

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



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August 28, 2008

John V. Cogbill, III  
Chairman  
National Capital Planning Commisison  
401 9th Street, NW  
North Lobby, Suite 500  
Washington D.C. 20004

Dear Chairman Cogbill and Commissioners:

The National Coalition to Save Our Mall supports creation of the Martin Luther King Jr. Memorial on the National Mall. We have been participating in the Historic Preservation Section 106 public consultation process and have provided written comments on the 2005 Environmental Assessment for the project. In our opinion, the proposed Visitor Facility (bookstore/restroom) component—added to the project in 2005 and enlarged in size, location, program and design since that time—overwhelms the site and detracts from the Memorial itself and should not be given final approval by the National Capital Planning Commission. We have additional questions and concerns we hope NCPC will take into serious consideration during its September 4 review of the MLK Memorial project.

In our August 11, 2008 letter to the National Park Service, which is attached, we stated our view that NPS should not have sought on July 3, 2008 preliminary approval of site and building plans for the Visitor Facility component of the Memorial project, and that the NCPC should not have given approval. The decision was premature and should now be reconsidered.

NPS's Legal Authority and Environmental Documentation for the Visitor Facility

We ask that you read our August 11 letter to the NPS in which we raise a number of questions and concerns, in particular about the Visitor Facility element, including:

- What is NPS's legal authority for adding a Visitor Facility to the Memorial's program in 2005, two years after Congress enacted a moratorium on memorials and visitor centers on the National Mall?
- The July 2005 Environmental Assessment does not document or evaluate any effects on the site of the Visitor Facility, which was added to the program only after the EA was completed and mentioned the need for such a facility. Is there a supplemental environmental document that actually studies the Visitor Facility's location, size, program, style, and effects on views, vistas, public safety, traffic,

- lighting, and on the visitor experience of the memorial itself? Has it been put out for public comment? We know of no such document.
- There was, to our knowledge, no Section 106 public consultation meetings between September 2005 and March 2008, during which time NPS apparently made decisions about adding, locating, and designing the Visitor Facility in informational (nondecisional) meetings with NCPC, the Commission of Fine Arts and the DC Historic Preservation Office--decisions essentially making the facility a “done deal” before public consultations were recommenced in 2008 and our Coalition and other consulting parties had any opportunity to question the location, program, and design of the structure. Meaningful public comment was not possible.

In his August 21, 2008 reply to the Coalition’s letter, Peter May of NPS confirms that decisions about the size, configuration and location of the visitor facility were made by NPS and refined through consultation with NCPC staff before consulting parties were re-engaged in 2008. He states NPS’s position justifying the adequacy of the EA as well as the Visitor Facility’s conformance with the moratorium, since, according to NPS definitions, it is not considered a visitor center. We wonder if Congress intended such subtle distinctions between a “visitor center” and a “visitor facility” or bookstore/restroom structure. See our further comments below.

In his letter, Mr. May also appears to **dismiss the need for any environmental review at all** of the Visitor Facility, citing that the DC Historic Preservation Officer “has agreed that the visitor services facility creates no significant impacts beyond those of the Memorial itself, which the Memorandum of Agreement seeks to mitigate.” But what is the documented evidence to support that astonishing claim by NPS and DCHPO—that a new substantial structure, separate from the Memorial itself, creates no significant impacts? Clearly, this determination needs to be explained and demonstrated, and that has not yet happened.

Based on the “Note to the Public” posted on the NCPC website, it appears that NCPC agrees with NPS’s conclusions about the adequacy of the EA and the Section 106 process. Indeed, during the June 2008 Section 106 consultation, the representative from NCPC stated that it was not the job of NCPC or any project review agency to question the NPS’s decision to add the Visitor Facility to the Memorial program. Why is that? Did that (in our view erroneous) deferral to NPS’s supposed prerogative essentially short-circuit the proper Section 106 and NEPA review? Does NCPC see itself as an advocate for federal agencies? If so, how can NCPC carry out an objective urban planning review including due priority to preservation of historic resources?

#### The Commemorative Works Act, the Moratorium, and Congressional Intent

Has the NCPC evaluated the project’s conformance with the Commemorative Works Act and with the Commemorative Works Clarification and Revision Act of 2003? We see no mention or discussion in the July 3, 2008 Executive Director’s Recommendation and have not had the opportunity review any more current EDR. Has the NCPC evaluated

how the Memorial itself and the Visitor Facility element satisfy provisions of the CWA of 1986, particularly its protection of open space and historic resources? Has NCPC studied the Visitor Facility's compliance with the Congressional moratorium? What is the reasoning? Has NCPC sought Congress's advice regarding Congress's intent in imposing the moratorium? Is this structure in keeping with NCPC's own policy statement that the Mall is "a completed work of civic art"?

Regarding the Congressional moratorium, it is worth noting that the moratorium is contained in Title II of Public Law 108-126 that authorized, in Title I, a visitor center at the Vietnam Veterans Memorial. The language in that law—which both imposes a moratorium and exempts from it the Vietnam visitor center—raises questions in our mind about whether the MLK visitor facility can be considered in compliance with the CWA.

- In the legislation itself for that visitor center, it states the purpose of the Vietnam visitor center is "to better inform and educate the public about the Vietnam Veterans Memorial and the Vietnam War." The proposed facility at the MLK Memorial is intended to perform a similar function. How is it not a visitor/education center?
- With PL 108-126, Congress authorized the addition of a visitor center at the Vietnam Veterans Memorial. Did Congress specifically authorize a visitor facility at the MLK Memorial?
- The legislation also states that for the visitor center, the Commemorative Works Act "shall apply, including provisions related to the siting, design, construction, and maintenance of the visitor center." Congress's intent is clear about the applicability of the CWA. Where is the documentation showing that NCPC has similarly applied the CWA to its evaluation of the MLK Visitor Facility?
- PL 108-126 states that "the visitor center shall be considered a commemorative work for the purposes of that Act." Based on this, is the MLK Visitor Facility also to be considered a commemorative work, in which case it would require a special legal exemption from the moratorium? If not, what is the reasoning?
- PL 108-126 does not define "visitor center" but it is very clear as to what constitutes a "commemorative work"—which the Vietnam Visitor Center was considered to be one. **"The term 'commemorative work' means any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove..."** Surely, such clear intent to forbid these kinds of elements on the Mall would apply also to a Visitor Facility structure of the size and kind proposed by NPS for the MLK Memorial.

We have asked Congressional staff in relevant oversight committees their opinion about NPS's legal authority to include the Visitor Facility as part of the MLK Memorial project and we anticipate a response in the near future. In our view, this means NCPC should not give final approval at this time.

Inconsistencies between NPS and NCPC regarding the Visitor Facility's location and effects on the 4-acre site

According to the August 21, 2008 letter from NPS to the Coalition, “the entire Memorial, including the visitor services facility, fits within the approved 4-acre site.” However, during the June 2008 Section 106 meeting, a NPS representative made a point of clarifying that the Visitor Facility lies just beyond the boundaries of the site. And NCPC’s July 3, 2008 EDR describes the site whose “boundaries generally include Independence Avenue on the north, the Tidal Basin along the south and east, and a realigned West Basin Drive on the west.” The EDR’s plan clearly marks the east curb of West Basin Drive as the “extent of memorial property.” The Visitor Facility, though, is west of the realigned West Basin Drive. Is the Visitor Facility part of the memorial site or not? If outside, by what authority is the Memorial now occupying more of the open space of West Potomac Park and the National Mall?

NPS, in asserting that the Visitor Facility lies within the original 4-acre site, states that therefore “its impact to recreation in West Potomac Park is no greater than that of the original Concept Design.” But the Concept Design shown to NCPC in December 2005 included a visitor facility at the south end of the Memorial, *east* of West Basin Drive—within the boundaries of what NCPC has identified as the site footprint. How does NCPC reply to NPS’s assertion? Does the new site not impact or reduce recreation space? What about other impacts—open space, views and public safety, for example?

Unexplained changes to the scope since completion of the EA

The EA lists the Design Guidelines that were developed by the memorial sponsor and the NPS. These specifications were evaluated in the environmental document. But the current design is different in significant ways that have not been evaluated in any supplemental environmental document. For example, the Design Guidelines (EA 1-11) state:

- “No element of the Memorial shall exceed 20 feet in height.” Our understanding is that certain elements now are 28 feet in height or more (approximately a 30% increase). What effect will that considerable increase in height have on views? Where is the documentation of effects?
- “There shall be no bookstore, museum, or other rooms located at the Memorial, above or below grade.” However, now the project includes a Visitor Facility.
- “There shall be no restroom facilities at the Memorial.” Now there are proposed restrooms.
- The EA states that a bookstore and restrooms are expected by visitors but that they “would be inconsistent with the design parameters” and “previous NPS policy that emphasized centralized restrooms in the Mall area.” Did NPS change policies to accommodate this new addition to the memorial project?
- Under “Mitigation” the EA states “restroom facilities should be provided...should be unobtrusive in scale.” But adding the Visitor Facility structure cannot be simply seen as mitigation. **It is a substantial adverse effect in its own right.**

Yet, the EA never evaluates this structure with plans, elevations, views, and the like.

In conclusion, there are substantial gaps and inconsistencies in information and environmental documentation for the MLK Memorial project that do not allow for any final decision to be made at this time. We are aware that Congressional authorization for the Memorial expires in November 2008 and that NPS is rushing to meet that deadline. We have no doubt, however, that Congress would reauthorize this Memorial, which has so much national public support. Meeting artificial deadlines should not be the basis of any official decision, especially when so many substantive questions remain unresolved.

Sincerely,

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

Judy Scott Feldman, PhD  
Chair and President

Enclosure