission’s oversight. Based upon our years of experience in the Washington DC Metropolitan Area, there is oftentimes little awareness and opportunities for meaningful public discourse. NCPC has a laudable and user-friendly website to be sure. But oftentimes this is insufficient to foster meaningful citizen awareness and involvement, particularly where constituency or local communities have neither the sophistication, technology, nor access to “professionals.” Of course, this concern will not apply to every NEPA project within the Commission purview. Too, we understand you are contemplating developing a companion public consultation guideline - all a positive move to be sure. That notwithstanding, we encourage your adding meaningful and minimal public participation policy goals and criteria in this current exercise. Federal Register notices or posting on a website are oftentimes insufficient to “get the job done”.

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Thank you for the opportunity to comment on these important documents. Founded in 1923, the Committee of 100 on the Federal City is an independent, not-for profit, citizen organization dedicated to safeguarding the important values that give our nation's capital its distinction and community character. Again, congratulations on a job well done. If we may be of further assistance to you in this important matter, answer questions, or provide additional information or clarification, please contact de Teel Patterson Tiller at pat_tiller@prodigy.net or at 703-501-8270 or at the above address.

Sincerely,

A handwritten signature in blue ink that reads "S.A. Hansen". The signature is fluid and cursive, with a horizontal line at the end.

Stephen A. Hansen, Chair

cc: Diane Sullivan, Director, Urban Design & Plan Review Division, NCPC –
diane.sullivan@ncpc.gov
Matthew Flis, AICP, Senior Urban Design, NCPC – matthew.flis@ncpc.gov