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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–082]

NASA Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Biological and Physical Research Advisory Committee, Space Station Utilization Advisory Subcommittee (SSUAS).

DATES: Wednesday, July 28, 2004, 8 a.m. to 5 p.m., Thursday, July 29, 2004, 8 a.m. to 5 p.m. and Friday, July 30, 2004, 8 a.m. to 12 noon.

ADDRESSES: Center for Advanced Space Studies, 3600 Bay Area Blvd, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Donald A. Thomas, Code U, National Aeronautics and Space Administration, Houston, TX 77058, (281) 483–7211.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting will include the following topics:

- Status on U.S. Vision for Space Exploration and its relationship to Research on International Space Station
- Program Reports from the Office of Biological and Physical Research and the International Space Station Program
- International Space Station Payload Operations
- Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

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NATIONAL CAPITAL PLANNING COMMISSION

Adoption of Final Environmental and Historic Preservation Policies and Procedures

AGENCY: National Capital Planning Commission.

ACTION: Announcement of the adoption of Final Environmental and Historic Preservation Policies and Procedures.

Authority: National Environmental Policy Act and National Historic Preservation Act.

SUMMARY: On April 1, 2004, the National Capital Planning Commission adopted its updated and revised Environmental and Historic Preservation Policies and Procedures. The Policies and Procedures were originally adopted on September 13, 1979 and amended on September 3, 1981, October 21, 1982. The revised policies adopted on April 1, 2004 represent the first wholesale revisions and updating of the policies in over twenty years.

A draft of the revised Policies and Procedures was originally published in the **Federal Register** for public comment on September 25, 2000. Following the receipt and consideration of comments, a revised draft was presented during an information presentation on the draft policies and procedures at the February 5, 2004 Commission meeting. Copies of the revised draft were made available for review on NCPC's Web site and upon request on December 29, 2003.

In drafting the revised policies and procedures, NCPC consulted with the Council on Environmental Quality (CEQ), the Advisory Council on Historic Preservation, and took into consideration valuable input from members of the public who provided testimony and written comments early in the review process. In addition, NCPC considered the recommendations of the CEQ's September 2003 NEPA Task Force report ''Modernizing NEPA Implementation.''

The revised and updated policies and procedures update and clarify NCPC's existing environmental and historic preservation policies and procedures in the following significant areas: (1) Making more explicit the levels of compliance with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act required for each stage of NCPC's review of a project or master plan; (2) requiring a clearly defined NEPA scoping process; (3) expanding the public participation requirements during compliance with NEPA and Section 106; (4) integrating more closely the NEPA and Section 106 compliance processes; and (5) updating and revising NCPC's list of categorical exclusions under NEPA.

DATES: The Final Environmental and Historic Preservation Policies and Procedures were adopted on April 1, 2004.

ADDRESSES: Copies of the final Environmental and Historic Preservation Policies and Procedures can be requested at NCPC's offices at 401 9th Street, NW., Suite 500, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Copies of the Policies and Procedures can be obtained at NCPC's offices and Web site, *www.ncpc.gov*, or by contacting Mr. Eugene Keller, NCPC's Environmental Officer at 202–482–7200 or by e-mail at *gene.keller@ncpc.gov*.

SUPPLEMENTARY INFORMATION: The polices and procedures as adopted on September 13, 1979 and amended on September 3, 1981, October 21, 1982, and April 1, 2004, are as follows (excluding Appendices, which may be obtained directly from NCPC:

Section 1. Purpose

The National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*, requires federal agencies to carefully consider environmental impacts in their decisions. All federal agencies must direct, to the fullest extent possible, their policies, plans, and programs to protect and enhance environmental quality. These procedures adopt and supplement the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA and describe the way the National Capital Planning Commission, beginning at an early point in its decision making process, considers the environmental and historic aspects of proposed actions that it may review and approve. The Commission's goals are to avoid or minimize adverse environmental consequences and enhance its decision processes based on a better understanding of environmental and historic resources impacts. In addition, these procedures provide guidance for early implementation of Section 106 of the National Historic Preservation Act (NHPA) in conjunction with NEPA.

The policy and procedures serve three primary functions. First, the National Capital Planning Commission must meet the requirements of NEPA for projects the Commission sponsors or co-sponsors as major federal actions that may significantly affect the environment. Second, the Commission must adhere to and meet the objectives of NHPA and its Section 106 process

when the Commission is the sole federal agency or acting in a specific approval authority that will constitute a federal undertaking subject to the Section 106 process. Third, the procedures provide guidance to other federal agencies by outlining the required documentation that must accompany each project or master plan submission to the Commission, and which will be acted upon in accordance with the Commission's authority.

In addition to NEPA and NHPA, the Commission will consider other environmental mandates during its decision making process including but not limited to:

1. Executive Order 12898, Environmental Justice
2. Clean Air Act, as amended
3. Endangered Species Act, as amended
4. Resource Conservation and Recovery Act
5. Executive Order 11988, Floodplain Management
6. Executive Order 11990, Protection of Wetlands
7. Federal Communications Commission Guidelines for Evaluating the Environmental Effects of Radiofrequency Emissions.

With regard to NHPA, these procedures require all submitted projects and plans to provide relevant information about conformance with NHPA as required by Section 106 of the Act. The applicant must submit documentation indicating compliance with the Section 106 process. However, the Section 106 compliance documentation may be combined and should be coordinated with NEPA documents when possible. Submission of Section 106 documentation is required regardless of the status of NEPA compliance. See Sections 4, 5, 7, and 8 of the procedures and Appendices A and B for specifics.

Section 2. Explanation of Abbreviations and Terms

''Advisory Council on Historic Preservation or Advisory Council'' refers to an independent federal agency that was established by NHPA in 1966 and provides a forum for influencing federal activities, programs, and policies as they affect historic resources.

''Adverse Effect'' refers to a determination that an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, are distant by location, or may be cumulative.

''Categorical Exclusion'' (CX) means a category of actions that have been found by the Commission, in accordance with 40 CFR 1507.3, to not require an Environmental Assessment or an Environmental Impact Statement based on the lack of significant individual or cumulative environmental effects of the actions, absent extraordinary circumstances.

''CEQ'' refers to the Council on Environmental Quality.

''Commission'' refers to the National Capital Planning Commission, which was created by the Planning Act.

''Compelling reason'' refers to the situation of taking historic properties into limited account during the planning of a project which responds to a disaster or emergency declared by the President, Governor of a State, or local government official that responds to immediate threats to life or property, and that the scope and timing of the planning steps are not phased to reflect the agency official's consideration of project alternatives in the NEPA process and that the decision expressed is commensurate with the assessment of other environmental factors.

''Comprehensive Plan'' refers to the *Comprehensive Plan for the National Capital*, which was prepared and adopted pursuant to the Planning Act.

''Cooperating agency'' means any federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

''Council'' refers to the Council of the District of Columbia, as defined in Section 103 of the Home Rule Act.

''Environmental Impact Statement'' (EIS) is a detailed written statement as required by Section 102(2)(C) of NEPA.

''Environmental Assessment'' (EA) is a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

''Environs'' refers to the territory surrounding the District of Columbia within the National Capital Region as defined in 40 U.S.C. 8702.

''EPA'' refers to the United States Environmental Protection Agency.

''Executive Director'' refers to the director employed by the Commission pursuant to Section 2(c) of the Planning Act.

''Finding of No Significant Impact'' (FONSI) refers to a document by a federal agency that briefly presents the reasons why an action, not otherwise excluded, will not significantly affect the environment. It shall include the EA or a summary of it.

''Home Rule Act'' refers to the District of Columbia Self-Government and Governmental Reorganization Act (December 24, 1973, 87 Stat. 774).

''Historic property'' refers to any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

''Mayor'' refers to the Mayor of the District of Columbia, as defined in Section 103 of the Home Rule Act.

''Memorandum of Agreement'' refers to the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

''National Capital'' refers to the District of Columbia and territory owned by the United States within the environs.

''National Historic Landmark'' refers to a historic property that the Secretary of the Interior has designated a National Historic Landmark.

''National Register of Historic Places'' refers to the nation's official list of cultural resources worthy or preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of national program to coordinate and support public and private efforts to identify, evaluate, and protect historic and archaeological resources.

''NEPA'' refers to the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*).

''NEPA document'' refers to a Categorical Exclusion determination, an Environmental Assessment, an

Environmental Impact Statement, or any other environmental document identified in CEQ NEPA Regulations, 40 CFR 1508.10.

''Newly acquired site involving a project'' refers to any land area with boundary limits that is proposed to be improved upon from an undeveloped or un-built condition, including but not limited to, building construction or other built structure with or without related site improvements, or site development, such as grading, any landform modification, landscaping, street, or road extensions.

''NHPA'' refers to the National Historic Preservation Act, (Pub. L. 89–665 as amended).

''Planning Act'' refers to the National Capital Planning Act of 1952, as amended (40 U.S.C. 8721 *et seq.*).

''Programmatic Agreement'' refers to a document that governs the implementation of a particular program of the resolution of adverse effects from certain complex project situations or multiple undertakings where historic properties are involves.

''Protect confidentiality concerns of affected parties'' refers to the need to protect limited sources of information pertaining to historic or archaeological resources related to their location, quality, quantity, disposition or other important aspect, which may jeopardize their existence and importance as a Section 106 resource, or other properties that meet the National Register criteria.

''Record of Decision'' (ROD) refers to a concise public record of an agency's decision in cases requiring EISs that is prepared in accordance with 40 CFR 1505.2.

''Redevelopment Act'' refers to the District of Columbia Redevelopment Act of 1945, as amended.

''Region'' refers to the National Capital Region as defined in Section 1(b) of the Planning Act.

''Section 106 consultation'' refers to the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process. The Secretary's ''Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act'' provide further guidance on consultation.

''Section 106 process'' refers to Section 106 of the NHPA as implemented by the Advisory Council's Regulations, 36 CFR, Part 800 — Protection of Historic Properties.

''Site Proposal'' refers to the geographical location of a planned action.

''State Historic Preservation Officer''(SHPO) refers to the official appointed or designated, pursuant to section 101(b)(1) of NHPA, to administer the state historic preservation program or a representative designated to act for the State Historic Preservation Officer.

''Undertaking'' means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a federal agency.

''Zoning Act'' refers to the Act of June 20, 1938, 52 Stat. 797, as amended.

''Zoning Commission'' refers to the Zoning Commission created by Section 1 of the Act of March 1, 1920, 41 Stat. 500, as amended.

''Zoning Regulations'' refers to the regulations, including the maps, and amendments thereto, promulgated by the Zoning Commission pursuant to the Zoning Act.

Section 3. Policy

In its planning and decision making, the Commission will use all practicable means and measures to further the National Environmental Policy set forth in Section 101 of NEPA and the Section 106 process of NHPA. To the maximum extent practicable, the Commission will ensure that its actions protect and, where possible, improve the quality of the human environment including the built and sociocultural environments of the National Capital Region. This effort will improve and coordinate the federal plans, functions, programs, and resources to carry out both the policy set forth in NEPA and the purposes of the Planning Act, the Zoning Act, and other statutes granting the Commission a planning and regulatory role.

The Executive Director, in conformance with this policy, will use the NEPA review process prescribed in the CEQ regulations as a practical planning procedure, and integrate the NEPA review process and the Section 106 processes into decision making in an efficient manner. The Executive Director will seek to avoid and minimize adverse effects to historic properties and to inform the Commission and the public of significant environmental impacts and reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. These efforts will be initiated at the earliest possible stage in planning any Commission-sponsored action. The Commission will ensure that it has reviewed and fully understood the environmental and historic impacts of requested action decisions before making relevant decisions.

Moreover, it is the policy of the Commission that in those limited circumstances where applicable, the Commission shall adhere to the provisions of Section 110(d), (e), and (f) of the NHPA and, consistent with the Commission's mission and mandates, shall carry out programs and projects (including those under which any federal assistance is provided or any federal license, permit, or other approval is required) in accordance with the purposes of the NHPA and give consideration to programs and projects which will further the purposes of the NHPA. Furthermore, in accordance with Section 112 of the NHPA, the Executive Director shall assure that all actions taken by employees or contractors of the Commission shall meet professional standards under regulations developed by the Secretary of the Interior, in consultation with the Advisory Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

Section 4. Commission Decision Points

The Commission will begin its NEPA review as soon as possible after receiving a complete proposal submission and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). Federal agencies making submissions involving an EIS or EA will seek to have the Commission participate as a cooperative agency during the submitting agency's preparation of the NEPA document. IF cooperating agency status of the Commission is not established, delay in the requested approval by the Commission may occur when necessary.

(A) *Federal, District, and Non-federal projects subject to Commission approval.* The Commission review and approval of proposed federal, District of Columbia, and non-federal plans, projects and acquisitions of real property are described herein in relation to the Commission's Project Plans Submission Requirements, Master Plan Submission Requirements, or Submission Requirements for Antennas on Federal Property. Generally, projects are submitted as a Concept proposal, a Preliminary design, and a Final design

in compliance with the preceding requirements. Furthermore, the Commission requires that the following environmental documents (NEPA Environmental Assessment, Environmental Impact Statement, or a Categorical Exclusion determination) and NHPA Section 106 process information accompany the request for an approval decision:

1. *Master Plan Approval*—In requesting an approval of a final master plan, the submitting agency shall submit, at a minimum, an Environmental Assessment as specified at Section 10 of these procedures and provide documentation of completion of the Section 106 process. In a submission requiring either an Environmental Assessment or an Environmental Impact Statement, the final determination resulting from the document *must be* completed and signed by the responsible federal lead agency *prior to* the submission of the proposal to the Commission for review.

2. *Site Proposal Approval*—In requesting the approval of a site for a commemorative work authorized under the Commemorative Works Act of 1986, 40 U.S.C. 8905(a), or other law providing for separate site and design proposals, the submitting agency shall submit an environmental document that considers the potential environmental effects of a site selection decision upon the proposed site and a reasonable range of alternative sites. The level of detail in the environmental analysis should be proportional to the scope of the site decision, including consideration of design guidelines and other criteria required by 40 U.S.C. 8905(b), and should defer detailed consideration of the effects of the design approval decision to a subsequent environmental document, to the extent that detailed consideration of alternative design proposals is impractical. The submitting agency may tier their environmental documents for design proposals to eliminate repetitive discussions of issues and to focus on the issues that are ripe for decision at the site and design approval stages. The federal agency shall, in accordance with Sections 800.3 and 800.4 of 36 CFR, Part 800, submit documentation demonstrating that it has identified consulting parties to the extent possible, established a public participation plan for the commemorative works approval process and identified, in consultation with the appropriate SHPO, the Commission and other consulting parties, the historic properties at the sites being considered for the commemorative work.

3. *Concept Proposal Approval*—In requesting a concept approval, the submitting agency shall not be required to provide an environmental document of Section 106 process documentation, with the exception of a conceptual design for commemorative works authorized under the Commemorative Works Act of 1986, 40 U.S.C. 8905(a). For a commemorative work conceptual design, the submitting agency shall ensure that the NEPA and Section 106 requirements for a preliminary plan approval are completed in advance of submission. However, the final determination on an Environmental Assessment or an Environmental Impact Statement prepared for a commemorative work concept design must only be completed and may be signed by the responsible federal lead agency prior to submission to the Commission.

4. *Preliminary Plan approval*—In requesting preliminary plan approval, the submitting agency shall submit an environmental document as specified at Sections 8, 9, or 10 of these procedures. In a submission requiring either an Environmental Assessment or an Environmental Impact Statement, the final determination resulting from the document *must be* completed and signed by the responsible federal lead agency *prior to* the submission of the proposal to the Commission for review. If applicable, the submitting agency shall provide documentation demonstrating that the Section 106 process has at least been initiated with the appropriate SHPO at the time of submission in accordance with Section 800.3 of 36 CFR, Part 800. The federal agency should also demonstrate compliance with the Section 106 process through 36 CFR 800.4 in consultation with the appropriate SHPO. The federal agency should establish the likely presence of historic properties with an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO and any other consulting parties, including the Commission. Consulting parties and other interested parties should be identified to the extent possible at this phase. Where alternatives under consideration consist of large land areas, generalized site areas, yet-to-be-defined specific design qualities and characteristics, or where access to properties is restricted, the applicant may use a phased process to conduct identification and evaluation efforts for Section 106 purposes. Deferral of final identification and evaluation of historic properties effects may occur if the documents used by the applicant comply with the National Environmental Policy Act and the Section 106 process pursuant to Sec. 800.8(c) of 36 CFR, Part 800.

If the agency is able to make an assessment of adverse effects pursuant to Sec. 800.5, in consultation with the appropriate SHPO, that information should be included in the submission. However, the Finding pertaining to the Environmental Assessment or the Record of Decision derived from the Environmental Impact Statement must reflect the agency's determination of effect under Section 800.5 of 36 CFR, Part 800 even though the Section 106 process may not have been completed.

5. *Final Plan approval*—In requesting final plan approval, the submitting agency shall comply with the environmental document requirements for preliminary plan approval and shall provide documentation demonstrating completion of the Section 106 process, including all requirements of Section 800.6 of 36 CFR, Part 800.

(B) *Legislative Proposals.* The Commission, in the development of Commission-initiated legislative proposals that would affect the environment, will include in any recommendation or report to Congress relevant NEPA documentation. The document will be available as part of the formal transmittal of a legislative proposal to Congress or up to 30 days later in order to allow time for completion of an accurate legislative environmental impact statement consistent with 40 CFR 1506.8.

(C) *Land Acquisitions.* Prior to the Commission's acceptance of custody and accountability (for federal lands), or acceptance of an offer to donate or contract for purchase (for private lands), the Commission will complete the necessary NEPA document and all necessary Section 106 process requirements including, but not limited to, those set forth in 36 CFR, Subpart B, Sections 800.3, 800.4, 800.5 and 800.6.

(D) *Non-federal projects subject to Commission Approval.* Non-federal applicants shall prepare the necessary NEPA and Section 106 documents, in conformance with the respective CEQ and Advisory Council requirements, according to the specifications set out in subsection (A) of this section. However, the Commission will make an independent evaluation of the NEPA document and will be the responsible lead federal agency for NEPA purposes, if there is no other anticipated federal agency involvement. When the non-federal applicant uses an existing NEPA document prepared by any other entity, the Commission will take responsibility

for the scope and contents of the environmental document if it is sufficient as required by regulations. See 40 CFR, 1506.3 and 1506.5. The Commission will review another federal agency's NEPA document, as provided for in Section 12 of these procedures, and may adopt the document if it meets the standards for an adequate document as specified by CEQ regulations. Otherwise, the Executive Director will require preparation of a subsequent NEPA document noting in the draft NEPA document why the original submitted text was considered inadequate. Where the Commission acts as lead agency, or as a cooperating agency where appropriate, an EIS or EA involving a non-federal applicant may be prepared for the Commission by a contractor that the Commission selects and funded by the applicant in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement pursuant to 40 CFR 1506.5(c).

(E) *Emergency Actions.* Where emergency circumstances make it necessary for the Commission to take an action with significant environmental impact without observing the provisions of these procedures, the Commission or the Executive Director must, as soon as practicable, consult with CEQ regarding alternative arrangements for NEPA compliance.

Section 5. Scoping in the Commission NEPA Process

NCPC and all applicants to the Commission shall engage in scoping prior to preparation of the applicable NEPA document. *Scoping* means determining the scope or range of environmental and historic resource analysis needed and that must occur in preparing either an EA or EIS. Scoping is discussed in the CEQ regulations largely in the context of EIS preparation but there shall be scoping for the preparation of an EA as recently augmented by CEQ discussions. Scoping is a key effort to help eliminate unimportant issues, focus the analysis on important issues, and prevent redundancy and excess bulk in documents. At minimum, the Executive Director shall ensure that the scoping process includes:

(A) Participation of affected federal, state, and local agencies, any affected Indian Tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds). 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort and must be demonstrated.

(B) Determining the significant issues that will require in-depth analysis. 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort and must be demonstrated.

(C) Identifying and eliminating from detailed study the issues that are not significant or have been covered by prior environmental review. In narrowing the discussion of issues, a brief presentation of why they will not have a significant effect on the human environment, or a reference to their coverage elsewhere, *must* be provided.

(D) Allocating assignments for preparing the NEPA document if necessary.

(E) Indicating any Environmental Assessments or Environmental Impact Statements (available, or that will be prepared) that relate to, but are not part of, the scope of the project under consideration.

(F) Identifying other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the project.

(G) Indicating the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(H) At the direction of the Executive Director, establishing the type of scoping for a specific action sponsored by the Commission, and which specific methods of obtaining agency, Tribal, applicant, and other public participation may be used. 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort.

Scoping through public involvement, consultations with agencies having jurisdiction by law or expertise, and publication of notices and draft documents, is required by the CEQ regulations for an EIS. Agencies with ''jurisdiction by law'' are those whose permission or assistance may be required by the Commission in order for the action to proceed (*e.g.,* the Army Corps of Engineers if wetlands may be affected), and those with other kinds of regulatory or advisory authority with respect to the action or its effects on particular environmental factors (*e.g.,* the Fish and Wildlife Service or the National Oceanic and Atmospheric Administration with respect to threatened or endangered species under their respective jurisdiction, or the Advisory Council on Historic Preservation with respect to historic properties and the Section 106 Review Process). 36 CFR, Subpart B, Section 800.3 ''Initiating the Section 106 Process'' is applicable to this effort. Continued dialogue and discussions with relevant outside agencies is essential to decisions and to the NEPA process.

Agencies with ''expertise'' are those who are likely to have authoritative information and opinions about the area where the action is proposed, or about environmental impact (*e.g.,* the U.S Geological Survey in the Department of the Interior, or a State Historic Preservation Officer). The Commission expects federal, state, Indian tribal, and local agencies with jurisdiction by law or expertise to be consulted in the NEPA document preparation by the applicant.

Section 6. Applicant NEPA Compliance Obligations

Commission actions involve application to the Commission for review and approval. All submissions will specify accompanying NEPA documents unless the action is categorically excluded from preparation of an EA or EIS at Section 8 of these procedures. Specification of the applicable exclusion must occur. For all submissions to the Commission, the applicant will be required to:

(A) Consult with the Commission as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that the Commission may require to be submitted as part of, or in support of, the request for review.

(B) Conduct studies that the Commission deems necessary and appropriate to determine the environmental impacts of the proposed action. This effort shall at a minimum include an EA or EIS, if necessary, as specified at Sections 10 or 9.

(C) In the instance of a non-federal applicant submission when the Commission may act as lead federal agency, the applicant shall:

1. Consult with affected federal, state, regional and local agencies, American Indian tribes, and other potentially interested parties during the location and preliminary planning stages of the proposed action to identify environmental factors and permitting requirements.

2. Notify the Commission as early as possible of other federal, state, regional, local or American Indian tribal actions required for project completion to allow the Commission to coordinate the federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate.

3. Notify the Commission of private entities and organizations interested in the proposed undertaking, in order that the Commission can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2).

4. Notify the Commission if the applicant plans to take an action that is within the Commission's jurisdiction that may have an adverse environmental impact or limit the choice of reasonable alternatives. If the Executive Director determines that the action would have an adverse environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1506.1(a), the Executive Director will notify the applicant that the Commission will take appropriate action to ensure that the objectives and procedures of NEPA are achieved in accordance with 40 CFR 1506.1(b).

Section 7. Applicant NHPA Section 106 Compliance Obligations

NHPA Section 106 process information will be provided in all submissions as identified at Section 4(A). Particular additional requirements are applicable as follows and are relevant to the submission circumstances as determined by Executive Director:

(A) *NCPC as the responsible lead federal agency for the undertaking.* It is the statutory obligation of the Commission to fulfill the requirements of Section 106 and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for Section 106 compliance when the Commission is the responsible lead federal agency for the undertaking. If the Commission is the sole federal agency acting upon the applicant's project or plan, the submitting applicant must provide the Commission with information about an undertaking and its effects on historic properties as soon as Commission involvement is reasonable anticipated. The Executive Director may authorize an applicant to initiate consultation with the SHPO and others, but will remain legally responsible for all findings and determinations if the Commission is the lead federal agency for compliance with Section 106. The Executive Director shall notify the SHPO when an applicant or group of applicants is so authorized. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

If the Commission is the sole federal agency acting upon the submission, the Executive Director will review the proposal as an undertaking as defined in 36 CFR 800.16(y) of the regulations and determine whether it is a type of activity that has the potential to cause effects on historic properties. Each specific submission will provide the necessary information to make a review and determination and will include information specified at 36 CFR, Subpart B, Sections 800.3 ''Initiation of the Section 106 process,'' Section 800.4 ''Identification of Historic Properties,'' Section 800.5 ''Assessment of Adverse Effects,'' and Section 800.6 ''Resolution of Adverse Effects.'' In addition, if applicable, 36 CFR, Subpart B, Section 800.10 ''Special requirements for protecting National Historic Landmarks'' may be necessary.

(B) *Requirements to be achieved when NCPC is the lead responsible agency under Section 106.* Based on the above referenced requirements in paragraph (A) and in conformance with 36 CFR, Subpart B, Section 800.8(c), the Section 106 review shall be carried out in coordination with NEPA review as follows:

1. Conduct Section 106 review when screening a project that may be categorically excluded from NEPA review to see whether ''extraordinary circumstances'' are evident requiring further review (40 CFR 1508.4). Whether such extraordinary circumstances are found to be present will depend on the severity of the impacts and the applicability of the extraordinary circumstances pursuant to Section 8 of these procedures. But even if no further review is required under NEPA, Section 106 review must be completed.

2. During preparation of any EA, conduct Section 106 review in order both to comply with Section 106 itself and to determine whether historic resources will be adversely affected, and if so, whether measures can be implemented to reduce adverse effects to a less than significant level. The results of the review should be reported in the FONSI if one is issued, with an explanation of how Section 106 review has resulted in avoiding significant adverse effect.

3. Section 106 review will be conducted during preparation of any EIS. Scoping identification (see Section 5), and assessment of effects should be done during the analysis leading to the draft EIS, with the results presented in the DEIS. Consultation to resolve adverse effects should be coordinated with public comment on the DEIS, and the results reported in the FEIS. Any Memorandum of Agreement (MOA) developed under Section 106, or the final comments of the Advisory Council, should be addressed in the ROD. Unless there is some compelling reason to do otherwise, the Section 106 MOA will be fully executed before the ROD is issued, and the ROD shall provide for implementation of the MOA's terms.

(C) *Public Involvement in the Section 106 Review Process.* The opinions of the public are essential to informed federal decision making in the NHPA Section 106 process specified above and at Section 4(A). The submitting applicant will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the federal involvement to the undertaking. This information will be provided to the Commission in all submittals.

Section 8. Categorical Exclusions

The Categorical Exclusion is a ''category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.'' CEQ Regulations, 40 CFR 1508.4.

The Commission has determined the following:

(A) *Criteria for Categorical Exclusion.* Specific criteria for typical classes of action that normally do not require either an Environmental Impact Statement or an Environmental Assessment.

1. Minimal or no effect on the environment.

2. No significant change to existing environmental conditions.

3. No significant cumulative environmental impact associated with the action.

4. Similarity to actions previously assessed with a Finding of No Significant Impact and monitored to confirm the Finding.

(B) *Extraordinary circumstances.* The Executive Director, acting on behalf of the Commission, must consider the characteristics of a project or plans that would require additional environmental review or analysis due to the qualities described below. If these circumstances are present, the application of a Categorical Exclusion would not occur and the appropriate environmental document will be prepared and made available to the Commission prior to its taking action on the item. The

circumstances of such consideration include:

1. Effects of a greater scope or magnitude than normally experienced based on Commission review records for application of a particular Categorical Exclusion.

2. Potential for degradation of existing unsatisfactory environmental conditions.

3. Use of unproven technology.

4. Reasonable evidence of potential adverse effects on an endangered or threatened species, archaeological remains, historic or other protected resources.

5. The action is related to individually insignificant but cumulatively significant environmental effects as described in the Federal Environment Element, the Parks and Open Space Element of the Comprehensive Plan for the National Capital, or other applicable Commission plans or programs.

(C) *Categorical Exclusions.* Actions that normally do not require either an Environmental Impact Statement of an Environmental Assessment include:

1. Repair, replacement, and routine installation of onsite primary or secondary electrical distribution systems.

2. Repair, replacement, and routine installation of components such as windows, doors, roofs; and site elements such as site or building identification signs, sidewalks, patios, fences, retaining walls, curbs, or gates. Additional features include water distribution lines, and sewer lines which involve work that is essentially replacement in kind.

3. Grounds and facility maintenance activities undertaken in accordance with the Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837) and other applicable standards for grounds and facilities management.

4. Procurement activities for goods and services for facility operations maintenance and support in accordance with applicable federal standards for procurement and recycling.

5. Interior construction or renovation involving non-historic structures, or if historic have demonstrated in the Commission submission compliance with the Section 106 process.

6. Reductions in force resulting from federal agency workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

7. A federal interest review of and, as a part thereof, coordinating federal agency comments on, general plans and capital improvement programs of local governments in the Maryland and Virginia portions of the Region and on regional policies and plans of the Metropolitan Washington Council of Governments pursuant to the Commission's function as the central federal planning agency in the Region and in furtherance of the purposes set forth in Section 1(a) of the Planning Act.

8. Review of an action that a District of Columbia agency has submitted and designated as an exclusion in accordance with the requirements and procedures of the District of Columbia Code, Chapter 9, Environmental Controls, Subchapter VI, Section 6–986.

9. Certify to the Council, together with findings and recommendations, whether a District Element of the Comprehensive Plan, or amendment thereto, adopted by the Council has a negative impact on the interests or functions of the Federal Establishment in the National Capital, 40 U.S.C. 8721(b)–(c); D.C. Code 2–1002(a)(4)(A).

10. Determine whether a modification to the District element of the Comprehensive Plan, submitted by the Council, as to which the Commission has certified a negative impact on the interests or functions of the Federal Establishment in the National Capital, has been made in accordance with the Commission's findings and recommendations. 40 U.S.C. 8721(c)(3)(C)–(D); D.C. Code 2–1002(a)(4)(B).

11. Adopt a Federal Element of the Comprehensive Plan or amendment thereto. 40 U.S.C. 8721(a): D.C. Code 2–1003.

12. Submit to the Zoning Commission proposed amendments or general revisions to the Zoning Regulations. 40 U.S. 8724(a); D.C. Code 2–1006(a).

13. Approve changes to highway plans for portions of the District of Columbia prepared by the Mayor, pursuant to D.C. Code 9–103.02, when such plans involve no major traffic volume increase, has a minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action as demonstrated in a submitted District of Columbia Environmental Impact Screening Form (EISF).

14. Approve the sale of real estate owned in fee simple by the District of Columbia for municipal use, which the Council and Commission find to be no longer required for public purposes as specified in 40 U.S.C. 8734(a) when such plans involve no major traffic volume increase, has a minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action as demonstrated in a submitted District of Columbia Environmental Impact Screening Form (EISF).

15. Approve the sale by the Secretary of the Interior of minor parcels of real estate held by the United States in the District of Columbia under the jurisdiction of the National Park Service that may be no longer needed for public purposes. 40 U.S.C. 8735(a); D.C. Code 10–804. Such an action shall be accompanied by a National Park Service NEPA determination that demonstrates a minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action.

16. Approve the exchange of minor parcels of District-owned land, or part thereof, for an abutting lot or parcel of land, or part thereof. 40 U.S.C. 8734; D.C. Code 10–901, when such plans involve minimal or no effect on the environment, no significant change to existing environmental conditions, and no significant cumulative environmental impact associated with the action as demonstrated in a submitted District of Columbia Environmental Impact Screening Form (EISF).

17. Approve settlements for the purpose of establishing and making clear the title of the United States in land and water in, under, and adjacent to the Potomac River, the Anacostia River, or Eastern Branch, and Rock Creek. D.C. Code 10–102.

18. Approve harbor regulations made by the Council that have a negligible effect upon the interests and rights of the Commission, pursuant to D.C. Code 22–4401.

19. Review and report on special exception applications with the Naval Observatory Precinct District. D.C. Municipal Regulations 11–1533.

20. Review and approval of the installation of communication antennae on federal buildings and co-location of communication antennae on federal property consistent with the General Services Administration Bulletin FPMR D–242, *Placement of commercial antennas on Federal property* and the NCPC Submission Requirements for Antennas on Federal property.

21. Review and approval of acquisition of occupiable space by lease acquision, construction, or expansion, or improvement of an existing facility where *all* of the following conditions are met:

(a) The structure and proposed use are in compliance with local planning and

zoning and any applicable District of Columbia, state, or federal requirements

(b) The proposed use will not substantially increase the number of motor vehicles at the facility;

(c) The site and the scale of construction are consistent with those of existing adjacent or nearby buildings; and

(d) There is no evidence of community controversy or other environmental issues.

22. Review and approval of land exchanges or transfer of jurisdiction that will not lead to anticipated changes in the use of land and that have no potential for environmental impact.

All projects, activities and programs excluded from NEPA review under these procedures shall still be reviewed to determine if the proposal qualifies as an undertaking requiring review under Section 106 of the National Historic Preservation Act, pursuant to 36 CFR, Subpart B, Section 800.3(a).

Section 9. Commission Actions That Normally Require Commission Preparation of Environmental Impact Statements

Because the Commission acts upon a broad range of proposals for action by federal and non-federal applications, each of which represents a unique context and intensity of effects, there are no ''typical classes'' of Commission action that normally requires an EIS, However, the Commission shall consider each specific submission on a case-by-case basis in accordance with the following context and intensity criteria:

(A) *Context.* The significance of proposals for Commission action shall be judged based on the effects of the proposal on society as a whole, the National Capitol region and its environs, the particular interests affected, and effects on the locality or area that is the subject of the proposed action. The context of the proposed action shall be identified by reference to, and in accordance with, the actions and effects considered in the *Comprehensive Plan for the National Capital, National Capital Urban Design and Security Plan, Legacy Plan, Federal Capital Improvements Program* and other applicable Commission plans and programs. Proposals for Commission action that detract or differ substantially from the goals and objectives of Commission plans and programs are generally more likely to be found significant than proposals that are consistent with Commission plans and programs. Proposals for Commission action in or affecting the Monumental Core units of the National Park System, or the water and habitat quality of the Potomac and Anacostia Rivers and other water bodies listed under Section 303(d) of the Federal Water Pollution Control Act are generally more likely to be found significant than proposals that have little or no effect upon those resources.

(B) *Intensity.* The significance of proposals for Commission action shall be judged based on the severity of the proposal's impact on the environment by reference to, and in accordance with, the goals and policies of the Federal Environment Element and Parks and Open Space Element of the *Comprehensive Plan for the National Capital,* and other applicable Commission plans and programs. In considering the effects identified in CEQ regulations, 40 CFR 1508.27(b), effects of proposals for Commission action that are individually or cumulatively inconsistent with, including delay in achievement of, the goals and policies of the Federal Elements or related commission plans and programs are generally more likely to be found significant than proposals that are consistent with Commission goals, policies, plans and programs considering the proposal's effects regarding magnitude, extent, duration, and frequency of consequences on those objectives. The Commission shall specifically consider any effects that are inconsistent with:

1. The Chesapeake Ecosystem Unified Plan, the goals, policies, and initiatives contained in the Chesapeake Bay 2000 Program, and successor or related agreements for the protection and restoration of the habitat and water quality of the Chesapeake Bay watershed;

2. The *Legacy Plan* and successor or related plans to improve conditions in and around the Monumental Core and avoid adverse effects upon districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places;

3. Regional attainment of the National Ambient Air Quality Standard for ozone and other criteria air pollutants;

4. Noise reduction efforts in and around the Mall area and nearby locations along the Potomac and Anacostia Rivers that, because of their open space pastoral setting and recreational land use opportunities, are susceptible to noise effects;

5. The Environmental Protection Agency's Chesapeake Bay 2000 Program and other regional and local efforts continue to contribute to improved water quality in the Region, as well as effects on water quality including:

(a) Dissolved oxygen levels in the Upper Potomac Estuary

(b) The ability of urban streams to meet bacterial standards for safe water contact

(c) Sedimentation from excessive upstream erosion

(d) Increases in the amount of impervious surfaces and stormwater runoff

(e) Loss of wetlands or streamside forest buffers

6. Waste management practices promoting resource conservation and recovery as a means of reducing the impact of solid waste and avoiding the generation of hazardous waste material that poses significant risks of exposure to humans and to the environment;

7. Efforts to ensure that no group of people, including a racial, ethnic, or socioeconomic group, bears a disproportionate share of the negative environmental consequences of actions within the jurisdiction of the Commission;

8. Antenna Submission Requirements aimed at addressing the aesthetic impacts of antennas on the scenic and visual qualities of the National Capitol Region;

9. Smart Growth and Sustainability opportunities, including tree replacement initiatives to reverse the loss of trees in the National Capitol Region, and the conservation and management of Environmentally Sensitive Areas in the National Capital Region, including vegetation, floodplains, wetlands, aquifers and recharge areas, soils, native species and wildlife habitats.

Another federal lead agency may determine that an EIS is normally required on an action that they are proposing to submit for consideration by the Commission. In such circumstances, the agency will coordinate with the Commission in the preparation of the EIS and the Commission shall be identified by the lead agency as an official cooperating agency.

(C) Non-federal applicants' preparation of an EIS will require the Commission to be the lead federal agency for NEPA, unless another federal agency agrees to act as lead agency. In the role as lead federal agency, the Commission will direct and circulate the EIS and develop a related ROD in accordance with the requirements of the CEQ Regulations. The Commission shall ensure that, in the draft and final EIS developed by the Commission, a disclosure statement is executed by any contractor (or subcontractor), under contract to prepare the EIS document in

accordance with 40 CFR 1506.5(c), and that the disclosure appears as an appendix to the EIS.

In the preparation of a non-federal applicant EIS directed by the Commission, the following steps will be taken:

1. Notice of Intent (NOI) and scoping. The Commission shall publish an NOI in the **Federal Register**, in accordance with 40 CFR 1501.7, containing the elements specified in 40 CFR 1508.22 as soon as practicable after a decision is made to prepare an EIS.

Through the NOI, the Commission will invite comments and suggestions on the scope of the EIS.

The Executive Director shall disseminate the NOI in accordance with 40 CFR 1506.6. Publication of the NOI in the **Federal Register** shall begin the public scoping process. The public scoping process for a Commission EIS will allow a minimum of 30 days for the receipt of public comments. The Commission will hold at least one public scoping meeting after publication of the NOI as part of the public scoping process for a Commission EIS. The Executive Director will publish public notification of the location, date, and time of public scoping meeting(s) in the NOI or by other appropriate means, such as news releases to the local media, or letters to affected parties. Public scoping meetings will not be held until at least 30 days after public notification.

2. In determining the scope of the EIS, the Executive Director shall consider all comments received during the announced comment period held as part of the public scoping process. The Executive Director may also consider comments received after the close of the announced comment period. A public scoping process is optional for a Commission supplemental EIS (40 CFR 1502.9(c)(4)). If the Executive Director initiates a public scoping process for a supplemental EIS, the provisions of this section shall apply.

(D) Public review of an EIS.

1. The public review and comment period on a commission draft EIS will be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes a Notice of Availability of the document in the **Federal Register**.

2. The Executive Director will hold at least one public meeting during the public comment period on the draft EIS. Such a public meeting will be announced at least 30 days in advance of its scheduled occurrence. The announcement shall identify the subject of the draft EIS and include the location, date, and time of the public meeting.

(E) The Executive Director will prepare a final EIS following the public comment period and the public meeting on the draft EIS. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4.

(F) The Commission will make a decision about a proposal covered by an EIS after a 30-day ''review period'' following completion of the final EIS. The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the **Federal Register**. If the The Executive Director decides to recommend an action on a proposal covered by an EIS, information to be contained in a Record of Decision (ROD), including monitoring and enforcement provisions as described at 40 CFR 1505.2, will be incorporated into the The Executive Director's Recommendation report. The Executive Director's Recommendation report will be available to the public prior to the Commission meeting where the proposal will be specifically acted upon. The Commission will arrive at its decision about the proposal and its environmental effects, as well as other considerations as specified in 40 CFR 1505.2, in a public meeting of record as identified by the Commission monthly agenda. The Commission may revise a ROD at any time, so long as the revised decision is adequately supported by an existing EIS. A revised ROD shall be subject to a public review and subject to the provisions of this paragraph.

(G) A supplemental Environmental Impact Statement will be prepared by the The Executive Director if there are substantial changes to the EIS proposal or significant new circumstances or information relevant to environmental concerns, as discussed in 40 CFR 1502.9(c)(1).

1. The Executive Director may supplement a draft EIS or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR 1502.9(c)(2).

2. The Executive Director will prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any original draft and final EIS, except that scoping is optional for a supplement. If the The Executive Director decides to recommend an action on a proposal covered by a supplemental EIS, information to be contained in a ROD, including monitoring and enforcement provisions as described at 40 CFR 1505.2, will be incorporated into the The Executive Director's Recommendation report. The Executive Director's Recommendation report will be available to the public prior to the Commission meeting where the proposal will be specifically acted upon. The Commission will arrive at its decision about the proposal and its environmental effects, as well as other considerations as specified in 40 CFR 1505.2, in a public meeting of record as identified by the Commission monthly agenda.

(H) The Executive Director, as provided in 40 CFR 1506.3, may adopt an existing EIS in accordance with CEQ Regulations.

(I) Section 106 consultation should be conducted during preparation of any EIS. Scoping, identification (see Section 5), and assessment of effects should be done during the analysis leading to the draft EIS, and the results should be presented in the draft EIS. Consultation to resolve adverse effects should be coordinated prior to and during public comment on the draft EIS, with the results reported in the final EIS. Any Memorandum of Agreement (MOA) developed under Section 106, or the final comments of the Advisory Council, should be addressed in the ROD. Unless there is some compelling reason to do otherwise, the Section 106 MOA should be fully executed before the ROD is issued, and the ROD should provide for implementation of the MOA's terms. 36 CFR, Subpart B, Section 800.8(c) of the Advisory Council's implementing regulations offers further guidance.

Section 10: Environmental Assessments

If a proposal or action is one that normally does not qualify for Categorical Exclusion, and the Executive Director does not find that consideration of the proposal should be documented in an EIS, the Executive Director will require preparation of an Environmental Assessment (EA). CEQ regulations identify the process of preparing Environmental Assessments, and that EA's are documents prepared to determine if an EIS is necessary. EAs should concisely describe the need for the proposal, the proposed action, and alternatives that meet the need for the proposal and the requirements of NEPA Section 102(2)(E), their environmental consequences, and a list of agencies and persons consulted (See Appendix A). If an EA determines that the proposed action will not have a significant effect on the human environment, the Executive Director will not prepare an EIS but must prepare a Finding of No Significant Impact (FONSI) (40 CFR 1508.13, ''Finding of No Significant Impact'') if the Commission utilizes the EA in its decision as a final approval action in concert with its authority under the Planning Act.

(A) Criteria used to determine those categories of action that normally

require an Environmental Assessment, but not necessarily an Environmental Impact Statement, include:

1. Detectable but likely insignificant degradation of environmental quality
2. Detectable but likely insignificant cumulative impact on environmental quality
3. Detectable but likely insignificant impact on protected resources

(B) Preparation of an EA for Commission review or adoption, if required, should generally adhere, for content, to the outline identified in Appendix A. Written in plain language, the EA should be analytic rather than encyclopedic and it should use an interdisciplinary analysis. The EA must encompass the range of alternatives to be considered by the Commission and it should be publicly scoped to assess alternatives and environmental impacts and involve interested persons and agencies in the development of the EA.

(C) If either a federal of the non-federal applicant applicant uses an existing EA in a submission requiring Commission approval, the Commission will adopt and take responsibility for the scope and contents of the environmental document if it is sufficient as defined by CEQ regulations. See 40 CFR, 1506.3 and 1506.5. The Commission will review another federal agency's EA, as provided for in Section 12 of these procedures, and may adopt the document if it meets the standards for an adequate document.

(D) Public review of an EA. The public review and comment period on a Commission-prepared EA will be no less than 30 days. The public comment period begins when the Commission publishes a Notice of Availability of the document in its tentative monthly Agenda or by separate mailing. Anyone may request a copy of the EA by contacting the Commission or the Commission Web site.

(E) The Commission will prepare a FONSI only if the related EA supports the finding that the proposed action will not have a significant effect on the human environment. If a required EA does not support a FONSI, the Commission will seek to have an EIS prepared, or the proposal will not be further considered for review and approval. In addition to the requirements found at 40 CFR 1508.13, a FONSI will include the following:

1. Any commitments to mitigation that are essential to render the impacts of the proposed action not significant, beyond those mitigations that are integral elements of the proposed action.
2. The date of issuance.
3. The signature of the Executive Director.

(F) A FONSI will be available for public review before the Commission takes an action on staff recommendation for the proposed action.

(G) Based on a review of the typical classes of actions it undertakes, the Commission has established that the following actions will normally require an Environmental Assessment but not necessarily an EIS prior to Commission action on the submitted proposal:

1. Approve a site proposal or preliminary design and recommendation to federal agencies, District of Columbia agencies, and non-federal applicants on actions or plans for a newly acquired site involving a project submitted to the Commission pursuant to 40 U.S.C. 8722(b)(1).
2. Approve preliminary plans for federal public buildings on existing federal land in the District of Columbia, and the provisions for open space in and around the same, pursuant to 40 U.S.C. 8722(d); DC Code 2–1004(c), except where such approval would apply to actions as specified at Section 8(C), item 21 of these procedures.
3. Approve the conceptual design of any commemorative work authorized under the Commemorative Works Act of 1986, 40 U.S.C. 8905(a). In the analysis for a commemorative work conceptual design the submitting agency shall ensure that the NEPA and Section 106 requirements, as provided at Section 4 (A)(3) of these procedures, are completed in advance of submission.
4. Approve a final report and recommendation to a federal or District of Columbia agency on any master plan or master plan modification submitted to the Commission. 40 U.S.C. 8722(c); DC Code 2–1004(d).
5. Approve the location, height, bulk, number of stories, size, and the provision for open space in and around District of Columbia public buildings in the central area of the District as concurrently defined by the Commission and Council. 40 U.S.C. 8722(e); DC Code 2–1004(c) [1]
6. Approve acquisition of lands in the District of Columbia and adjacent areas in Maryland and Virginia for the National Capital park, parkway, and playground systems and, in connection with acquisitions in Maryland and Virginia, make agreements with state officials as to the arrangements for such acquisitions. 40 U.S.C.; DC Code 2–1009.
7. Approve a comprehensive or general plan of the District of Columbia pursuant to Section 6(a) of the Redevelopment Act.
8. Approve plans showing the location, height, bulk, number of stories, size, and provisions for open space and off-street parking in and around buildings for foreign governments and international organizations on land sold or leased by the Secretary of State in the northwest section of the District of Columbia bounded by Connecticut Avenue, Tilden Street, Reno Road, 36th Street, Yuma Street, and Van Ness Street, pursuant to Section 4 of the Act of October 8, 1968 (Pub. L. 90–553) as amended by Public Law 97–186.
9. Approve transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between federal and District authorities, pursuant to 40 U.S.C. 8124(a), except where such transfers or jurisdiction conform to master plans or site and building plans approved by the Commission, or to urban renewal plans and modifications thereof, adopted by the Commission, or conform to the conditions specified at Section 8(C), item 22 of these procedures.

(H) Section 106 consultation should be conducted during preparation of any EA. Scoping, identification (see Section 5), and assessment of effects should be done during the analysis leading to preparation of the EA, and the results should be presented in the EA. Consultation to resolve adverse effects should be coordinated with public comment and evidence of that effort must occur and be reported in the EA. Any Memorandum of Agreement (MOA) required under Section 106, or the final comments of the Advisory Council, should be addressed in the Finding of No Significant Impact (FONSI). 36 CFR, Subpart B, Section 800.8(a) of the Advisory Council's implementing regulations offers further guidance.

Section 11. Public Participation

Public participation is required as a part of the EIS scoping and in the draft EIS review. The Commission must involve environmental agencies, applicants, and the public, to the extent practicable, in the preparation of EAs, and in determining whether extraordinary circumstances exist that may involve application of a Categorical Exclusion. The level and kind of public participation depend on the nature of the proposed action and the likely environmental issues.

Public involvement is appropriate:

1. During scoping.

[1] The central area has been concurrently defined by the *Commission* and *Council* to include the Shaw School and Downtown Urban Renewal Areas.

2. During the actual analysis of alternatives, the affected environment, and potential impacts.

3. During the review of the results of analyses as recorded in EAs and EISs. Commission recommended actions for involving the concerned public include:

1. Identify the potential ''stakeholders'' (that is, those with an economic, cultural, social, or environmental ''stake'') in the action through background research, consultation with knowledgeable parties, and public meetings.

2. Consult with stakeholders to establish and address their concerns.

3. Use facilitators where appropriate and necessary.

Where there may be language or cultural barriers to effective communication about scoping actions or decisions, public participation measures must be sensitive to such barriers and make appropriate efforts to overcome them. Translations into the community's usual language, and meetings held in ways that accommodate their cultural traditions, values, and modes of communication may be necessary.

Public meetings for purposes of scoping MUST:

1. Ensure that meeting facilities are accessible to the disabled.

2. Provide signers or interpreters for the hearing impaired, if requested.

3. Make special arrangements as needed for consultation with affected Indian tribes or other Native American groups who have environmental concerns that cannot be shared in a public forum.

To the fullest extent possible, the Commission shall use the public participation processes designed for carrying out NEPA requirements concurrent with and integrated with the environmental impact analyses and related surveys and studies required to comply with the NHPA, Section 106; the Comprehensive Environmental Response, Compensation, and Liability Act; the Native American Graves Protection and Repatriation Act (NAGPRA); Superfund Amendments & Reauthorization Act (SARA) Title III (Emergency Planning and Community Right-to-Know Act, or EPCRA); the Fish and Wildlife Coordination Act, the Endangered Species Act, and applicable Executive Orders.

With regard to the Section 106 process, the submitting applicant must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input prior to submittal of the potential undertaking to the Commission. Members of the public may also provide views on their own initiative for the Executive Director, the Commission, and submitting applicant to consider in decision making.

Section 12. Delegations to the Executive Director

In conjunction with carrying out these procedures, the Commission delegates to the Executive Director the functions of:

(A) Determining whether to prepare an EIS, make a Finding of No Significant Impact, or issue a Categorical Exclusion determination.

(B) Scoping and obtaining the information required for the preparation of a draft EIS or an environmental assessment.

(C) Preparing a draft EIS.

(D) Circulating a draft EIS for review and comment to EPA, affected and interested public agencies, and the general public.

(E) Integrating agency and public comments, where appropriate, into the preparation of the final EIS.

(F) Distributing the final EIS to EPA and all agencies and individuals who commented on the draft EIS.

(G) Determining the appropriate environmental documentation for each stage of Commission review, including adoption of federal agency prepared NEPA documents when appropriate.

(H) Monitoring and ensuring that mitigation and other conditions established by the Commission are implemented, including informing the public and cooperating or commenting agencies on progress regarding mitigation measures that the Commission proposed and were adopted.

(I) Preparing, circulating, and filing supplements to either draft or final environmental impact statements, if the Executive Director or the Commission finds that there are substantial changes to a proposed action that are relevant to environmental concerns, significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact, or that the purpose of NEPA will be furthered by doing so.

These delegates are not to be construed, however, to extend to the requirement to respond to any comments of the Advisory Council on Historic Preservation. That responsibility solely resides with the Chairman of the Commission.

Section 13. Public Information

Interested persons can obtain information on all elements of the Commission's NEPA and Section 106 processes from the Commission at 401 Ninth Street, NW., North Lobby, Suite 500, Washington, DC 20576. The public is also invited to visit the National Capital Planning Commission's Web site at *www.ncpc.gov*. The Office of Urban Design and Plans Review, at (202) 482–7200, can provide specific information on any aspect of a Commission NEPA document. The Commission will, to the maximum extent practicable, use the Commission's website and other effective means of communication to provide the public with current and relevant information regarding the quality of the human environment in the National Capital Region and the past, present and reasonably foreseeable future effects of Commission actions and proposals.

Section 14. Supersession

The Commission's environmental policies and procedures published at 36 FR 23706, 37 FR 3010, 37 FR 4936, 37 FR 11198, 37 FR 16039, and 47 FR 51481 are superseded.

Section 15. Authority

These procedures are adopted pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.,* the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (43 FR 55978–56007), and the implementing regulations of Section 106 of the National Historic Preservation Act, 36 CFR, Part 800—Protection of Historic Properties.

Dated: June 30, 2004.

Wayne E. Costa,

Acting General Counsel & Designated Federal Register Officer.

[FR Doc. 04–15442 Filed 7–7–04; 8:45 am]

BILLING CODE 7520–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

In the Matter of Rochester Gas and Electric Corporation (R.E. Ginna Nuclear Power Plant), Order Approving Transfer of License and Conforming Amendment

Note: This Order was published on May 28, 2004, and has been subsequently modified by Order Modifying May 28, 2004, Order Approving Transfer of License and Conforming Amendment (June 14, 2004, 69 FR 33075).

Rochester Gas and Electric Corporation (RG&E) is the holder of