

**National Coalition to
Save Our Mall**
Preserving Our Monument to Democracy



Judy Scott Feldman, PhD
Chair
National Coalition to Save Our Mall
9507 Overlea Drive
Rockville, MD 20850
July 27, 2008

Harry Rombach, RA
Associate Director, Facilities Master Planning
Smithsonian Institution
600 Maryland Avenue, SW, Suite 5001
PO Box 37012 MRC 511
Washington, DC 20013-7012

Re: Tier 1 Final Environmental Impact Statement for the NMAAHC

Dear Mr. Rombach:

We appreciate the opportunity to comment on the Tier 1 Final Environmental Impact Statement dated June 2008 for the Smithsonian's National Museum of African American History and Culture. The National Coalition to Save Our Mall submitted major comments and concerns regarding the EIS on February 1, 2007 and on the Draft EIS on January 10, 2008 (attached). In our opinion, the Tier 1 document does not adequately and directly address our stated concerns.

In the April 15, 2008 joint Smithsonian-National Capital Planning Commission letter to the National Trust for Historic Preservation responding to the Trust's concerns about the use of tiers in the EIS process—a concern the Coalition stated also in our January 10 comments—, SI and NCPC defended the tier process because “there are a series of decisions SI must make about project development before it can submit a concept for NCPC's review.” After reviewing the Tier 1 document, we believe that the partial nature of the information and analysis contained in it does indeed make it difficult, as the Trust feared, for the public to give substantive comments at this stage of the process and could foreclose alternative consideration about size, shape and placement in the second tier. The Smithsonian, in our view, should not submit the project to NCPC for concept review before all the necessary data has been compiled and evaluated in a fully complete EIS.

The National Coalition to Save Our Mall has gone on record with our view that no permanent structure of any nature should be put on that site, which is part of a national historic landmark, on the grounds of the Washington Monument. As is evident in any objective review of the Tier 1 of the EIS, this landscape is of preeminent importance to the experience, setting, and views of the Washington Monument at the heart of the National Mall; any construction here will have adverse and irreparable impacts. Nonetheless, we have been participating in the Historic Preservation Act Section 106 review in hopes that we can help mitigate adverse impacts and make the Museum as much as possible a positive contribution to the Mall's value to the nation. The EIS documentation is a crucial tool for identifying the affected resources and potential impacts before any decisions are made.

The Tier 1 document confirms our fear, however, that critical information has not yet been collected or evaluated and will not be made available until the Tier 2 stage. Questions about flooding, flood plain, groundwater, and related effects on the museum structure itself, on nearby public buildings and areas, the National Mall, and the Washington Monument could be potentially the most serious challenges for this project. The document mentions older studies on these topics and states that new, updated data will be collected, then provides reassurances that there will be no significant impact. What is the basis of that (pre-determined) conclusion? How can that be stated before the required studies have been completed? What about potential impacts of climate change, rising ocean levels, intensifying storms, which are not mentioned in the Tier 1 document? Will that be studied in the Tier 2 review? The public cannot make intelligent comments at this point without answers to these questions.

The Smithsonian's stated intention to move forward with NCPC concept review even before critical data is collected and analyzed suggests that the desire to confirm the site is driving the review process instead of an objective, scientific evaluation of conditions and effects to the historic resources. This would be contrary to CEQ Regulations, as noted in our January 10, 2008 comments included below.

The rest of our comments focus primarily on two topics that bear on the integrity of the National Mall, which is of particular interest to our Coalition—flooding and the stability of the Washington Monument.

Washington Monument Stability

At the last Section 106 meeting, in May 2008, I raised the question, as the Coalition has asked repeatedly in the past, about potential impacts of building on this site—part of the grounds of the Washington Monument—on the stability of the nearby Washington Monument's foundation, which is not built to bedrock. At that time, I was assured by representatives of both the Smithsonian Institution and the National Park Service that no harm would be allowed to come to the Monument. What is the basis for that statement? Where is the data and evaluation of groundwater, water table fluctuations, soil conditions, and tilt—conditions relating to the stability of the Washington Monument's foundation that have concerned Congress and hydrologists since the 1880s? Maybe engineering data exists to prove new, nearby construction would have no effect, but the Tier 1 document does not provide it or give confidence that the SI even intends to study this critical question.

- **Section 6.3.1. What are the key considerations about geology, soils, and groundwater** identifies “key considerations” including, “If temporary or permanent dewatering associated with construction or operation could lower groundwater levels, which could affect the stability of soils within the immediate vicinity of the site.” There is no mention of the Washington Monument or the history of concern about its stability, including effects of dewatering by projects as far away as 12th Street. Does the immediate vicinity include the Monument? If not, why not?
- **Section 6.3.5 What Are the Current Groundwater Conditions** states that “no geotechnical survey has been conducted,” and that SI is relying in Tier 1 on surveys conducted by the Park Service in 1999 and 2002. It then states that Tier 2 of the NEPA process will include a full geotechnical survey of the area. Clearly there is no updated data available at this time to make any objective, informed decision. The reason the NPS undertook those studies in 1999 and 2002 (did they even include borings on this site?) was to gauge the potential impact of relatively minor grading changes on the stability of the Monument's foundation. If grading changes hundreds of feet from the Monument

- raised questions of adverse impacts to the Monument, then how much more should major construction of the Museum on the Monument grounds do so?
- **Section 6.3.5** states that the Tier 2 groundwater data will “be used to develop proper engineering methods.” But that forecloses the possibility that any as-yet-unknown soil and water table problems affecting the stability of the Washington Monument could force a reevaluation of risk and thus of the site.
 - **Section 7.3.3 Analysis of Cumulative Impacts for Geology and Soils** states that impacts are site specific and that “no cumulative impacts to either geology or soils would occur under any of the proposed alternatives.” What is the scientific basis for that conclusion that the impacts would be only site specific? Cumulative impacts need to look further afield than the immediate site. The soils that support the foundation of the Washington Monument, with its long, well-documented history of geologic and soil issues, needs to be part of this evaluation.

If major construction on the Museum site is determined by engineers to have potentially adverse impacts on the Monument’s stability, how will those potential impacts be mitigated? Can we risk undermining the stability of the obelisk? If the data proving the future stability of the Monument is already known by SI, then that data should be made public now, as part of the Tier I process. If the data is not yet available, the possibility of seeking alternatives to the site should not be ruled out.

Flooding and Floodplain Designation

- **Section 3.2.3 on Groundwater, Soils, and Flooding** notes the concerns raised repeatedly by agencies and the public about groundwater, potential effects of the stability of the Washington Monument, and flooding. The very insufficient EIS gives no confidence that a building on the site will not have substantial flooding and will not cause additional flooding to surrounding buildings and areas and will not affect water table levels under the Washington Monument’s foundation.
- **Section 7.3.4 Analysis of Cumulative Impacts for Surface Water and Floodplain Resources** mentions the June 2006 floods and states that, “implementation of any of the proposed Action Alternatives may alter floodwater flows from similar flooding events.” It mentions a list of projects, from the Vietnam Veterans Visitors Center to the Behring Center, that could result in noticeable changes in floodwater flows in the downtown Washington, D.C., area. But the EIS then states “adverse cumulative impacts to floodplains would not be considered significant.” What is the basis of that surprising conclusion?
- Why is there no evaluation of the effects of climate change, rising sea levels, and increasingly powerful storms— which could greatly exacerbate the existing flooding problem? This low-lying location could expect effects to be more dramatic than most parts of the Mall or the city.
- The EIS acknowledges that the cause of the devastating June 2006 flooding has “not yet been determined” by the Army Corps or FEMA, although the source was interior flooding, not Potomac River flooding. Improvements to the Potomac Park levee system at 17th Street, N.W., now being planned by DC Government and FEMA are intended only to protect against river flooding and will not address the question of interior flooding. Therefore, the potential impacts of more 2006-type flooding events is unknown at this time. Can we move forward not knowing the answers to the question of interior flooding? In our opinion, no.

- We are surprised and concerned that neither FEMA nor the Smithsonian in the EIS has identified and evaluated the potential effect of Tiber Creek, which runs beneath Constitution Avenue, on the site and what possible role it played in the June 2006 floods. We strongly believe that more information and evaluation is required about both the past and potential future effect of Tiber Creek on flooding in this area as part of the Tier 1 review.
- **Section A.1.16 Executive Order 11988.** Does this project violate this executive order — if FEMA decides to confirm its new flood map? The executive order states that, “To achieve flood protection, agencies shall wherever practical elevate structures above the base flood level rather than filling in land.” 7.3.3 states that slurry walls would be used during construction and operation. Would this violate the Executive Order?
- Is SI applying this Executive Order to the evaluation of the potential effects of water table fluctuations on the stability of the Washington Monument?

Regarding Executive Order 11988, FEMA’s June 27, 2008 letter to the Coalition states that it has cancelled the September 26, 2008 effective date of the new FEMA Flood Insurance Rate Map to allow time for improvements to be made to the Potomac Park levee system. But the levee at 17th Street addresses only Potomac River flooding, not the kind of interior flooding that devastated buildings in Downtown and along the Mall, including the National Archives. Even with the 17th Street levee in place, FEMA may be compelled to reinstate the new flood maps, after the 18-month provisional grace period, until the interior flooding problem can be identified and fixed. In that case, the Executive Order would be in effect for this project.

Other Adverse Impacts

- As is clearly illustrated in various diagrams in the Appendix, any design configuration on this location will have overwhelming adverse impacts on the historic grounds of the Washington Monument and surrounding views from multiple locations of the Washington Monument grounds and the Monument itself. Any design will obstruct numerous views from 14th Street, N.W., and the grandeur of the Monument will be eliminated.
- Any of the potential building configurations, especially the freeform, is incompatible with the architectural surrounding.
- Any structure on this location will have a tremendous adverse effect on the historic Federal Triangle, including views to and from this area in all directions.

The purpose of the environmental review is to identify potential adverse effects and appropriate mitigation measures. The “Tier 1 Final Environmental Impact Statement,” however, lacks critical information to allow the public to comment adequately on effects or mitigation. Until the Tier 2 portion of the EIS is completed, and the public has the data with which to evaluate effects and alternatives, this should not be considered a “final” document. Nor should any action be taken to seek NCPC concept approval.

For this project, the environmental process already has been compromised, but that should not be allowed to affect the ongoing EIS process. The Smithsonian Institution Board of Regents decided on this location prior to the Environmental Impact Study and initiation of the Section 106 public consultation process. In our opinion, that was putting the cart before the horse. Making the site decision before the environmental studies is contrary to the National Environmental Policy Act, which calls for federal agencies to study the impact of new projects.

We realize the Smithsonian does not consider itself fully a federal agency. Regardless of whether it considers itself a federal agency or not, this is federal land—and the fact that SI is doing an EIS seems to acknowledge its responsibility. However, the EIS process cannot simply confirm the initial decision but must objectively evaluate the potential impacts. If they are revealed to be insurmountable or potentially destructive, then there must be a way to revisit the decision for this location.

Sincerely,

A handwritten signature in blue ink that reads "Judy Scott Feldman". The signature is written in a cursive, flowing style.

Judy Scott Feldman, PhD
Chair

cc: Advisory Council on Historic Preservation
Commission of Fine Arts
Council on Environmental Quality
DC State Historic Preservation Office
National Capital Planning Commission
National Park Service
National Trust for Historic Preservation
DC Preservation League
Committee of 100 on the Federal City

Comments of
NATIONAL COALITION TO SAVE OUR MALL
At public hearing
On Draft EIS for
NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE
January 10, 2008

My name is George H. F. Oberlander, representing the National Coalition to Save Our Mall, a coalition of professional and civic organizations and other concerned historians, artists and citizens, to provide a constituency dedicated to the protection and preservation of the Mall in the National Capital.

Our mission is to defend our national gathering place and symbol of constitutional principles against threats posed by proposals for new memorials, museums, security barriers, service buildings and roads, that would encroach on the Mall's historical and cultural integrity, its open space and sweeping vistas and significance in American public life. We strongly support the Congressional moratorium on additional construction on the National Mall.

We are consulting parties in the Section 106 historic preservation process, assessing possible adverse impacts of the proposed EIS alternatives on the numerous historic resources associated with each alternative. That process is still continuing and going on.

Last February the Coalition submitted nine major comments and concerns regarding the EIS, by our Chair Judy Feldman. I herewith resubmit those February 1, 2007 comments since in our opinion, the Draft EIS, being discussed this evening, does not adequately and directly address any of the stated concerns. We hope the Final EIS will more adequately and specifically address those concerns. I will not read them now.

What I will discuss now is the Coalitions real concern over the improper process undertaken and the EIS being used as justification for Smithsonian decisions.

- This EIS has been developed after the site location had been decided by the Board of the Smithsonian, Jan. 30, 2006.
- CRQ Regulations specifically state "primary purpose of an EIS is to serve as an action forcing device" and be used by the Federal Agencies "to plan actions and make decisions". (Sec. 1502.1 CEQ Regs)
- The Smithsonian Board decided on the location before the required EIS was prepared to evaluate alternatives.
- In other words tonight's hearing is after the site decision has already been made. So why discuss alternatives including the no action alternative?
- The EIS is now being used to justify the earlier decision. This is contrary to CEQ Regulations which seeks documentation upon which the site location decision can be made.
- We are very disappointed about the course of events and further unhappy that a review agency (that has disapproval authority for each of the alternatives) is party to such after the decision fact justification.

The EIS and the 106 process are responsible for identifying appropriate mitigation measures, on adverse impacts, not already included in the proposed action or alternatives. (CEQ Regs. Sec. 1502.14(f)).

It is difficult to understand that the proposed action of placing a building on the northeast corner of the Washington Monument Grounds is a possible mitigating measure on the impacts on

historic resources. Rather we believe that that action is a major environmental consequence on urban quality, historic and cultural resources and the design of the Washington monument and its grounds. (CEQ Regs. Sec. 1502.16(g)).

In our opinion there should not be any building on the preferred site at all. **It is rather doubtful that all of the major adverse impacts on the historic resources can be mitigated.**

We are not opposed to the creation of the Museum. In fact the Coalition testified in its support when Congress was considering its legislation. (July 9, 2003 Comm. on House Administration).

We are opposed to the site selected by the Smithsonian for the museum and the process the Smithsonian is following to obtain the required building approvals.

We realize that much time and effort has been spent on this project, and that the Congress identified four sites from which to choose. We are realists to the extent that the Smithsonian is going through the EIS/Sec. 106 review process to obtain approval for the selected preferred site. This seems like a “Done Deal”.

Nevertheless, our concerns should be noted, responded to and made part of the EIS record.

A new issue has developed for the preferred site. The site location is in the new FEMA mapped flood zone. (Map attached)

Section 6.3.5 of the EIS, Flooding and Flood Controls (page 178), states that “the area is outside of the currently designated FEMA flood hazard zone”. **The new FEMA proposed maps now includes the site in the flood zone. The DEIS must be corrected to address this serious issue.**

In fact the Acting Executive Director of NCPC was quoted in the Washington Post last Friday, saying:

“The proposed flood plain map modifications...may have a potentially adverse impact on federal operations...within the Nation’s Capital”. For reference we have attached a portion of the FEMA proposed maps indicating the approximate preferred site location in the flood zone.

Section 6.1, Cultural Resources and Section 6.2, Aesthetics & Visual Resources, are insufficient. Although mentioning the ongoing Sec. 106 process anticipating a programmatic or memorandum of agreement by the summer of 2008, it does not identify the various unresolved aesthetic and visual issues which may not be able to be mitigated or mitigatable.

The intent is to append the agreement to the Record of Decision (ROD) to be issued during the summer months (Page 34). The EIS process is being tiered.

In our opinion, the tiered EIS approach divides and conquers the required process. It delays the hard decisions for a later time. We believe all the mitigating issues should be resolved (if possible) before the ROD. There is considerable doubt that placing a structure, of whatever design and magnitude, on the preferred site, can deal adequately with all of the visual and historic adverse impacts identified and needing mitigation.

Last but not least an item not mentioned in the DEIS but raised by the Coalition. If and when the museum is built on the preferred site, a definite program be included and established for day and night activities outside the structure to help animate this part of the Washington Monument Grounds and the Mall. We have suggested this several times but no reference or analysis or evaluation of the idea is in the DEIS.

Thank you.