

From: "Robert Smythe" <rbsmythe@comcast.net>
To: <NCR_Georgetownboathouse@nps.gov>
Subject: Scoping comments re EIS for Georgetown University boathouse
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18 January 2008 [submitted by e-mail to NCR_Georgetownboathouse@nps.gov]

TO: Superintendent Kevin Brandt
C&O National Historic Park
National Park Service, U.S. Department of the Interior

FROM: Robert B. Smythe
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RE: Scope of analysis for the EIS for the proposed Georgetown University
boathouse

I am commenting on the scope of analysis for this EIS as an environmental professional, as a member of the C& O Canal Association, and as a frequent user of the Capital Crescent Trail in both Maryland and the District of Columbia. I was the Senior Staff Member for Natural Resources with the President's Council on Environmental Quality (CEQ) at the time that CEQ prepared and issued the NEPA Regulations in 1978 (40 CFR 1500-1508) and I have subsequently served as a trainer, consultant, and expert witness on the National Environmental Policy Act (NEPA) and the EIS process.

A. Overview

The NEPA process as established by the CEQ NEPA Regulations is intended, first and foremost, to guide agency planning and decisionmaking through an open, objective process in order to assure full compliance with NEPA, with special attention to the timely involvement of other agencies and the public in that process. The Scoping process is a key element of this process, and is addressed in Part 1501.7 of the CEQ Regulations. Furthermore, when the agency decides, as the National Park Service has done in this case, to prepare an EIS, the CEQ Regulations provide specific instructions regarding the scope, timing, content, and process for EIS preparation and review (40 CFR 1502). The National Park Service (NPS) is also subject to the NEPA procedures of the Department of the Interior and its own NEPA procedures, but the governing regulations are those issued by the Council on Environmental Quality.

The scope of an EIS "consists of the range of actions, alternatives, and impacts to be considered" (Part 1508.25). To determine the proper scope of an EIS, the lead agency (in this case the NPS) "shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts." These essential nine elements are specified in this same part of the CEQ Regulations; they include actions, alternatives and impacts. When, as in this case, an EIS is being prepared in response to a proposal submitted by an applicant from outside the

agency, it is especially important for the lead agency to undertake a thorough, objective analysis of alternatives to the specific action requested by the applicant and of the potential impacts (direct, indirect, and cumulative) of not only the applicant's proposal but also of reasonable alternatives to that proposal, including no action, other reasonable courses of action, and mitigation measures. The purpose of these specific requirements is to ensure that the agency establishes a reasonable, objective, and sufficiently broad basis for reaching a decision that meets the overall objectives of NEPA, including effective public participation.

B. Scoping for this EIS Process

In this case, which presents a very controversial proposal by a non-government entity to construct a facility for its own use on property under the jurisdiction of the NPS, between the shoreline of the Potomac River and the adjacent boundary of the Capital Crescent Trail, it is essential that the NPS's scoping process consider the interest of the agency and the public as paramount, and not be constrained by the narrower requests and/or desires of the applicant, or of political or economic interests of others acting on behalf of or otherwise allied with the applicant.

Therefore the NPS must not only consider, but objectively analyze as part of its preparation of this EIS, a range of alternatives that includes: other potential designs, sizes, and locations for the proposed boathouse; other existing and potential public uses of the site proposed by the applicant; and the potential direct, indirect, and cumulative impacts of selecting each of the alternatives that are considered. The determination of the potential significance of such impacts should be done in accordance with the detailed definition of "significantly" contained in the CEQ Regulations, Part 1508.27, which includes a ten-point test for evaluating the intensity of potential impacts.

Impacts to be studied and evaluated must include on-site and off-site effects of both construction and operation of any boathouse or other facility at each potential site. This analysis should include, for example, loss of existing vegetation and wildlife habitat on and in the vicinity of such a facility; effects on any endangered species, historic and archaeological resources, and nearby recreational activities (including impacts on current uses of the Potomac River and other nearby parks, trails, and roads); potential impacts on parking, traffic, streets, and business activities in the area, including an analysis of how any new facility would affect existing vehicular and pedestrian traffic and access. Whether these impacts may be direct and immediate, and/or indirect, cumulative, and long-term, they must be objectively evaluated and their potential significance determined and presented for agency and public review and comment.

C. Integrity of the Analysis

The applicant's proposal has already generated substantial public concern and controversy. I do not know whether the NPS intends to conduct the studies and analysis required for this EIS internally, or plans to rely on an outside contractor, employed either by the NPS or by the applicant, to do this work. In my opinion, as much of this analysis

as possible should be done directly by Park Service professionals, with the assistance of outside experts answerable directly to the NPS where such expertise is needed. The CEQ Regulations (Part 1502.6) state that "The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process."

If the NPS is expecting the applicant to engage a contractor or consultants for any or all of the scoping and analysis for this EIS, the NPS must make certain that it reviews the terms of any contractors in advance, and that it retains the absolute right to review all of the analysis conducted in this manner and to reject, or require revisions of, any work generated by such outside contractors or by others acting on behalf of the applicant. Too many external NEPA-related studies prepared for applicants by outside contractors have been biased toward the specific desires of the applicant, by failing to objectively analyze or even consider reasonable alternatives, by containing far too much general information and too little analysis, by inadequately identifying and analyzing potential indirect and cumulative impacts of the action proposed by the applicant, and/or by ignoring or dismissing public and agency concerns. The NPS should take care not to allow any of these failures of the NEPA process to occur in this case. The CEQ Regulations state specifically that "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." (Part 1502.24).

These comments are respectfully submitted with the hope and intent that they will be of constructive assistance to the National Park Service in conducting both the scoping process and the analysis and document preparation for this proposed action, and that they will support the agency's professionals in carrying out an excellent NEPA process. I would be pleased to contribute any expertise to this effort that the NPS may wish to request. My contact information is given below. Thank you for considering my comments.

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