# APPENDIX A REGULATORY FRAMEWORK

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APPENDIX A
REGULATORY FRAMEWORK
In addition to NEPA and NCPC guidance on NEPA implementation, there are many federal executive orders and other federal, state, and local laws and regulations that are considered and implemented in conjunction with NEPA. Regulations, orders, and laws that are pertinent to a resource impact analysis and that guided how the analysis was conducted are listed within each resource section of the environmental consequences and are briefly summarized below.

A.1 LEGISLATION

Several laws pertain to resource protection and legislative mandates within the study area:


This law establishes the National Museum of African American History and Culture Plan for Action Presidential Commission to develop a plan of action for the establishment and maintenance of the National Museum of African American History and Culture in Washington, D.C., and for other purposes.


The National Museum of African American History and Culture Act establishes within the Smithsonian Institution the National Museum of African American History and Culture, to be operated as a center for scholarship and a location for museum training, public education, exhibits, and collection and study of items and materials relating to the life, art, history, and culture of African Americans from slavery and the era of reconstruction to the Harlem renaissance, the civil rights movement, and beyond. The Act establishes the NMAAHC Council and requires the Council to appoint a Director to manage the Museum.
Public Law 107–106
107th Congress

An Act

To establish the National Museum of African American History and Culture Plan for Action Presidential Commission to develop a plan of action for the establishment and maintenance of the National Museum of African American History and Culture in Washington, D.C., and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Museum of African American History and Culture Plan for Action Presidential Commission Act of 2001”.

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) IN GENERAL.—There is established the National Museum of African American History and Culture Plan for Action Presidential Commission (hereafter in this Act referred to as the “Commission”).

(b) MEMBERSHIP.—The Commission shall consist of not more than 23 members appointed as follows:

(1) The President shall appoint seven voting members.
(2) The Speaker of the House of Representatives and the Senate Majority Leader shall each appoint six voting members.
(3) In addition to the members appointed under paragraph (2), the Speaker of the House of Representatives and the Senate Majority Leader shall each appoint two additional nonvoting members.

(c) QUALIFICATIONS.—Members of the Commission shall be chosen from the following professional groups:

(1) Professional museum associations, including the Association of African American Museums and African American Museum Cultural Complex, Inc.
(2) Academic institutions and groups committed to the research and study of African American life, art, history, and culture, including Historically Black Colleges and Universities and the Joint Center for Political and Economic Studies.

SEC. 3. FUNCTIONS OF THE COMMISSION.

(a) PLAN OF ACTION FOR ESTABLISHMENT AND MAINTENANCE OF MUSEUM.—

(1) IN GENERAL.—The Commission shall submit a report to the President and the Congress containing its recommendations with respect to a plan of action for the establishment and maintenance of the National Museum of African American
History and Culture in Washington, D.C. (hereafter in this Act referred to as the "Museum").

(2) NATIONAL CONFERENCE.—In developing the recommendations, the Commission shall convene a national conference on the Museum, comprised of individuals committed to the advancement of African American life, art, history, and culture, not later than 3 months after the date of the enactment of this Act.

(b) FUNDRAISING PLAN.—The Commission shall develop a fundraising plan for supporting the creation and maintenance of the Museum through contributions by the American people, and a separate plan on fundraising by the African American community.

(c) REPORT ON ISSUES.—The Commission shall examine and submit a report to the President and the Congress on the following issues:

(1) The availability and cost of collections to be acquired and housed in the Museum.
(2) The impact of the Museum on regional African American museums.
(3) Possible locations for the Museum on or adjacent to the National Mall in Washington, D.C.
(4) The cost of converting the Smithsonian Institution's Arts and Industries Building into a modern museum with requisite temperature and humidity controls.
(5) Whether the Museum should be located within the Smithsonian Institution.
(6) The governance and organizational structure from which the Museum should operate.

(d) LEGISLATION TO CARRY OUT PLAN OF ACTION.—Based on the recommendations contained in the report submitted under subsection (a) and the report submitted under subsection (c), the Commission shall submit for consideration to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on House Administration of the House of Representatives, the Committee on Rules and Administration of the Senate, and the Committees on Appropriations of the House of Representatives and Senate a legislative plan of action to create and construct the Museum.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) FACILITIES AND SUPPORT OF SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall provide the administrative services, facilities, and funds necessary for the performance of the Commission's functions.

(b) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government may receive compensation for each day on which the member is engaged in the work of the Commission, at a daily rate to be determined by the Secretary of the Interior.

(c) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

SEC. 5. DEADLINE FOR SUBMISSION OF REPORTS; TERMINATION.

(a) DEADLINE.—The Commission shall submit final versions of the reports and plans required under section 3 not later than 9 months after the date of the enactment of this Act.
(b) Termination.—The Commission shall terminate not later than 30 days after submitting the final versions of reports and plans pursuant to subsection (a).

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $3,000,000 for activities of the Commission during fiscal year 2002.

Public Law 108–184  
108th Congress  
An Act  
To establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes.  
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,  
SECTION 1. SHORT TITLE.  
This Act may be cited as the “National Museum of African American History and Culture Act”.  
SEC. 2. FINDINGS.  
Congress finds that—  
(1) since its founding, the United States has grown into a symbol of democracy and freedom around the world, and the legacy of African Americans is rooted in the very fabric of the democracy and freedom of the United States;  
(2) there exists no national museum within the Smithsonian Institution that—  
(A) is devoted to the documentation of African American life, art, history, and culture; and  
(B) encompasses, on a national level—  
(i) the period of slavery;  
(ii) the era of Reconstruction;  
(iii) the Harlem renaissance;  
(iv) the civil rights movement; and  
(v) other periods associated with African American life, art, history, and culture; and  
(3) a National Museum of African American History and Culture would be dedicated to the collection, preservation, research, and exhibition of African American historical and cultural material reflecting the breadth and depth of the experiences of individuals of African descent living in the United States.  
SEC. 3. DEFINITIONS.  
In this Act:  
(1) BOARD OF REGENTS.—The term “Board of Regents” means the Board of Regents of the Smithsonian Institution,  
(2) COUNCIL.—The term “Council” means the National Museum of African American History and Culture Council established by section 5,  
(3) MUSEUM.—The term “Museum” means the National Museum of African American History and Culture established by section 4.
(4) SECRETARY.—The term “Secretary” means the Secretary of the Smithsonian Institution.

SEC. 4. ESTABLISHMENT OF MUSEUM.

(a) ESTABLISHMENT.—There is established within the Smithsonian Institution a museum to be known as the “National Museum of African American History and Culture”.

(b) PURPOSE.—The purpose of the Museum shall be to provide for—

(1) the collection, study, and establishment of programs relating to African American life, art, history, and culture that encompass—

(A) the period of slavery;
(B) the era of Reconstruction;
(C) the Harlem renaissance;
(D) the civil rights movement; and
(E) other periods of the African American diaspora;

(2) the creation and maintenance of permanent and temporary exhibits documenting the history of slavery in America and African American life, art, history, and culture during the periods referred to in paragraph (1);

(3) the collection and study of artifacts and documents relating to African American life, art, history, and culture; and

(4) collaboration between the Museum and other museums, historically black colleges and universities, historical societies, educational institutions, and other organizations that promote the study or appreciation of African American life, art, history, or culture, including collaboration concerning—

(A) development of cooperative programs and exhibitions;
(B) identification, management, and care of collections; and
(C) training of museum professionals.

SEC. 5. COUNCIL.

(a) ESTABLISHMENT.—There is established within the Smithsonian Institution a council to be known as the “National Museum of African American History and Culture Council”.

(b) DUTIES.—

(1) IN GENERAL.—The Council shall—

(A) make recommendations to the Board of Regents concerning the planning, design, and construction of the Museum;
(B) advise and assist the Board of Regents on all matters relating to the administration, operation, maintenance, and preservation of the Museum;
(C) recommend annual operating budgets for the Museum to the Board of Regents;
(D) report annually to the Board of Regents on the acquisition, disposition, and display of objects relating to African American life, art, history, and culture; and
(E) adopt bylaws for the operation of the Council.

(2) PRINCIPAL RESPONSIBILITIES.—The Council, subject to the general policies of the Board of Regents, shall have sole authority to—

(A) purchase, accept, borrow, and otherwise acquire artifacts for addition to the collections of the Museum;
(B) loan, exchange, sell, and otherwise dispose of any part of the collections of the Museum, but only if the funds generated by that disposition are used for additions to the collections of the Museum; or
(C) specify criteria with respect to the use of the collections and resources of the Museum, including policies on programming, education, exhibitions, and research with respect to—
(i) the life, art, history, and culture of African Americans;
(ii) the role of African Americans in the history of the United States from the period of slavery to the present; and
(iii) the contributions of African Americans to society.
(3) OTHER RESPONSIBILITIES.—The Council, subject to the general policies of the Board of Regents, shall have authority—
(A) to provide for preservation, restoration, and maintenance of the collections of the Museum; and
(B) to solicit, accept, use, and dispose of gifts, bequests, and devises of personal property for the purpose of aiding and facilitating the work of the Museum.
(c) COMPOSITION AND APPOINTMENT.—
(1) IN GENERAL.—The Council shall be composed of 19 voting members as provided under paragraph (2).
(2) VOTING MEMBERS.—The Council shall include the following voting members:
(A) The Secretary of the Smithsonian Institution.
(B) One member of the Board of Regents, appointed by the Board of Regents.
(C) Seventeen individuals appointed by the Board of Regents—
(i) taking into consideration individuals recommended by organizations and entities that are committed to the advancement of knowledge of African American life, art, history, and culture; and
(ii) taking into consideration individuals recommended by the members of the Council.
(3) INITIAL APPOINTMENTS.—The Board of Regents shall make initial appointments to the Council under paragraph (2) not later than 180 days after the date of enactment of this Act.
(d) TERMS.—
(1) IN GENERAL.—Except as provided in this subsection, each appointed member of the Council shall be appointed for a term of 3 years.
(2) INITIAL APPOINTEES.—As designated by the Board of Regents at the time of appointment, of the voting members first appointed under subparagraph (C) of subsection (c)(2)—
(A) six members shall be appointed for a term of 1 year;
(B) six members shall be appointed for a term of 2 years; and
(C) five members shall be appointed for a term of 3 years.
(3) REAPPOINTMENT.—A member of the Council may be reappointed, except that no individual may serve on the Council
for a total of more than 2 terms. For purposes of this paragraph, the number of terms an individual serves on the Council shall not include any portion of a term for which an individual is appointed to fill a vacancy under paragraph (4)(B).

(4) VACANCIES.—
(A) IN GENERAL.—A vacancy on the Council—
(i) shall not affect the powers of the Council; and
(ii) shall be filled in the same manner as the original appointment was made.
(B) TERM.—Any member of the Council appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of that term.

e) COMPENSATION.—
(1) IN GENERAL.—Except as provided in paragraph (2), a member of the Council shall serve without pay.
(2) TRAVEL EXPENSES.—A member of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Council.
(f) CHAIRPERSON.—By a majority vote of its voting members, the Council shall elect a chairperson from its members.

(g) MEETINGS.—
(1) IN GENERAL.—The Council shall meet at the call of the chairperson or on the written request of a majority of the voting members of the Council, but not fewer than twice each year.
(2) INITIAL MEETINGS.—During the 1-year period beginning on the date of the first meeting of the Council, the Council shall meet not fewer than 4 times for the purpose of carrying out the duties of the Council under this Act.

SEC. 6. DIRECTOR AND STAFF OF THE MUSEUM.

(a) DIRECTOR.—
(1) IN GENERAL.—The Museum shall have a Director who shall be appointed by the Secretary, taking into consideration individuals recommended by the Council.
(2) DUTIES.—The Director shall manage the Museum subject to the policies of the Board of Regents.
(b) STAFF.—The Secretary may appoint two additional employees to serve under the Director, except that such additional employees may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.
(c) PAY.—The employees appointed by the Secretary under subsection (b) may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

SEC. 7. EDUCATIONAL AND LIAISON PROGRAMS.

(a) IN GENERAL.—
(1) PROGRAMS AUTHORIZED.—The Director of the Museum may carry out educational and liaison programs in support of the goals of the Museum.

(2) SPECIFIC ACTIVITIES DESCRIBED.—In carrying out this section, the Director shall—

(A) carry out educational programs relating to African American life, art, history, and culture, including—
(i) programs using digital, electronic, and interactive technologies; and
(ii) programs carried out in collaboration with elementary schools, secondary schools, and postsecondary schools; and

(B) consult with the Director of the Institute of Museum and Library Services concerning the grant and scholarship programs carried out under subsection (b).

(b) GRANT AND SCHOLARSHIP PROGRAMS.—

(1) IN GENERAL.—In consultation with the Council and the Director of the Museum, the Director of the Institute of Museum and Library Services shall establish—

(A) a grant program with the purpose of improving operations, care of collections, and development of professional management at African American museums;

(B) a grant program with the purpose of providing internship and fellowship opportunities at African American museums;

(C) a scholarship program with the purpose of assisting individuals who are pursuing careers or carrying out studies in the arts, humanities, and sciences in the study of African American life, art, history, and culture;

(D) in cooperation with other museums, historical societies, and educational institutions, a grant program with the purpose of promoting the understanding of modern day practices of slavery throughout the world; and

(E) a grant program under which an African-American museum (including a nonprofit education organization the primary mission of which is to promote the study of African-American diaspora) may use the funds provided under the grant to increase an endowment fund established by the museum (or organization) as of May 1, 2003, for the purposes of—
(i) enhancing educational programming; and
(ii) maintaining and operating traveling educational exhibits.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director of the Institute of Museum and Library Services to carry out this subsection—

(A) $15,000,000 for fiscal year 2004; and

(B) such sums as are necessary for each fiscal year thereafter.

SEC. 8. BUILDING FOR THE NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY AND CULTURE.

(a) IN GENERAL.—

(1) LOCATION.—

(A) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Board of Regents shall designate a site for the Museum.
(B) Sites for consideration.—In designating a site under subparagraph (A), the Board of Regents shall select from among the following sites in the District of Columbia:

(i) The Arts and Industries Building of the Smithsonian Institution, located on the National Mall at 900 Jefferson Drive, Southwest, Washington, District of Columbia.

(ii) The area bounded by Constitution Avenue, Madison Drive, and 14th and 15th Streets, Northwest.

(iii) The site known as the "Liberty Loan site", located on 14th Street Southwest at the foot of the 14th Street Bridge.

(iv) The site known as the "Banneker Overlook site", located on 10th Street Southwest at the foot of the L’Enfant Plaza Promenade.

(C) Availability of site.—

(i) In general.—A site described in subparagraph (B) shall remain available until the date on which the Board of Regents designates a site for the Museum under subparagraph (A).

(ii) Transfer to Smithsonian Institution.—Except with respect to a site described in clause (i) of subparagraph (B), if the site designated for the Museum is in an area that is under the administrative jurisdiction of a Federal agency, as soon as practicable after the date on which the designation is made, the head of the Federal agency shall transfer to the Smithsonian Institution administrative jurisdiction over the area.

(D) Consultation.—The Board of Regents shall carry out its duties under this paragraph in consultation with the following:

(i) The Chair of the National Capital Planning Commission.

(ii) The Chair of the Commission on Fine Arts.

(iii) The Chair and Vice Chair of the Presidential Commission referred to in section 10.

(iv) The Chair of the Building and Site Subcommittee of the Presidential Commission referred to in section 10.

(v) The Chair and ranking minority member of each of the following Committees:

(I) The Committee on Rules and Administration of the Senate.

(II) The Committee on House Administration of the House of Representatives.

(III) The Committee on Transportation and Infrastructure of the House of Representatives.

(IV) The Committee on Appropriations of the House of Representatives.

(V) The Committee on Appropriations of the Senate.

(2) Construction of building.—The Board of Regents, in consultation with the Council, may plan, design, and construct a building for the Museum, which shall be located at the site designated by the Board of Regents under this paragraph.
(3) **Nonapplicability of provisions relating to monuments and commemorative works.**—Chapter 89 of title 40, United States Code, shall not apply with respect to the Museum.

(b) **Cost sharing.**—The Board of Regents shall pay—
   (1) 50 percent of the costs of carrying out this section from Federal funds; and
   (2) 50 percent of the costs of carrying out this section from non-Federal sources.

(c) **Authorization of Appropriations.**—There are authorized to be appropriated such sums as are necessary to carry out this section.

### SEC. 9. CONGRESSIONAL BUDGET ACT COMPLIANCE.

Authority under this Act to enter into contracts or to make payments shall be effective in any fiscal year only to the extent provided in advance in an appropriations Act, except as provided under section 11(b).

### SEC. 10. CONSIDERATION OF RECOMMENDATIONS OF PRESIDENTIAL COMMISSION.

In carrying out their duties under this Act, the Council and the Board of Regents shall take into consideration the reports and plans submitted by the National Museum of African American History and Culture Plan for Action Presidential Commission Act of 2001 (Public Law 107–106).

### SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) **In general.**—There are authorized to be appropriated to the Smithsonian Institution to carry out this Act, other than sections 7(b) and 8—
   (1) $17,000,000 for fiscal year 2004; and
   (2) such sums as are necessary for each fiscal year thereafter.

(b) **Availability.**—Amounts made available under subsection (a) shall remain available until expended.
(c) USE OF FUNDS FOR FUNDRAISING.—Amounts appropriated pursuant to the authorization under this section may be used to conduct fundraising in support of the Museum from private sources.

A.1.3 Commemorative Works Clarification and Revision Act of 2003

Public Law 107-217, Chapter 89, Title 40 National Capital Memorials and Commemorative Works passed on August 21, 2002, discourages development on the National Mall and Washington Monument reservation and designates a “Reserve” area on the cross-axis of the Mall where no new memorials will be permitted. Subsequently, this law was amended in the Commemorative Works Clarification and Revision Act of 2003, Public Law 108-126 Title 2 Section 204 which states that “No commemorative work primarily designed as a museum may be located on lands under the jurisdiction of the Secretary in Area I or in East Potomac Park”. Nevertheless, the NMAAHC Act Section 8 states under the “Requirements Relating to Monuments and Commemorative Works” that Chapter 89 of title 40, “shall not apply with respect to the Museum”.

TITLE II--COMMEMORATIVE WORKS

SEC. 204. SITE AND DESIGN CRITERIA.

Section 8905(b) of title 40, United States Code (as amended by section 203(e)), is amended by adding at the end the following:

(5) MUSEUMS- No commemorative work primarily designed as a museum may be located on lands under the jurisdiction of the Secretary in Area I or in East Potomac Park as depicted on the map referenced in section 8902(2).

(6) SITE-SPECIFIC GUIDELINES- The National Capital Planning Commission and the Commission of Fine Arts may develop such 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 this chapter.

(7) DONOR CONTRIBUTIONS- Donor contributions to commemorative works shall not be acknowledged in any manner as part of the commemorative work or its site.


The National Historic Preservation Act of 1966, as amended through 2000 (NHPA) protects buildings, sites, districts, structures, and objects that have significant scientific, historic, or cultural value. The Act established affirmative responsibilities of Federal agencies to preserve historic and prehistoric resources. Effects on properties that are listed in or eligible for the National Register of Historic Places (NRHP) must be taken into account in planning and operations. Any property that may qualify for listing in the NRHP must not be inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate.

A.1.5 Section 106 of the National Historic Preservation Act of 1966 (NHPA)

Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP. Revised regulations, "Protection of Historic Properties" (36 CFR Part 800), became effective January 11, 2001, and are summarized below (ACHP, 2002a).

Initiate Section 106 process- The responsible Federal Agency first determines whether it has an undertaking that is a type of activity that could affect historic properties. Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. If so, it must identify the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer * (SHPO/THPO*) to consult with during the process. It should also plan to involve the public, and identify other potential consulting parties. If it determines that it has no undertaking, or that its undertaking is a type of activity that has no potential to
affect historic properties, the agency has no further Section 106 obligations.

Identify historic properties- If the agency's undertaking could affect historic properties, the agency determines the scope of appropriate identification efforts and then proceeds to identify historic properties in the area of potential effects. The agency reviews background information, consults with the SHPO/THPO* and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Districts, sites, buildings, structures, and objects listed in the National Register are considered; unlisted properties are evaluated against the National Park Service's published criteria, in consultation with the SHPO/THPO* and any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to them.

If questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the National Park Service. Section 106 review gives equal consideration to properties that have already been included in the National Register as well as those that have not been so included, but that meet National Register criteria.

If the agency finds that no historic properties are present or affected, it provides documentation to the SHPO/THPO* and, barring any objection in 30 days, proceeds with its undertaking.

If the agency finds that historic properties are present, it proceeds to assess possible adverse effects.

Assess adverse effects- The agency, in consultation with the SHPO/THPO*, makes an assessment of adverse effects on the identified historic properties based on criteria found in ACHP's regulations.

If they agree that there will be no adverse effect, the agency proceeds with the undertaking and any agreed-upon conditions. If they find that there is an adverse effect, or if the parties cannot agree and ACHP determines within 15 days that there is an adverse effect, the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects.

Resolve adverse effects- The agency consults to resolve adverse effects with the SHPO/THPO* and others, who may include Indian tribes and Native Hawaiian organizations, local governments, permit or license applicants, and members of the public. ACHP may participate in consultation when there are substantial impacts to important historic properties, when a case presents important questions of policy or interpretation, when there is a potential for procedural problems, or when there are issues of concern to Indian tribes or Native Hawaiian organizations.

Consultation usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate the adverse effects. In some cases, the consulting parties may agree that no such measures are possible, but that the adverse effects must be accepted in the public interest.

Implementation- If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA.

Failure to resolve adverse effects- If consultation proves unproductive, the agency or the SHPO/THPO*, or ACHP itself, may terminate consultation. If a SHPO terminates consultation, the agency and ACHP may conclude an MOA without SHPO involvement. However, if a THPO* terminates consultation and the undertaking is on or affecting historic properties on tribal lands, ACHP must provide its comments. The agency must submit appropriate documentation to ACHP and request ACHP's written comments. The agency head must take into account ACHP's written comments in deciding how to proceed.
Tribes, Native Hawaiians, and the public- Public involvement is a key ingredient in successful Section 106 consultation, and the views of the public should be solicited and considered throughout the process.

The regulations also place major emphasis on consultation with Indian tribes and Native Hawaiian organizations, in keeping with the 1992 amendments to NHPA. Consultation with an Indian tribe must respect tribal sovereignty and the government-to-government relationship between the Federal Government and Indian tribes. Even if an Indian tribe has not been certified by NPS to have a Tribal Historic Preservation Officer who can act for the SHPO on its lands, it must be consulted about undertakings on or affecting its lands on the same basis and in addition to the SHPO.

* The regulations define the term "THPO" as those tribes that have assumed SHPO responsibilities on their tribal lands and have been certified pursuant to Section 101(d)(2) of the NHPA. Nevertheless, remember that tribes that have not been so certified have the same consultation and concurrence rights as THPOs when the undertaking takes place, or affects historic properties, on their tribal lands. The practical difference is that during such undertakings, THPOs would be consulted in lieu of the SHPO, while non-certified tribes would be consulted in addition to the SHPO.

A.1.6 National Park Service regulations & permitting for activity on the NMAAHC site (36 CFR 7.96)

The National Park Service issues permits for the public use of the NMAAHC site. This legislation defines the type of land use including athletic and use for demonstrations and special events.

§ 7.96 National Capital Region.

(a) Applicability of regulations. This section applies to all park areas administered by National Capital Region in the District of Columbia and in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland and to other federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the act of March 17, 1948 (62 Stat. 81). (b) Athletics—(1) Permits for organized games. Playing baseball, football, croquet, tennis, and other organized games or sports except pursuant to a permit and upon the grounds provided for such purposes, is prohibited.

(g) Demonstrations and special events— (1) Definitions. (i) The term “demonstrations” includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers. (ii) The term “special events” includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstrations under paragraph (g)(1)(i) of this section, and which are engaged in by one or more (3) Persons engaged in the sale or distribution of printed matter under this section, and which are engaged in by one or more (3) Persons engaged in the sale or distribution of printed matter under this section, shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

A.1.7 Americans with Disabilities Act (ADA)

The Americans with Disabilities Act of 1990 (ADA), or United States Public Law 101-336, 104 Stat. 327 (July 26, 1990), codified at 42 U.S.C. § 12101 et seq., was signed into law on July 26, 1990. The ADA is a civil rights law that prohibits the discrimination of persons
based on disability. Disability is considered a physical or mental impairment that substantially inhibits a life activity.

**A.1.8 Noise Control Act of 1972 (NCA)**

The Noise Control Act of 1972 gives the USEPA the primary role for controlling environmental noise. Under the authorities, the USEPA has the responsibility for coordinating all Federal programs in noise research and control. The USEPA must be consulted by other Federal agencies prior to publishing new regulations on noise. If the agency feels that any proposed new or existing Federal regulations do not adequately protect the public health and welfare, it can call for public review of them. Citizen suits are also authorized. USEPA also has the authority to set standards for any product or class of products which have been identified as a major source of noise. They would be based on criteria that USEPA is required to develop before proposing any standards. Categories of equipment covered by the legislation include construction, transportation (including recreational vehicles), motors or engines, and electrical and electronic.

The FHWA, the USEPA, and OSHA have all developed standards to minimize the effects of noise associated with the construction and operation of transportation facilities. The standards protect, among others, workers involved in the construction of the transportation facilities, near-by residents that may be affected by the operational transportation facilities, and the general public that may be subjected to noise from the transportation facility.

**A.1.9 Clean Air Act (42 U.S.C. 85)**

As described in the Affected Environment, the Clean Air Act of 1970 (CAA) controls the emission of pollutants into the atmosphere. The CAA seeks to reduce or eliminate the creation of pollutants at their source, and designates this responsibility to State and local governments. Under the CAA, the EPA has established national air quality standards. These standards, which express concentrations of designated pollutants, are called the National Ambient Air Quality Standards (NAAQS). The NAAQS are to be achieved by the States through State Implementation Plans (SIP), which provide limitations, schedules, and timetables for compliance with NAAQS for stationary sources and transportation control plans for mobile sources.

A 1990 Amendment to the CAA provides that “No department, agency, or instrumentality of the Federal government shall engage in, support in any way, or provide financial assistance for, license or permit, or approve any activity which does not conform to an implementation plan, ‘...approved or promulgated. The assurance of conformity...’ shall be an affirmative responsibility of the head of such department, agency, or instrumentality.” Conformity to an implementation plan means conformity to an implementation plan’s purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Conformity with a SIP requires the government to conduct activities so that the activities would not cause or contribute to any new violation of any standard in any area, or delay timely attainment of any standard of any required interim emission reductions or other milestones in any area. Regulations regarding determining conformity of general Federal actions to implementations plans appear in 40 CFR 51 and 93.

**A.1.10 Clean Water Act (33 U.S.C. 26)**

Since major amendments in 1977, the Federal Water Pollution Control Act has been known as the Clean Water Act (CWA). This statute seeks to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. The CWA identifies certain pollutants and sets required treatment levels for those pollutants. The CWA regulates both point source and non-point source discharges. Point sources are distinct entities that discharge into rivers, lakes, estuaries, or others waters of the U.S. through discrete conveyances such as pipes, ditches, or canals. Nonpoint sources are those that do not discharge wastewater from a discrete
NMAAHC TIER I FINAL ENVIRONMENTAL IMPACT STATEMENT

conveyance (e.g., most agricultural lands, certain construction sites, parking lots, and streets).

Section 401 of the CWA addresses water quality certification and authorizes the review and conditioning, approval, or denial of Federal permits or licenses that might result in discharges to waters of the U.S.

Section 402 of the CWA established the National Pollutant Discharge Elimination System (NPDES) program. Pursuant to the NPDES permits are required for all point source discharges to waters of the U.S., including discharges of stormwater runoff associated with industrial activities.

Section 404 of the CWA contains provisions for protection of wetlands and establishes a permitting process for activities having potential effects in the wetlands by the U.S. Army Corps of Engineers (USACE). Wetlands, riverine, and open water systems are considered waters of the USACE. The USACE’s definition of waters of the U.S. includes all interstate waters and lakes, as well as rivers, streams, mudflats, and sandflats, sloughs, prairie potholes, wet meadows, and other wetland communities. Section 404 regulates the discharge of dredge or fill into wetlands, or other waters of the U.S., and requires sequencing for proposed impacts and replacement of unavoidable losses. All development activities that might involve impacts on wetlands, through dredging and filling require consultation with the USACE. If a given wetland is determined to meet the regulatory definition, a nationwide permit is issued or an individual permit application is required, depending in the development proposal for fill or land disturbance activities.

Under the Endangered Species Act of 1973 (ESA), Federal agencies are required to conserve plant or animal species that have been Federally listed as endangered or threatened. Federal agencies should consult as necessary with the U.S. Fish and Wildlife Service (USFWS) to ensure that any actions authorized, funded, or carried out by the Federal agencies are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction of or substantial damage to critical habitat. This consultation, deriving from Section 7 of the ESA, is often referred to as the Section 7 consultation process. While this consultation is in progress, an agency must not make an irrevocable commitment of resources to its project. A consultation typically leads to the USFWS’s suggestion of alternatives or mitigating measures that can be incorporated into the project, thereby allowing its completion. In connection with this proposed project, coordination with the USFWS is being undertaken to ensure consideration of potential effects on endangered and threatened species present.

A.1.12 The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA:

- established prohibitions and requirements concerning closed and abandoned hazardous waste sites;
- provided for liability of persons responsible for releases of hazardous waste at these sites; and
- established a trust fund to provide for cleanup when no responsible party could be identified.

The law authorizes two kinds of response actions:
Short-term removals, where actions may be taken to address releases or threatened releases requiring prompt response.

- Long-term remedial response actions, that permanently and significantly reduce the dangers associated with releases or threats of releases of hazardous substances that are serious, but not immediately life threatening. These actions can be conducted only at sites listed on EPA's National Priorities List (NPL).

CERCLA also enabled the revision of the National Contingency Plan (NCP). The NCP provided the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. The NCP also established the NPL.

CERCLA was amended by the Superfund Amendments and Reauthorization Act (SARA) on October 17, 1986.


The RCRA was enacted to address the huge volumes of municipal and industrial solid wastes generated in the U.S. After several amendments, the RCRA now regulates hazardous and solid waste activities and underground storage tanks (USTs). The Act controls the generation, transportation, treatment, storage, and disposal of hazardous wastes. RCRA has also set forth a framework for the management of non-hazardous wastes.

**A.1.14 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (February 11, 1994)**

This E.O. requires Federal agencies to make environmental justice part of its mission, by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Under this executive order Federal agencies shall conduct their programs, policies, and activities that substantially affect human health or the environment in a manner that ensures such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin. The essential purpose of the executive order is to ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of any negative environmental consequences resulting from Federal actions or policies. On February 11, 1994, President Clinton also issued a memorandum for heads of all departments and agencies, to analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by NEPA.

The general purposes of this EO are as follows:

- To focus the attention of federal agencies on human health and environmental conditions in minority communities and low-income communities with the goal of achieving environmental justice.
- To foster nondiscrimination in federal programs that substantially affect human health or the environment.
- To give minority communities and low-income communities greater opportunities for public participation in, and access to, public information on matters relating to human health and the environment.
A.1.15 Executive Order 11514, Protection of Enhancement of Environmental Quality (March 5, 1970)
This E.O. requires agencies to monitor, evaluate, and control activities so as to protect and enhance the quality of the environment for the purpose of sustaining and enriching human life.

A.1.16 Executive Order 11988, Floodplain Management (May 24, 1977)
This E.O. requires Federal agencies to take action to reduce the risk of flood loss, to minimize the impacts of floods on human safety, health and welfare, and to restore and preserve the national and beneficial values served by floodplains in carrying out their responsibilities for managing and disposing of Federal lands. Before taking an action, an agency must determine whether the proposed action would occur in a floodplain; if so, consideration must be made of alternatives to avoid adverse effects and incompatible development in floodplains.

If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

A.1.17 Executive Order 13045, Protection of Children from Environmental Health and Safety Risk (April 21, 1997)
E.O. 13045, requires federal agencies, to the extent permitted by law and mission, to identify and assess environmental health and safety risks that might disproportionately affect children. This E.O. further requires federal agencies to ensure that their policies, programs, activities, and standards address these disproportionate risks. EO 13045 defines environmental health and safety risks as “risks to health or to safety that are attributable to products or substances that the child is likely to come in contact with or ingest (such as the air we breathe, the food we eat, the water we drink and use for recreation, the soil we live on and the products we use or are exposed to).”

A.1.18 Presidential Executive Memorandum on Environmentally and Economically Beneficial Landscaping Practices (April 1994)
This E.M. directs agencies of the Federal government to follow principles for environmentally and economically beneficial landscape practices in order to improve their current landscape practices. These practices include use of regionally native plants for landscaping; design, use, or promote construction practices that minimize adverse effects on natural habitat; seek to prevent pollution; implement water and energy efficient practices; and create outdoor demonstration projects. The FHWA has developed a guidance for this E.M. that states that at every opportunity where it is determined to be appropriate and cost-effective, the guiding principles of the E.M. to use native plants should be considered to the maximum extent practicable. The FHWA guidance defines what a native plant is and provides guidance on design, plant management and how to use native plants in roadside situations.

A.2 REGULATIONS OF THE DISTRICT OF COLUMBIA

A.2.1 DC Law 2-144, the Historic Landmark and Historic District Protection Act of 1978
This law is the local ordinance that authorizes the designation and protection of historic landmarks and historic districts. While it puts in place a special review process for properties in a historic district, it also recognizes change as an important element in the city's evolution. It is charged with making decisions on applications to demolish or alter an historic landmark or a building or structure in a historic district; to subdivide an historic landmark or a property in a historic district; or to construct a new building or structure in an historic district or on the site of an historic landmark. The Historic Preservation Review Board maintains the official inventory of
historic landmarks and historic districts in the District of Columbia and has authority to designate new landmarks or districts. The Board also reviews subdivision and permit applications affecting regulated properties and makes recommendations to the Mayor’s Agent about whether to grant or deny applications.

A.2.2 Soil Erosion and Sedimentation Control Act (1977)
The District of Columbia’s Soil Erosion and Sediment Control Program implements and enforces D.C. Law 2-23 (D.C. Erosion and Sedimentation Control Act of 1977), which regulates all land-disturbing activities to prevent accelerated erosion and transport of sediment to its receiving waters. The program reviews and approves all construction and grading plans submitted to the District of Columbia Government for compliance with the regulations. Inspections are conducted at construction sites to ensure that control devices are constructed in accordance with approved plans. In addition, the program is also responsible for investigating erosion, drainage and related complaints and providing recommendations towards their resolution. The sediment control program complements the water management program. Therefore, in an effort to meet the goals and objectives of the USEPA Chesapeake Bay Program, the District strengthened its sediment control law by enacting D.C. Law 10-166 (D.C. Erosion and Sedimentation Control Amendment Act of 1994) to specifically remove the exemption provision for sediment control compliance associated with construction activities by federal agencies.

A.2.3 D.C. Stormwater Management Regulations, 21 D.C.M.R. §§ 526-535
21 D.C.M.R. § 526 provides that “No person shall, unless exempt, engage in any earth movement or land change within the District of Columbia without instituting appropriate stormwater management measures to control or manage runoff from such developments.” A stormwater management plan is required for 5000 square feet of land disturbance and the submission of stormwater management plan is required prior to issuance of a building permit.

A.2.4 D.C. Law 13-311 Stormwater Permit Compliance Amendment Act of 2000 (June 12, 2001)
This law established the Stormwater Administration as a branch of DCWASA and provides for the collection of fees from various activities to fund work directly related NPDES MS4 permit. The law also established that affected agencies could apply for reimbursement from fund for work supporting NPDES MS4 permit and created the MS4 Advisory Panel consisting of the Mayor, Chairman of Council of District of Columbia, General Manager of DCWASA, Director of Department of Health (DOH) Environmental Health Administration and the Director of DDOT.

A.2.5 D.C. Law 5-188, Water Pollution Control Act of 1984
Law 5-188, the “Water Pollution Control Act of 1984,” was introduced in Council and assigned Bill No. 5-326, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted and then signed by the Mayor on January 11, 1985.

The Act states that, while regulating against water pollution and except as provided in subsection (d) of this section, the Mayor shall protect aquatic animals and plants, and shall preserve and restore aquatic life in District waters for aesthetic enjoyment, for recreation, and for industry. The Mayor shall study the number and the well-being of aquatic plants and animals, and shall determine the need to license or otherwise limit fishing and other forms of hunting, sports or industry which take or destroy aquatic life or the aquatic habitat. The Mayor may establish seasons for hunting, sports or industry which take or destroy aquatic life or the aquatic habitat. Revenues from a licensing regulatory scheme under this section shall be used only for protecting and managing aquatic life. The Mayor
may enter into agreements with state and federal agencies to manage and protect aquatic life and the Mayor may protect against aquatic life that creates a nuisance in the District (Mar. 16, 1985, D.C. Law 5-188, § 4, 32 DCR 919).

The legislation also states that any segment or segments of the surface waters of the District that are of water quality better than needed for the current use or have scenic or aesthetic importance shall be designated as Special Waters of the District of Columbia (SWDC). Rock Creek and its tributaries have been designated as SWDC. The water quality of SWDC-designated segments of the District’s surface waters shall be maintained at or above the current level by implementing the following:

a) Existing nonpoint source discharges, storm water discharges, and storm sewer discharges to SWDC segments shall be controlled through implementation of best management practices and regulatory reform.

b) Construction of development projects such as roads, bridges, and bank stabilization of the stream in which a SWDC-designated segment is located, which may lead to pollution of the water, shall be permitted on a case-by-case basis to ensure there are no long-term adverse water quality effects and no impairment of the designated uses of the segment occurs.

c) Short-term degradation of water quality in a SWDC segment due to construction projects may be permitted provided that prior notice is given to the public as well as other local and federal government agencies, and provided that their concerns are properly addressed.
APPENDIX B
COORDINATION & CONSULTATION
The following documents are included in Appendix B Coordination & Consultation:

- National Park Service Accepts as a Cooperating Agency
- Section 106 Initiation
- Advisory Council on Historic Preservation Accepts as a Consulting Party
- Documentation of the Administrative Transfer of the NMAAHC Site from the National Park Service to the Smithsonian Institution
- Formal Agency Consultation Letters & Responses
- Tiered EIS Agreement letters between the Smithsonian Institution and NCPC
- Concurrence of Potential Adverse Effect from D.C. Historic Preservation Officer
Harry -

This will confirm that the National Park Service desires to be a cooperating agency in the preparation of the EIS for the National Museum of American History and Culture.

John Parsons

"Rombach, Harry" <ROMBAH@si.edu> To: "John Parsons" <John_Parsons@nps.gov> cc: "Passman, Jane" <PASSMJ@si.edu>

09/15/2006 10:50 Subject: AM

John-

It was good talking with you this morning. In our discussion you said that the National Park Service wants to be a "cooperating agency" under NEPA and CEQ regulations for our National Museum of American History and Culture site environmental impact statement. Would you please confirm this by replying to this email?

Thanks much and best regards,
Harry

Harry Rombach, R.A.

Associate Director for Facilities Master Planning
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PO BOX 37012
VB 5200, MRC 908
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t: 202.275.0250
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e: rombah@si.edu
Dear David,

As you know, the Smithsonian Institution has been authorized to design and construct the National Museum for African American History and Culture on the National Mall. The site intended for the museum, known as the Monument Site, is adjacent to the Washington Monument Grounds at Constitution Avenue and 15th Street, N.W. It was one of the four designated by Congress for the possible location of the museum per Public Law 108-184, 20 U.S.C.80r (the Act) and subsequently selected for the new museum by the Board of Regents of the Smithsonian on 20 January 2006 pursuant to Section 8(a)(1)(A) of the Act.

Per Public Law 108-72, any project by the Smithsonian which requires approval by the National Capital Planning Commission is subject to Section 106 review. According to the National Historic Preservation Act, 36 CFR Part 800, agencies are required to take into account the effect of their undertaking on historic properties.

On 24 March 2006, we agreed that the undertaking to design and construct the new museum will have an adverse effect on the National Mall, a property listed on the National Register of Historic Places, and may have an effect on other listed properties also listed in the National Register of Historic Places, pursuant to CFR 800.5(1).
We now wish to consult with you per 36 CFR Part 800.3(4)(e)(f), to identify the consulting parties who will work with us on the 106 process to help mitigate the adverse effects this undertaking will have on the National Mall.

I will also send a letter to the Advisory Council on Historic Preservation inviting them to participate in the Section 106 process pursuant to CFR 800.2(b)(1).

We look forward to working with you on this project.

Sincerely yours,

Cynthia R. Field, PhD
Chairperson
June 7, 2007

Martha Catlin
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue NW, Room 803
Washington, DC 20004

Dear Martha;

It was good to see you last week and to follow up with you on Thursday, May 31st by phone. Also, I have just received a confirmation that the Advisory Council on Historic Preservation (ACHP) will participate in consultation to develop a memorandum of agreement for the proposed new National Museum of African American History and Culture (NMAAHC) which is timely for me. As I am new to the position of Chief, Architectural History and Historic Preservation, we both agreed that it would be helpful to summarize the actions that have been taken so far. It also reinforces your Chairman, John Nau’s request to the Secretary of the Smithsonian, in a letter dated January 27, 2006, that we are advancing the mutual goal of an efficient and well-coordinated design review process.

This summary outlines the steps that the Smithsonian has taken to ensure that there is an open process of consultation, identifies the meetings and lists the products to date that have been prepared and shared with the public. I will also give a brief accounting of the site selection and transfer. Since our conversation, I have received a copy of Judy Feldman’s June 5, 2007 letter to Executive Director John Fowler, and I believe the following summary addresses the issues she has raised as well.

Since the passage of Public Law 108-72, in August 2003, the Smithsonian is "deemed to be an agency for purposes of compliance with regulations promulgated by the Advisory Council on Historic Preservation pursuant to section 106 of the National Historic Preservation Act" in carrying out "projects in the District of Columbia which are subject to the review and approval of the National Capital Planning Commission."

In December 2003, in Public Law 108-184, Congress required the Smithsonian Board of Regents to select a site for the NMAAHC from four designated sites. Congress directed that the Regents consult with, among others, the Chair of the National Capital Planning Commission (NCPC) and the Chair of the Commission of Fine Arts (CFA) in fulfilling their responsibility. Congress further mandated that the head of the Federal agency with administrative jurisdiction over the selected site transfer administrative jurisdiction over the area to the Smithsonian (SI).

The Smithsonian hired the Plexus Scientific Corporation and PageSoutherlandPage to assess the four sites that had been designated by Congress. Because Congress did not require NCPC
The approval of the site selection, the Smithsonian was not required to undertake a section 106 review in assessing the four designated sites. The Site Evaluation Study was completed in 2005. In our conversation, you mentioned that you did not have copies of these documents, and so I am enclosing a copy for your records. The electronic version of the Executive Summary and Phase II Analysis can be seen on the museum’s website www.nmaahc.si.edu.

In 2005, the Smithsonian held a number of meetings among the organizations named by Congress in Public Law 108-184 and others, including the Advisory Council on Historic Preservation and preservation advocates such as the “National Coalition to Save Our Mall,” Committee of 100, and the D.C. Preservation League. (See the enclosed chronology)

On January 30, 2006, the Board of Regents selected the “Monument site” at 14th and Constitution Avenue. The Site Announcement stated that the site was selected for its iconic symbolism and that the new museum would inspire future visitors with the stories of “perseverance, courage, talent and triumphs” and be consistent with the iconic symbolism of the Mall.

Soon after the announcement, the Smithsonian initiated meetings with ACHP, NCPC, and the Department of Interior (DOI) in an effort to facilitate communication between the federal agencies that would play a role in the museum’s development and to establish the roles that each agency would play. The Smithsonian’s General Counsel circulated drafts of an agreement outlining these responsibilities among counsel for the agencies. At the time the drafts were in circulation, the Smithsonian was in the process of drafting a scope of work (SOW) and request for proposal (RFP) for a contractor to prepare an Environmental Impact Statement (EIS) and conduct necessary historic preservation analysis. Based on the conversations that took place among the agencies, the NCPC participated as a ”joint lead” in the development of the SOW and RFP and in the selection of the contractor (Louis Berger Group) for the EIS work.

Also around that same time, DOI determined that the transfer of the administrative jurisdiction over the land from DOI to SI did not require it to perform NEPA or section 106 reviews. The Smithsonian agrees with DOI’s decision, based on the fact that the transfer was a ministerial act mandated by Congress.

Concurrently, the Smithsonian’s Office of Architectural History and Historic Preservation along with David Maloney, Acting Historic Preservation Officer for the District of Columbia, identified that the undertaking to design and construct a new museum would have an adverse effect on the National Mall, a property listed in the National Register of Historic Places. The Smithsonian invited both the DC Historic Preservation Office and the Advisory Council on Historic Preservation to begin the process of identifying appropriate consulting parties for the Section 106 compliance. So, while the draft agreement circulated among counsel was not finalized, the federal agencies have worked cooperatively together to fulfill their respective obligations regarding the site. In light of the progress that has been made, there seems to be no need to re-visit the draft.

The Louis Berger Group’s work has included both the Phase I archeology and defining the...
Agreement (PA). The current timeline calls for a draft PA to be developed in October, 2007. I was pleased to hear your positive comments regarding the products that have been prepared so far to evaluate the impacts that this new museum will have on the historic resources in the Area of Potential Effects. I, too, was impressed with the research to date and feel that we will have a good understanding of these impacts as the planning studies move forward.

Since the site selection, there have been three public meetings, all dealing with the impacts of the NMAAHC on the Monument site and outlined in the chronology. This last meeting presented the revised Area of Potential Effect, Phase I archeology findings, and computer generated views and vistas for site and massing studies for five alternatives. The next meeting will address the steps for Phase II archeology and will refine the views study based on comments submitted by participants.

As was mentioned at the May 30th Section 106 Meeting by Curtis Davis, Project Executive for the NMAAHC, the National Park Service transferred administrative jurisdiction of the Monument site to the Smithsonian on May 30, 2007. The Smithsonian and the Park Service have entered into an agreement by which the Park Service will operate the site as parkland through 2010 or until construction of the museum actually commences, whichever comes first. (A copy of Secretary Kempthorne’s letter and the agreement are enclosed).

I think the enclosed chronology, documents, and references should close the loop on what has transpired over the last year or so. If you need any additional hard copy documents, please let me know, but most of the material, as outlined, is on the Louis Berger’s website at www.louisberger-nmaahcels.com or in our files.

Again, it will be great to work with you and I know that the Smithsonian is committed to ensuring that the preservation issues related to the design and construction of the museum will be fully addressed through the forthcoming formal Section 106 process. If you find that any of this summary needs further clarification or modification, please do not hesitate to contact me at (202) 633-6567. I hope to share this information as part of the next Consulting Parties Meeting #4 on June 27, 2007.

Sincerely,

Sharon C. Park, FAIA
Chief, Architectural History and Historic Preservation
Office of Facilities Engineering and Operations
Planning and Project Management

Attachments

Cc: Sheila Burke, Farleigh Earhart, Curtis Davis, Smithsonian
PDF copies to be sent to:

DCSHPO; David Maloney  
Louis Berger Group; Larry Earle  
SI; Sheryl Kolasinski, Amy Ballard, Jane Passman  
NGPC; Lois Schiffer, Nancy Witherell, Gene Keller  
NPS; Sally Blumenthal, Jennifer Talken-Spaulding
THE SECRETARY OF THE INTERIOR
WASHINGTON

MAY 30 2007

Dr. Cristián Samper
Acting Secretary, Smithsonian Institution
P.O. Box 37012
Washington, D.C. 20013

Dear Dr. Samper:

Pursuant to Section 8(a)(1)(C)(ii) of Public Law 108-184, 20 U.S.C. § 808-6, I hereby transfer as of June 1, 2007, administrative jurisdiction over the area of Washington, D.C., bounded by Constitution Avenue, Madison Drive, and 14th and 15th Streets, Northwest, as depicted on Attachment A, to the Smithsonian Institution for the establishment of the National Museum of African American History and Culture.

Sincerely,

[Signature]

DIRK KEMPTHORNE

Enclosures
AGREEMENT
BETWEEN
THE SMITHSONIAN INSTITUTION
AND
THE UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

This Agreement is made and entered into between the Smithsonian Institution, acting by
and through its Deputy Secretary and Chief Operating Officer, and the United States
Department of the Interior, National Park Service, acting through its Director.

Article 1. Background and Objectives

WHEREAS, on December 16, 2003, Congress passed Public Law 108-184, 20 U.S.C.S. §
80r, (the "Act"), creating within the Smithsonian Institution ("Smithsonian") a museum
by the name of the National Museum of African American History and Culture (the
"Museum");

WHEREAS, pursuant to Section 8(a)(2) of the Act, the Smithsonian Board of Regents
(the "Regents") is authorized to plan, design, and construct a building for the Museum;

WHEREAS, pursuant to Section 8(a)(1)(A) of the Act, on January 30, 2006, the Regents
designated the site listed in Section 8(B)(ii) of the Act - the area bounded by Constitution
Avenue, Madison Drive, and 14th and 15th Streets, Northwest - as the site for the
Museum (the "Monument Site");

WHEREAS, the Monument Site is depicted on the map attached hereto and incorporated
herein as Attachment A;

WHEREAS, the Monument Site is currently under the administrative jurisdiction of the
Department of the Interior ("DOI"), National Park Service ("NPS") and managed as
parkland within the National Mall & Memorial Parks unit of the National Park System;

WHEREAS, in Section 8(C)(ii) of the Act, Congress mandated that the Federal agency
with administrative jurisdiction over the designated site "shall transfer to the Smithsonian
Institution administrative jurisdiction over the area" "as soon as practicable after the date
on which the designation is made"; and

WHEREAS, NPS and the Smithsonian wish to establish a framework under which NPS
will undertake certain maintenance and operational responsibilities for the Monument
Site following its transfer to the Smithsonian:

NOW THEREFORE, the Smithsonian and NPS enter into this Agreement.
Article II. Authority

By the Act of July 1, 1898, c. 543, § 2, 30 Stat. 570, Congress placed the District of Columbia parks under the “exclusive charge and control” of the United States Army Chief of Engineers. The Act of February 26, 1925, c. 339, 43 Stat. 983, transferred this authority to the Director of Public Buildings and Public Parks of the National Capital. And Executive Order No. 6166, June 10, 1933, H. R. Doc. No. 69, 73d Cong., 1st Sess., § 2, (stating that the Office of National Parks. Buildings and Reservations of the National Capital shall be known as the National Park Service) devolved this authority upon the National Park Service. See Act of March 2, 1934, c. 38, § 1, 48 Stat. 389. NPS relies upon these authorities, the authorities in 16 U.S.C. §§ 1 – 4, and relevant implementing regulations including 36 C.F.R. § 1.2(a)(2), in entering into this Agreement.

By the Act of August 10, 1846, ch. 178 §178. 1, 9 Stat 102, Congress accepted the bequest of James Smithson to the United States of America to found, at Washington, under the name of the “Smithsonian Institution” an establishment for the increase and diffusion of knowledge among men. On December 16, 2003, Congress passed Public Law 108-184, 20 U.S.C.S. § 80r, creating within the Smithsonian Institution a museum by the name of the National Museum of African American History and Culture. The Smithsonian relies upon these authorities and the authorities at 20 U.S.C. §§ 41-70 and 20 U.S.C.S. § 80r in entering into this Agreement.

Article III. Responsibilities for the Monument Site

A. Applicable Regulations

Except as may be otherwise delineated herein, NPS regulations contained in Chapter 1 of Title 36 of the Code of Federal Regulations are, by operation of this Agreement, applicable to the Monument Site. NPS shall be responsible for enforcing such regulations at the Monument Site.

B. Law Enforcement

The Park Police shall be responsible for law enforcement activities at the Monument Site, including, but not limited to, arrest, transportation, processing of persons arrested, and the handling of motor vehicle accidents, traffic control, or traffic enforcement. Nonetheless, in the event that the Smithsonian erects a temporary building on site, the Smithsonian will be solely responsible for such building and shall maintain all control of such building and its contents.
C. Regulation of Public Use

For the duration of this Agreement, NPS will regulate use of the Monument Site pursuant to the applicable regulations contained in 36 C.F.R. Parts 1-7, including the processing of permit applications for special events and demonstrations. In order to coordinate the Smithsonian’s use with the NPS regulatory permitting process, the Smithsonian will provide NPS with advance notice of its intent to use the Monument Site, including set-up and take down dates, whereupon NPS will promptly submit and process an application on behalf of the Smithsonian for such dates. Such applications may be filed up to one year before the event. Initially, the Smithsonian plans to use the Monument Site each year on Martin Luther King Jr. Day and the weekend of the Black Family Reunion for programs. If another application is received for use of an area on a date sought by the Smithsonian, NPS will consult with the Smithsonian. Consistent with NPS regulations, NPS will not issue the applicant a permit if the area does not reasonably permit multiple occupancy or if the proposed activity unreasonably interferes with the Smithsonian’s permitted activities. Consistent with an application request, an NPS permit will also authorize the in-person solicitation of money, if it occurs within the confines of the permit area as part of Smithsonian’s ongoing activity. For purposes of the processing of permit applications for special events and demonstrations, NPS will designate any area on which the Smithsonian has installed a temporary structure or is conducting preliminary construction-related activities (e.g., engineering studies, core borings, ground water testing) as not reasonably suited for public use under 36 C.F.R. § 7.96(g)(4)(iii)(C), (vi)(B).

D. Maintenance

NPS shall be responsible for the general maintenance of the Monument Site, except for any Smithsonian structure or facility on the site. Such maintenance shall include, but not be limited to, grass clipping, trash removal, snow removal, sidewalk cleaning and repair, trash cans, existing directional signage, planting, tree trimming, and replacement of light bulbs.

E. Smithsonian Activities on the Monument Site

Notwithstanding NPS regulations as otherwise applicable to the Monument Site, the Smithsonian may undertake certain activities, such as installing a temporary structure and conducting preliminary construction-related activities (e.g., engineering studies, core borings, ground water testing), necessary for the planning, design, and construction of the Museum. Prior to undertaking these activities, Smithsonian shall consult and work with NPS to assure such activities are appropriate on parkland designated as the Museum site.

F. Concession Services

NPS, through its concessioner Guest Services Inc., will continue to operate the concession facility located on the Monument Site (the “Concession Facility”). The
location of the Concession Facility is depicted on Attachment B. Such operation shall cease when the concession is relocated to another location on the National Mall, or December 31, 2010, or when the Smithsonian begins construction of the Museum, whichever comes first.

The Smithsonian agrees that it will not establish a general food and beverage concession on the Monument Site while the Concession Facility is operating. Notwithstanding the foregoing, the Smithsonian shall be free to offer food and beverages for sale, and shall be free to contract with any service provider for such services, in connection with programs, performances, ceremonies, and other activities presented by it at the Monument Site, provided that such offerings are made within the confines of a structure clearly identified to the public as a Smithsonian facility.

The Smithsonian may also, consistent with 36 C.F.R. § 7.96(k), offer merchandise for sale in connection with programs, performances, ceremonies, and other educational and fund raising activities presented by it at the Monument Site provided that such offerings are made within the confines of structures clearly identified to the public as a Smithsonian facility.

In no event shall any offerings of food, beverage, or merchandise be made by or on behalf of the Smithsonian within the perimeter of the Concession Facility depicted on Attachment B.

G. Tort Claims

Any claim filed under the Federal Tort Claims Act (28 U.S.C. §§ 2671 et seq.) alleging an injury the cause of which may be traced to the conduct of NPS or the Smithsonian, shall be received and processed by the party having responsibility for the conduct giving rise to the particular injury.

Article IV. Key Officials

The key officials specified in this Agreement are considered to be essential to ensure maximum coordination and communication between the parties. Upon written notice, either party may designate an alternate to act in place of the designated key official, in an emergency or otherwise. Any notice which the parties may desire or may be required hereunder to give or deliver to the other party shall be deemed sufficiently given or delivered, if in writing, and sent by registered or certified mail, return receipt requested, first class postage prepaid, addressed to the appropriate key contacts set forth below, and the time of the delivery of such notice shall be deemed to be the time when the same is so mailed.
A. The key contact for NPS is:

Superintendent
National Mall & Memorial Parks
National Capital Region, National Park Service
900 Ohio Drive, SW
Washington, D.C. 20024-2000
(202) 245-4660 voice
(202) 426-9309 fax
naccsuperintendent@nps.gov

B. The key contact for the Smithsonian is:

Curtis M. Davis, RA
Project Executive
National Museum of African American History & Culture
Smithsonian Institution
Office of Planning and Project Management
Capital Gallery, 600 Maryland Avenue SW, Suite 500, MRC 511
P.O. Box 37012
Washington, DC 20013-7012
(202) 633-6568 voice
(202) 633-6233 fax
DavisCu@si.edu

Article V. Costs

NPS shall be responsible for all costs associated with its responsibilities under this Agreement consistent with applicable law. The Smithsonian will bear all costs for the programs, performances, ceremonies, and other activities presented by it at the Monument Site. Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), as amended, nothing herein contained shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by the United States Congress for this purpose, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

Article VI. Effective Date and Term

The effective date of this Agreement is the date of the last signature affixed hereto. The length of this Agreement shall be until December 31, 2010. This Agreement may be terminated by either party following ninety (90) days written notice. As used in this Agreement, the term “days” means Federal business days.
Article VII. General Provisions

A. Assignment.

No part of this Agreement may be assigned or transferred to any other party.

B. Modifications.

Any modifications to this Agreement shall be in writing, in the form of an amendment, and must be signed by both parties.

C. Civil Rights.

The parties will not discriminate in the selection of participants for any program on the grounds of race, creed, color, sex, or national origin and will observe all provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.

D. Complete Agreement.

All terms and conditions with respect to this Agreement are expressly contained herein.

E. Construction.

This Agreement shall be construed as if the parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against any one party.

F. Counterparts.

This Agreement may be signed in one or more identical counterparts, whether transmitted by telecopy or otherwise. Each such counterpart shall be deemed an original for purposes of this Agreement.

G. Headings and Interpretation.

The headings throughout this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement. The use of the masculine or neuter genders in this Agreement shall include the masculine, feminine and neuter genders. The singular form in this Agreement shall include the plural if the context requires.

H. Severance of Terms.

If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and
provisions. Meeting the terms of this Agreement shall not excuse any failure to comply with all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

I. Third Party Enforceability

This Agreement is intended only to improve coordination between the signatories with respect to the Monument Site and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against either signatory, the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

SIGNED AND AGREED:

SMITHSONIAN INSTITUTION

By: [Signature]  
Sheila Burke  
Deputy Secretary and  
Chief Operating Officer  
Date: May 30, 2007

NATIONAL PARK SERVICE

By: [Signature]  
Mary A. Bomar  
Director  
Date: MAY 18 2007

By: [Signature]  
Joseph M. Lawler  
Regional Director, National Capital Region  
Date: MAY 18 2007
March 16, 2007

John Wolflin
U.S. Fish and Wildlife Service
177 Admiral Cochrane Drive
Annapolis, MD 21401

Dear Mr. Wolflin:

The Louis Berger Group, Inc. is assisting the Smithsonian Institution in preparing an Environmental Impact Statement (EIS) to assess the potential effects of constructing and operating the proposed National Museum of African American History and Culture (NMAAHC) on the National Mall in Washington, DC. The EIS is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, the Council of Environmental Quality's Regulations for Implementing NEPA (40 CFR 1500-1508), and the National Capital Planning Commission’s (NCPC) 2004 Environmental and Historic Preservation Policies and Procedures.

The EIS will identify and assess the potential environmental effects of constructing and operating a permanent facility for the NMAAHC as a part of the Smithsonian Institution. The site of the proposed NMAAHC is located on the National Mall in Washington, D.C. on an approximately five-acre parcel that is bounded by four heavily used roads: Constitution Avenue, Madison Drive, and 14th and 15th Streets N.W. Project area maps that show the site location are attached. The site resembles an urban park with scattered trees and a maintained lawn. A temporary concession facility for the National Park Service is situated in one corner of the site. Recreation associated with the National Mall also occurs on the site.

The purpose of this correspondence is to request a list of federally listed species that may be impacted by this proposed project and to initiate informal Section 7 consultation. Because of its location in a highly urbanized environment on the National Mall, it is unlikely that the proposed NMAAHC will affect any federally listed or locally sensitive species. However, we would appreciate written verification from your office. A letter is also being sent to the D.C. Department of Health (Fish and Wildlife Division) to solicit their input.

If you have any questions or require additional information, please contact Joel Gorder by phone at (202) 303-2648, by facsimile at (202) 293-0787, or by e-mail at jgorder@louisberger.com. Thank you in advance for your assistance.

Sincerely,

Joel Gorder
Planner/Environmental Scientist

Enclosures: Maps

Cc: Jane Passman, Smithsonian Institution
    Jess Commerford, Berger Project Manager
    Jill Cavanaugh, Berger Deputy Project Manager
    Karen Lusby, Berger EIS Technical Lead
March 16, 2007

John Sieman
D.C. Department of Health - Fish and Wildlife
51 N Street NE Suite 5002
Washington, DC 20002

Dear Mr. Sieman:

The Louis Berger Group, Inc. is assisting the Smithsonian Institution in preparing an Environmental Impact Statement (EIS) to assess the potential effects of constructing and operating the proposed National Museum of African American History and Culture (NMAAHC) on the National Mall in Washington, DC. The EIS is being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, the Council of Environmental Quality’s Regulations for Implementing NEPA (40 CFR 1500-1508), and the National Capital Planning Commission’s (NCPC) 2004 Environmental and Historic Preservation Policies and Procedures.

The EIS will identify and assess the potential environmental effects of constructing and operating a permanent facility for the NMAAHC as a part of the Smithsonian Institution. The site of the proposed NMAAHC is located on the National Mall in Washington, D.C. on an approximately five-acre parcel that is bounded by four heavily used roads: Constitution Avenue, Madison Drive, and 14th and 15th Streets N.W. Project area maps that show the site location are attached. The site resembles an urban park with scattered trees and a maintained lawn. A temporary concession facility for the National Park Service is situated in one corner of the site. Recreation associated with the National Mall also occurs on the site.

The purpose of this correspondence is to determine if there are any local species of concern that may be affected by the construction and operation of the museum and to solicit your input or concerns related to these species. Because of its location in a highly urbanized environment on the National Mall, it is unlikely that the proposed NMAAHC will affect any locally sensitive or federally listed species. However, we would appreciate written verification from your office. A letter is also being sent to U.S. Fish and Wildlife Service to initiate informal Section 7 consultation.

If you have any questions or require additional information, please contact Joel Gorder by phone at (202) 303-2648, by facsimile at (202) 293-0787, or by e-mail at jgorder@louisberger.com. Thank you in advance for your assistance.

Sincerely,

Joel Gorder
Planner/Environmental Scientist

Enclosures: Maps

Cc: Jane Passman, Smithsonian Institution
Jess Commerford, Berger Project Manager
Jill Cavanaugh, Berger Deputy Project Manager
Karen Lusby, Berger EIS Technical Lead
Proposed Site of the NMAAHC in Relationship to Local Streets

Proposed Site of the NMAAHC in Relationship to National Mall
March 20, 2007

Joel Gorder
The Louis Berger Group, Inc.
2445 M Street NW
Fourth Floor
Washington DC 20037

RE: National Museum of African American History and Culture Washington DC

Dear Joel Gorder

This responds to your letter, received March 19, 2007, requesting information on the presence of species which are federally listed or proposed for listing as endangered or threatened in the above referenced project area. We have reviewed the information you enclosed and are providing comments in accordance with section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

Except for occasional transient individuals, no proposed or federally listed endangered or threatened species are known to exist within the project impact area. Therefore, no Biological Assessment or further section 7 consultation with the U.S. Fish and Wildlife Service is required. Should project plans change, or should additional information on the distribution of listed or proposed species become available, this determination may be reconsidered.

This response relates only to federally protected threatened or endangered species under our jurisdiction. Limited information is currently available regarding the distribution of other rare species in the District of Columbia. However, the Nature Conservancy and National Park Service (NPS) have initiated an inventory of rare species within the District. For further information on such rare species, you should contact Mary Pfaffko of the National Park Service at (202)-535-1739.

An additional concern of the Service is wetlands protection. Federal and state partners of the Chesapeake Bay Program have adopted an interim goal of no overall net loss of the Basin's remaining wetlands, and the long term goal of increasing the quality and quantity of the Basin's wetlands resource base. Because of this policy and the functions and values wetlands perform, the Service recommends avoiding wetland impacts. All wetlands within the project area should be identified, and if alterations of wetlands is proposed, the U.S. Army Corps of Engineers,
Baltimore District, should be contacted for permit requirements. They can be reached at (410) 962-3670.

We appreciate the opportunity to provide information relative to fish and wildlife issues, and thank you for your interests in these resources. If you have any questions or need further assistance, please contact Devin Ray at (410) 573-4531.

Sincerely,

Mary Ratnaswamy, Ph.D.
Program Supervisor, Threatened and Endangered Species
Visual Resource analysis called for by NEPA in Tier 2, however, after we have selected the design architect.

We expect this Tier 1 analysis to lead to a Smithsonian decision on a “Tier 1 preferred alternative” expressed as a narrative set of design principles outlining opportunities, boundaries, and constraints. The Smithsonian’s decisions based on the Tier 1 analyses will serve to inform the design architect and, in part, guide the development of conceptual designs and a subsequent preferred concept design alternative for the museum. As a Section 106 component to the NEPA Tier 1 process, we would expect to include in the Smithsonian decision a Programmatic Agreement (PA) or some other form of agreement that would serve as a “roadmap” to bring the Section 106 process to closure at a later date.

In Tier 2, we will analyze the aesthetics and visual impacts of concept design alternatives developed by the selected architect. Materials, proportions, symbolism, form, architecture, landscape architecture, and the like, are themes that will be analyzed during the design process and the information required to develop alternatives based on “architectural concepts” will be developed in this stage. As we have previously discussed, the necessary NEPA analyses may take the form of an Environmental Assessment (EA) or a Tier 2 EIS, depending on the impacts of the proposed alternatives. We assume that the alternative concept designs will be consistent with the Tier 1 preferred alternative. As Joint Lead Agencies, if we reach consensus that the preferred concept is substantially outside the parameters established in the Tier 1, we would perform additional analyses as part of Tier 2. Completion of Tier 2 would complete our NEPA obligations.

Furthermore, Tier 2 will integrate a continuation of the Section 106 review and consultation process. As noted, the closure of the 106 process will be described in the “roadmap” developed during the NEPA Tier 1 and 106 processes. Whatever the case, it is our understanding that 106 closure must occur before the Smithsonian final design submission to NCPC.

We see the milestones for NEPA, Section 106, and NCPC submissions fitting together as outlined below. Note that the sequence of events is paramount; actual timing is dependent on many factors, most importantly funding availability:

- Draft EIS presentation in January, 2008 with public comments to be submitted to SI and NCPC;
- Summary of comments posted on the Berger website February, 2008;
- Discussion with consulting parties leading to a PA or some other form of Section 106 agreement that would serve as a “roadmap” for future 106 engagement;
- Completion of the Tier 1 EIS (including a statement of a preferred alternative/design principles) and Smithsonian Institution’s Record of Decision in summer 2008, which will include the Section 106 agreement, in summer 2008;
• Public informational meeting in late spring or summer 2008 on the preliminary findings by the Pre-Design Team of Freelon Bond regarding geo-technical and programming requirements for the museum;

• Public presentation of conceptual designs, informed by Tier 1, developed by the design Architect in 2009;

• Focused topical discussions with consulting parties as a continuation of the Section 106 process on aspects of the presented conceptual designs that avoid, minimize or mitigate adverse impacts on Historic Resources;

• Concept Design Submission to NCPC in early 2009;

• Continued Section 106 consulting parties discussion of the results of conceptual/preliminary design and impacts within Areas of Potential Effects and summary statement of alternatives to avoid, minimize and/or mitigate Adverse Effects;

• Tier 2 of the NEPA process with EA or EIS, if SI and NCPC reach consensus that the preferred concept is substantially outside the parameters established in the Tier 1 EIS document;

• Continuation of focused and topical Section 106 design review as the architectural team develops preliminary design; 2009;

• Preliminary Design Submission to NCPC, 2010;

• Closure of the Section 106 as defined by the agreement associated with the NEPA Tier 1 process.

We believe a two-tiered approach will allow the Smithsonian to focus on actions that are "ripe for decision" (CEQ regulations, §1508.28) and streamline, to the greatest extent possible, the EIS and the National Historic Preservation Act, Section 106, reviews. Because NCPC is involved in the EIS process as well as the Section 106 review, your guidance and concurrence on how best to engage the public as the Smithsonian moves forward with the development of our country's newest and long-awaited national museum is much appreciated.

Please let us know if you have any concerns with this approach or suggestions. Our intention is to include this letter and your response in our Draft EIS and Section 106 documentation.

Sincerely,

Harry Rombach, R.A.
Associate Director for Facilities Master Planning
IN REPLY REFER TO:
NCPC File No. 6331

JAN 18 2008

Mr. Harry Rombach, R.A.
Associate Director for Facilities Master Planning
600 Maryland Avenue SW Suite 5001
P.O. BOX 37612, MRC 511
Washington DC 20013-7012

Dear Mr. Rombach:

Thank you for your December 3, 2007 letter outlining the Smithsonian’s proposed process for the National Museum of African American History and Culture (NM AHC) Environmental Impact Statement (EIS). We understand from your letter that you will be using a tiered process as defined under the National Environmental Policy Act (NEPA). We also understand that the Smithsonian will conduct its NEPA process for this project in conjunction with its National Historic Preservation Act (NHPA) Section 106 review process.

We note, based on your schedule, that the project would be submitted to NCPC for concept review early in 2009 and that additional NEPA analysis will continue under Tier 2 after that time. We concur with your proposed approach with the following clarifications:

1. Whether the Tier 2 analysis must take the form of an Environmental Assessment (EA) or an EIS depends on the potential impacts of the proposed alternatives, and the Smithsonian and NCPC will make this determination together;

2. That the Tier 2 alternative concept designs will be consistent with the Tier 1 preferred alternative principles;

3. That in addition to the Smithsonian’s preferred alternative, NCPC staff may select an additional alternative that will be carried into the Tier 2 process for further analysis and design to ensure that a wide range of design alternatives are considered.

Additionally, should the Smithsonian’s concept design be substantially outside the parameters established in Tier 1, or should the Commission require changes to the concept during its review at the concept stage, NCPC expects that the Smithsonian will perform all additional analysis under Tier 2 necessary to respond to Commission comments and to allow NCPC to meet its NEPA and Section 106 obligations defined in the Commission’s Environmental and Historic Preservation Policies and Procedures. NCPC submission requirements outline the schedule for NEPA and NHPA processes to be completed relative to preliminary and final review.

Thank you for clarifying that your December 3, 2007 letter incorrectly listed the date of your public scoping session for this project as occurring in January of 2008 when it actually occurred in January of 2007. We encourage continuing and frequent consultation with NCPC staff through Tier 1, concept development, Tier 2, and the associated NHPA Section 106 review process. If you have any questions, please contact Mr. Eugene Keller, at (202) 482-7251.

Sincerely,

David Levy
Acting Director
Office of Urban Design and Plan Review
Architectural History and Historic Preservation

20 November, 2007

Mr. David Maloney
District of Columbia Historic Preservation Officer
DC Office of Planning
801 North Capital Street, N.E.
Washington, D.C. 20002

Dear David,

This is a request for your official written concurrence of a potential adverse effect regarding the proposed design and construction of the National Museum of African American History and Culture on the Washington Monument Grounds in Washington, DC. In a letter dated March 27, 2006, Dr. Cynthia Field, Chair of the Architectural History and Historic Preservation office of the Smithsonian Institution, referenced a conversation with you on March 24, 2006, where you both acknowledged that this undertaking would have an adverse effect on the National Mall and possibly other historic properties nearby. Since that time, additional analysis has confirmed that other sites will be adversely affected, particularly by partially obstructed views to these resources and the by the loss of open space that is now part of the existing cultural landscape.

I am enclosing for your reference the documentation as specified in 36 CFR 800.11(e) that the Advisory Council requires for notification of a potential Adverse Effect. Your written concurrence is necessary for inclusion in the forthcoming Draft Environmental Impact Statement materials being prepared for a presentation to be made by the Smithsonian and the National Capital Planning Commission, as Joint-Lead Agencies, for this project. The public hearing is scheduled for January 10, 2007. The report needs to go to the printer as soon as we receive your concurrence.

As you are aware, the undertaking in question is the design and construction of the National Museum of African American History and Culture on a site authorized by Congress at 14th and Constitution Avenue, NW, Washington, DC. As part of the National Historic Preservation Act, Section 106 review process and the National Environmental Policy Act (NEPA), this project has been reviewed by numerous consulting parties, including your office, for the better part of a year and no proposed alternative for a building on the site has satisfactorily avoided all impacts on the views and vistas for existing historic structures in the Area of Potential Effects. While there have been studies and plans in the past, such as the McMillan Plan, contemplating the construction of an additional major building on the site, to date, this area of the site has remained without a permanent structure. This constitutes a potential adverse effect for any major permanent structure visible on the site.

The supporting documentation included with this request includes the Cultural

*While the date of the public hearing is noted as January 10, 2007, the actual date of the meeting was January 10, 2008.*
Page 7, National Museum of African American History and Culture

Resources Report, the Effects Analysis for the five developed alternatives, the Viewshed Matrix, the Historic Resource Maps with Areas of Potential Effect and information on the 6th alternative. This additional alternative, still in its draft state, does not eliminate the potential for adverse effect.

Please do not hesitate to let me know if you have any questions. If all is clear and consistent with your earlier determination regarding this project, please sign and return this letter for inclusion in the Draft Environmental Impact Statement at your earliest convenience. As always, the Smithsonian Institution will continue to work with the consulting parties through the Section 106 process of the National Historic Preservation Act to investigate ways to avoid, minimize or mitigate these adverse effects as we move into the design development stages of this project over the next year or so.

Sincerely yours,

Sharon C. Park
FAIA
Associate Director, Architectural History and Historic Preservation
Office of Planning and Project Management
Smithsonian Institution
800 Maryland Avenue, SW Suite 5001 MRC 511
PO Box 37972
Washington, DC 20013-7012

[Signature]
11-26-07

I concur with the determination of Adverse Effect
David Maloney, DC Historic Preservation Officer

Date

Attachments

Letter of March 27, 2006
Effects Analysis by Alternatives
Viewshed Matrix
Historic Resources Map with Area of Potential Effect
NMAAHC Cultural Resources Report