



November 9, 2007

Sally Blumenthal
Deputy Associate Regional Director
Lands, Resources and Planning
National Capital Region
National Park Service
1100 Ohio Drive SW
Washington, DC 20242

Re: Vietnam Veterans Memorial Center

Dear Ms. Blumenthal:

On behalf of the National Trust for Historic Preservation, this letter will summarize our comments and concerns regarding the proposed design for the Vietnam Veterans Memorial Center and the consultation process under Section 106 of the National Historic Preservation Act (NHPA).

Background on the interests of the National Trust. As you know, the National Trust has had longstanding concerns regarding the adverse effects of the proposed Memorial Center on the historic character of the National Mall. We submitted comments on the Environmental Assessment (EA) for the project, on June 23, 2006 (at which time we requested consulting party status under Section 106), and we testified before the National Capital Planning Commission (NCPC) on August 3, 2006. Our concerns included the adverse visual effects of this project on the historic landscape of the National Mall and the need to address cumulative impacts, among other issues. We also objected that the Park Service failed to adequately notify stakeholder agencies and organizations under the National Environmental Policy Act (NEPA), and that less harmful alternatives were being eliminated without Section 106 consultation.

In addition to the comments we have submitted to the federal agencies involved in reviewing this project, we have also met personally with representatives of the Vietnam Veterans Memorial Fund.

Procedural Concerns

As the federal agency with stewardship responsibilities for the National Mall, the National Capital Region of the National Park Service should be setting a high standard for implementation of the National Historic Preservation Act, not only for the National Park Service as a whole, but for other agencies as well. Instead, as described in more detail below, the Park Service's Section 106 compliance in this case has been, at best, belated and begrudging –

Protecting the Irreplaceable



certainly not the exemplary model for consultation that should be expected of the Park Service.

- **The belated timing of Section 106 consultation has unduly restricted the consideration of alternatives to avoid and minimize adverse effects.**

The National Park Service has been actively involved in the planning for this project since 2004. Yet it was not until *three years* after the Park Service had begun the planning process – and more than 14 months after comments were closed on the EA – that the Park Service formally notified the Advisory Council on Historic Preservation (ACHP) that the project would have an adverse effect on historic properties, and the first Section 106 consultation meeting was held.

This belated engagement in Section 106 consultation violates the Section 106 regulations, which require the agency to “ensure that the section 106 process is initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.” 36 C.F.R. § 800.1(c). Although the Park Service purportedly “initiated” Section 106 consultation in February 2005, by writing to the DC State Historic Preservation Office (SHPO), no consultation occurred until more than 18 months later – contrary to the SHPO’s warnings that the Park Service should “ensure a measured, balanced, and inclusive consultation process allowing all interested parties a reasonable opportunity to comment *before critical project decisions are made.*” (Letter from DC SHPO to Lisa Mendelson-Ielmini, NPS (Mar. 14, 2005) (emphasis added). The SHPO also warned that “[t]he preferred site is among those with a potential for more significant adverse effects” *Id.*

The Park Service’s failure to engage in timely consultation under Section 106 has “restrict[ed] the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking’s adverse effects on historic properties,” *id.*, also in direct violation of the Section 106 regulations. By the time the first Section 106 consultation meeting was held (September 12, 2007), the final site selection had occurred more than a year earlier, and the project architects had been actively working on design concepts and securing reviews from other agencies ever since. As a result, the consulting parties for Section 106 review are placed in the unfair and difficult (if not outright unlawful) position of being limited to commenting on the “tweaking” of conceptual designs that are largely established, at a site whose selection is already final. Alternative design concepts that would be less harmful to the National Mall (to say nothing of alternative sites) have already been foreclosed, even before the first consultation meeting.

- **Notice and coordination for consultation meetings has been inadequate.**

For each of the Section 106 consultation meetings held to date (September 12 and October 24, 2007), we received *barely* two weeks’ notice in advance.¹ Fortunately, the National

¹ We received only one week’s notice that the Park Service intended to present the design to the Commission of Fine Arts (CFA) on October 18, 2007.

Trust was able to be represented at both meetings. However, we objected in writing to the fact that the second meeting was scheduled on a date when the ACHP itself was unable to participate.² We received no response from the Park Service. We know that a number of other consulting parties objected to the second date as well. Those objections were all disregarded. The suggestion that the Park Service would schedule a separate meeting with ACHP staff³ is not an adequate substitute for ACHP's participation in a consultation meeting, and indeed, completely misses the point of the ACHP's involvement in consultation.

- **The Park Service should postpone submission of the plans to the NCPC.**

Your letter dated October 9, 2007 states that the Park Service intends to submit the proposed design to the NCPC for "approval" at the Commission's meeting on December 6, 2007. While this advance notice is appreciated, we urge the Park Service to engage in further Section 106 consultation prior to submitting the proposed plans to the NCPC. Review by the NCPC will inevitably lock the Park Service even further into a design concept that is fraught with problems.

Design Concerns

In addition to our procedural concerns regarding the Park Service's failure to comply in a timely manner with Section 106 of the NHPA, we also have a number of concerns about the proposed design, which we have voiced at the Section 106 consultation meetings and in our meeting with the Vietnam Veterans Memorial Fund.

- **The proposed design is not "underground."**

The legislation authorizing the Center requires that the facility "shall be located underground." Pub. L. No. 108-126, § 101 (codified at 16 U.S.C. § 431 note, § 6(a)(2)). While the proposed design concept does call for construction to be almost entirely below the current grade or elevation, the centerpiece of the facility would be a highly visible open square pit, lined in masonry and glass, approximately 30 feet wide, more than 50 feet long, and 31 feet deep, with a bridge extending across the area halfway down. If this large sunken room had a roof, it would be "underground," but it does not have a roof, nor any other means to shield the views directly into the yawning opening.

- **The proposed design will result in an adverse visual intrusion on the historic landscape of the National Mall.**

The legislation authorizing the Center requires that "the size of the visitor center shall be limited to the minimum necessary . . . to protect open space and visual sightlines on the Mall,"

² E-mail from E. Merritt to S. Blumenthal (Oct. 19, 2007).

³ E-mail from S. Blumenthal to J.S. Feldman (Oct. 23, 2007).

Pub. L. No. 108-126, § 101 (codified at 16 U.S.C. § 431 note, § 6(b)(3)(B)), and must be “constructed and landscaped in a manner . . . consistent with the special nature and sanctity of the Mall.” *Id.* (codified at 16 U.S.C. § 431 note, § 6(b)(4)).

The proposed design does not comply with this mandate. Instead of being limited to the minimum size necessary to protect open space and visual sightlines on the Mall, the size of the facility has apparently expanded by about a third since the design process began, and is now more than 34,000 gross square feet. And instead of being “consistent with the special nature and sanctity of the Mall,” the proposed open pit design would have an adverse effect on the historic character of the Mall.⁴

Under the Section 106 regulations, four of the criteria of adverse effect are directly applicable to the proposed design concept for this project:

- “[P]hysical destruction of or damage to all or part of the property” 36 C.F.R. § 800.5(a)(2)(i);
- “Alteration of a property . . . that is not consistent with the Secretary’s Standards for the Treatment of Historic Properties” *Id.* § 800.5(a)(2)(ii);
- Changing the character of a “property’s use or of physical features within the property’s setting that contribute to its historic significance;” *Id.* § 800.5(a)(2)(iv); and
- Introduction of visual elements that “diminish the integrity of the property’s significant historic features;” *Id.* § 800.5(a)(2)(v).

These criteria confirm that the effect of the proposed design on the National Mall would be adverse on four different counts – partial physical destruction and alteration of the Mall, changing the character of physical features within the Mall’s setting, and a visual intrusion that would diminish the integrity of the Mall’s historic landscape.

- **The proposed design is inconsistent with the design guidelines adopted by the NCPC and Commission of Fine Arts (CFA).**

Although the design guidelines adopted by the NCPC and CFA in July and August of 2006 were developed without Section 106 consultation, the guidelines do represent a reasonable

⁴ Both the National Trust and the National Coalition to Save Our Mall commented at the September 12, 2007 consultation meeting that the open pit design would pose a major adverse visual effect on the historic landscape of the National Mall. However, these comments were not included in the “Meeting Summary” prepared by the Park Service. We hereby reiterate our request, made at the October 24, 2007 consultation meeting (for which a “Meeting Summary” has not yet been prepared), that the “Meeting Summary” for September 12 be revised to reflect these comments and concerns.

and thoughtful attempt to limit the adverse visual impact of the Center on the National Mall. However, the proposed design of the project is not consistent with the design guidelines. For example, the very first design guideline stipulates:

1. “The Visitor Center will be constructed *underground* as required by the authorizing legislation for the project with *no portion of the building or related building elements visible from any portion of the Lincoln Memorial steps and podium, from Constitution Avenue, and from within the axial viewsheds of 23rd Street, NW and Henry Bacon Drive, NW.*” (Design Guidelines (emphasis added).)

As discussed above, the Visitor Center would *not* be “underground” based on the current design, and the building and related elements would be *clearly* visible from the Lincoln Memorial steps and podium, even during the summer months with leaves on the trees. This is illustrated directly by Views J and K in the design materials submitted to the consulting parties (dated Fall 2007), at pages 44-45. In fact, Views J and K appear to include a structural element that sticks up above the ground level on the right (or east) side of the facility.

Design guideline # 5 provides as follows:

5. “The Visitor Center will not intrude into the landscape. No protrusions, such as skylights, monitors, *light wells, or sunken areaways*, will be visible from the sidewalk surrounding the site.” (Design Guidelines (emphasis added).)

The design materials provided to the consulting parties make it difficult to evaluate compliance with this design guideline, because most of the surrounding views illustrated in the design materials are from the perspective of a vehicle in the middle of the street or a pedestrian on the far side of the intersection, rather than the “sidewalk surrounding the site,” as called for in the design guidelines. (*See* pp.35-41, Views A-F.) However, page 30 of the design materials includes a drawing illustrating the view from the sidewalk on Henry Bacon Drive. This view makes it clear that “sunken areaways” and “light wells” will in fact be highly visible from the sidewalk, in conflict with the design guidelines.

Yet another design guideline addresses the project’s impact on recreational use of the site:

13. “The Visitor Center design *will not impede* the use of the site for multi-purpose recreation on the site.” (Design Guidelines (emphasis added).)

The design materials submitted to consulting parties show that the footprint of the facility will substantially “impede” recreation on the site, by requiring the large flat grassy area, previously available for recreation, to be chopped up into three much smaller areas, each of which would be too small for most recreational uses, with the bulk of the site off limits to recreation as a result of the open pit and other infrastructure in the middle. (*See* p.33.)

- **The proposed design is inconsistent with the assumptions on which the Environmental Assessment was based.**

In commenting on the EA, the National Trust disagreed with the EA's conclusion that the adverse visual effects of constructing the Center would be relatively minor. The whole premise of the EA was that the Center and its infrastructure would be essentially invisible. Since that time, the design has evolved substantially, in a manner that would exacerbate, not minimize, those adverse visual impacts. In fact, the current design concept is so fundamentally different from the design assumptions on which the EA was based that the EA cannot be said to have considered the adverse visual impacts of the design in any meaningful way. We believe that a Supplemental EA is necessary in order to satisfy the Park Service's requirements under NEPA. Here are a few of the statements from the EA that illustrate the EA's false assumption that the Center would not be visible:

- From the Lincoln Memorial, "The entry to the underground building would be covered by a green, vegetated roof that would appear consistent with the grassy expanse of the National Mall from the vantage point of the Lincoln Memorial and adjacent areas. Building elements . . . *would not be visible*, particularly from the Lincoln Memorial. . . . One strategy . . . an open light well . . . would be recessed into the graded lawn so that it *is not visible* from any of the surrounding streets or the Lincoln Memorial." EA at p.2-9 (emphasis added).
- "[U]se of a recessed light well would allow for . . . daylight penetration *without being visible* from adjacent and surrounding areas." *Id.* (emphasis added).
- Looking north from Lincoln Memorial Circle along 23rd Street NW, the Center "would be partially visible at the periphery of this view . . . , *appearing primarily as a grassy slope*, due to the fact that the structure would be located underground. *Built elements would not be visible.*" EA at p.4-12 (emphasis added).
- Looking north from Lincoln Memorial Circle on Henry Bacon Drive, "[t]he portions of the Center that are not obscured by the elm trees *would appear as a grassy slope.*" *Id.* (emphasis added).
- Looking south on the 23rd Street axis, "[n]o building features would be visible along 23rd Street." *Id.* (emphasis added).
- Looking south on Henry Bacon Drive, "[b]uilt elements would not be visible as a result of the grading of the site." EA at p.4-13 (emphasis added).
- "[T]he parcel would continue to appear from most vantage points as open space." *Id.*
- From Constitution Avenue, the Center "would appear as a gently sloping grassy landscape. . . . *No built elements would be visible.*" EA at p.4-15 (emphasis added).
- From the Lincoln Memorial, the EA states that Site A "*is not visible* from the mid-point of the steps," and that "the building would have a *green vegetated roof*" and

“would appear as a *sloping grassy expanse*.” EA at p.4-20 (emphasis added).

- Looking toward the Lincoln Memorial, “the current grassy open space would be replaced by a *gently raised grassy mound*.” EA at p.4-21 (emphasis added).

Clearly, these fundamental assumptions in the EA are flatly inaccurate. The simulated views in the design materials confirm that the structure and building elements will be highly visible from the steps of the Lincoln Memorial, as well as from the edges of the site. (See Views J and K, at pp. 44-45.) As a result, a Supplemental EA is required in order to evaluate the visual impacts of the Center.

We agree with the concerns expressed by the Commission of Fine Arts.

At its meeting on October 18, 2007, the CFA articulated a number of concerns about the design of the proposed project. Among many other issues, the CFA “expressed concern about the inherent contradiction of relating the VVMC’s design to that of the Vietnam Veterans Memorial and the subsequent risk of subverting the power and meaning of the original memorial.” Letter from Thomas Luebke, CFA, to Joseph M. Lawler, Regional Director, NPS (Oct. 26, 2007).

As you know, the National Trust has raised similar issues at the Section 106 consultation meetings, expressing concerns that the proposed design, when seen from the sidewalk approaching the entrance, may be too similar to the Memorial itself, and could have the effect of mimicking the Memorial in a way that would detract from the Memorial’s simplicity and form. The Park Service has been dismissive of these concerns, contending that the proposed design for the Center “bears no resemblance to the memorial.” Meeting Summary, at p.5 (# 3.H.) (Sept. 12, 2007). However, the design materials sent to the consulting parties four weeks after the September 12 meeting include an image that is strikingly evocative of the approach to the Wall itself. (See p.30, view from the sidewalk of Henry Bacon Drive). This image exacerbates our concerns, rather than alleviating them, and we urge the Park Service to reconsider its dismissive approach to this complex design issue. The design of the Center should not distract or detract from the powerful simplicity and form of the Memorial itself.

Recommendations

The National Trust urges the National Park Service to take the following steps:

- Prepare a Supplemental EA that would meaningfully evaluate the adverse visual impacts of the Center on the historic and cultural landscape features of the National Mall.
- Develop additional photo simulations from the sidewalk surrounding the site to better understand and evaluate the adverse visual impact on the National Mall from the pedestrian perspective.

- Use the Section 106 consultation process to “develop and evaluate alternatives or modifications” to the project that would avoid, minimize, and mitigate its adverse effects on the National Mall, as required by 36 C.F.R. § 800.6(a). These alternatives and modifications should include, but not be limited to, the following:
 - Relocate the Center toward the northeast corner of the site, and elevate the grade. This would substantially reduce the length of the paved approach from Constitution Avenue, and would reduce the appearance of hardscape in general.⁵ Relocating the Center to the northeast would also allow the most visually intrusive portion of the project to be partially shielded by the new food service kiosk. The adverse effect of the modest re-grading involved in this option would be more than outweighed by the opportunity it would provide to reduce the visual impact of the central open pit.
 - Explore the potential use of a “green vegetated roof,” as contemplated in the EA (at p.4-20), to help disguise the adverse visual impact of the project.
 - Develop measures to address cumulative effects, under 36 C.F.R. § 800.5(a)(1).
- Defer any further review by the NCPC until after Section 106 consultation has led to the development of those alternatives and modifications.

Thank you in advance for considering the comments of the National Trust on this important and difficult project. We look forward to continuing Section 106 consultation with the Park Service prior to any additional decisions being made that would narrow the potential opportunities to develop alternatives and modifications that would avoid and minimize harm to the National Mall.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel

cc: Steve Lorenzetti, NPS
John Parsons, NPS
Perry Wheelock, NPS
Caroline Hall, NPS

⁵ We were advised at the October 24, 2007 consultation meeting that for every 30 inches the grade is elevated, the facility could be moved 50 feet closer to Constitution Avenue.

Ms. Sally Blumenthal, NPS

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