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January 7, 2008

Mr. Kevin Brandt
Superintendent, C&O Canal National Historical Park
1850 Dual Highway, Suite 100
Hagerstown, Md. 21742

Re: Georgetown University boathouse proposal-scoping comments (EIS)
Failure of NPS to comply with NEPA

Dear Mr. Brandt:

For the record, the purpose of this letter is to explain the basis for my contention that the 1987 Georgetown Waterfront Park Plan was illegally procured and promulgated thereby invalidating its implementation. As I will demonstrate below the National Park Service failed to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) for the Georgetown Waterfront Park. Since it is clear that the boundaries, design and contents of this Park may have a significant impact on the human environment the preparation of at least an EA is and was mandatory under the National Environmental Policy Act (NEPA).

This is an important issue today. Although I have been assured that the work accomplished in the Georgetown Waterfront Park will not preclude consideration of the previously identified alternative site east of 34th St. for Georgetown University's boathouse, a site now specifically under consideration in the current EIS, the illegality of the Georgetown Waterfront Park Plan and its implementation is another reason for consideration and possible selection of this site notwithstanding the current status of the work already performed in the Park. This site still remains environmentally the best location for the University's boathouse. The basis of my contention follows.

1. On Friday, July 7, 2006, I spoke to an employee of the Park Service to determine whether or not an EIS or an EA had ever been prepared for the Georgetown Waterfront Park. For possible job security reasons, I believe this employee should remain unidentified. This individual told me that he would get back to me later that day. Having not heard from him on Friday, I called him on Monday morning, July 10. I asked him if he had ascertained the answer to my question as to whether or not the Park Service had prepared either an EA or an EIS for the Georgetown Waterfront Park. He responded by advising me to "file a FOIA request." I told him that the answer to my question was either yes or no. Was there an EA or an EIS, yes or no. He was obviously uncomfortable with this somewhat churlish response and stated to me that he was a "messenger," and that he had been "instructed" to tell me "to file a FOIA request." I asked him who had given him those instructions. He replied that he did not think it was appropriate to divulge that

information. I told him that I wanted to discuss this matter with the individual who had given him these instructions. He then relented and replied, "John Parsons and Sally Blumenthal." I asked him to transfer me to Mr. Parsons, which he did. Mr. Parsons was unavailable but I left a message requesting that he call me.

2. On July 11, 2006, John Parsons, then the Associate Regional Director of the Park Service's National Capital Regional Office, returned my telephone call. He advised me that an EA had been prepared in 1984 on the Georgetown Waterfront Park. He further stated that this so-called EA had a "different format." He also stated that based on this document, a FONSI was issued. I was frankly surprised by this revelation inasmuch as this matter had never been made public. He promised to provide me with a copy of this "EA" and FONSI by Friday, July 14.

3. As promised, Mr. Parsons hand delivered on the afternoon of July 14 a copy of what is labeled "Environmental Assessment Proposed Park Boundary Georgetown Waterfront, June 1984" and a document purporting to be a FONSI, dated June 27 1984. He also included in the package a document entitled "Georgetown Waterfront Park Compliance Summary," approved October 5, 2005, 39 miscellaneous documents covering 117 pages consisting of letters, statements, resolutions, maps, diagrams, questionnaires and minutes, and a 76 page transcript of a hearing, chaired by Mr. Parsons, on April 16, 1985. The "EA," the FONSI and the "Compliance Summary" were never made available to the public before July 14, 2006. Parenthetically, in providing this material, the Park Service treated the matter as a FOIA request, thereby in effect acknowledging that at least some of the material in the package was from old Park Service files previously unavailable or uncirculated to the public. A copy of the cover letter is attached.

4. This "EA" dated "June 1984" never underwent public notice, comment or review. Since the FONSI was issued on June 27, 1984, it is obvious that there was little or no time for public comment or review. There is no evidence, documentary or otherwise, that this "EA" was ever made public in 1984. It appears simply to be an internal document of the Park Service which surfaced 22 years later apparently only as a result of my inquiry to ascertain whether an EIS or an EA had ever been prepared for the Georgetown Waterfront Park. The production of this bogus 1984 "EA" is a tacit admission by the Park Service that before it could proceed with the implementation of the Georgetown Waterfront Park Plan, it should first, as a matter of law, prepare an EA or an EIS addressing environmental concerns.

5. It seems that the Park Service contends that the 39 miscellaneous documents identified above and the hearing of April 16, 1985 constitute public comment and review. This contention has no basis in fact. All but one of the 39 miscellaneous documents – a letter from the Chair of the C&O Canal National Historical Park Commission dated March 12, 1984 – were dated after the FONSI was issued on June 27, 1984. For the record, most of the material is dated in 1985 and 1986. Hence, this material cannot be construed as public comment on the 1984 "EA" which purports to be the basis for the FONSI. The same observation can be made about the hearing, chaired by Mr. Parsons on April 16, 1985.

6. According to the 2005 "Compliance Summary," the Park Service contends that the Georgetown Waterfront Park Plan, which was presented to the public in 1987, was based on the

1984 “EA” and FONSI. Of importance to this discussion, the non-motorized boathouse zone was not mentioned or otherwise discussed in the 1984 “EA.” Hence, it, along with other features of the 1987 Plan, was not subjected to a comprehensive and formal EA or EIS with a concluding FONSI addressing this issue. Incidentally, what was the purpose of the “Compliance Summary”? I have never seen one and I doubt if the Park Service can produce another one. I believe that the “Compliance Summary” is a self-serving attempt to do indirectly what it failed to do directly. Once again, there was no public notice, comment or review of the “Compliance Summary” which would have afforded the public an opportunity to expose in 2005 the deficiencies in the process adopted by the Park Service. In any event, the 1987 Plan makes no mention of either the 1984 “EA” or the FONSI. The failure to mention them substantiates my claim that the public was never made aware of either of these documents before July 14, 2006. Apart from the serious problems of the absence of public notice, comment and review, this “EA,” now 23 years old, is completely obsolete and should be supplemented as it fails to meet current needs and realities.

7. An examination of the actual findings of the June 27, 1984 FONSI demonstrates the obsolescence of the 1984 “EA” as well as the misapplication of NEPA requirements. The “EA” upon which it was based called for “the establishment of boundaries for a park along the Georgetown Waterfront between Rock Creek to just west of Key Bridge.” While the Park Service relies on this FONSI as the basis for its 1987 Plan, the Park Service did not undertake any process or procedure by which the boundaries identified in the “EA” were significantly reduced. The Park now lies between 31st and 34th Sts. But more important, the FONSI does not address the design and contents of the Park as required by NEPA. In fact, such a NEPA review has never taken place. Parenthetically, according to the 1987 Plan, the non-motorized boathouse zone extends from 34th St. to about 1,100 ft. west of Key Bridge. By some slight of hand, the Park Service now says in its EIS announcement that the zone extends to “approximately 1,250 ft. above Key Bridge.” The Park Service should be required to identify the process or procedure by which the zone was extended an additional 150 ft. into the C&O Canal NHP.

Specifically, the June 27, 1984 FONSI found that “this project is not a major Federal action significantly affecting the quality of the human environment nor is it environmentally highly controversial.” The FONSI went on to find that the “project is not committing the National Park Service to specific future actions that would constitute significant or controversial impacts” and that the “impact of this proposal is not of a cumulative nature either in itself or in conjunction with other Federal or non-Federal projects.” Since the Park Service felt that it could get away in 1984 with an EA prepared for internal use, it is not surprising that the stealth FONSI would also conclude that “this proposal does not require the preparation of an Environmental Impact Statement.” Now, after some 23 years, the Park Service intends to prepare an EIS for the Georgetown University boathouse proposal which necessarily must include the Georgetown Waterfront Park. The preparation of this EIS cannot cure the legal deficiencies in the 1984 “process” leading to the adoption of the 1987 Georgetown Waterfront Park Plan, which for reasons advanced above is legally invalid.

The facts on the ground do not support the findings in the 1984 FONSI. Moreover, the broad reach of these findings are not even supported by the “EA” itself. Because the FONSI was not released to the public in 1984, no challenge was made at that time. These findings are clearly

inapplicable today and have been for several years. The Georgetown Waterfront Park Plan has been fraught with controversy for many years, much of which has been bitter. Such controversy still exists. Thus, to suggest that the contents and design of this park is not controversial is blatantly false.

The environmental review for the Georgetown Waterfront Park should have considered all the cumulative impacts of the implementation of the Plan for the entire waterfront – for example, the location and size of the Georgetown University boathouse, the boundaries of the non-motorized boathouse zone, the preservation of the natural appearance of the Palisades, the impact on the Capital Crescent Trail and the C&O Canal, and many more – not just the Georgetown Waterfront Park. The 1984 “EA” does not satisfy this requirement. Thus, calling a document an “Environmental Assessment” does not make it an Environmental Assessment.

For the reasons set forth above, the Park Service cannot use the advanced construction in the Georgetown Waterfront Park as a reason for excluding the site east of 34th St. as a viable alternative for Georgetown University’s boathouse.

With the exception of the mysteriously undocumented 150 ft. extension of the non-motorized boathouse zone into the C&O Canal NHP, the basic contentions set forth in this letter were transmitted on August 16, 2007 to the Secretary of the Interior, Dirk Kempthorne, and the Director of the National Park Service, Mary A. Bomar. By letter dated August 20, 2007, Director Bomar acknowledged my letter and essentially promised that I would receive a “detailed response.” A copy of her letter is attached. Needless to say, I have heard nothing from the Park Service as of this date. I believe the reason for refusing to provide a response is because the Park Service concedes that the factual allegations set forth in this letter are accurate and the conclusion reached inescapable.

Respectfully submitted,

Robert B. Norris

Enc.