

December 8, 2008

Ms. Denise Decker
National Capital Region
U.S. General Services Administration
301 7th St. SW, Room 7600
Washington, DC 20407

Re: St. Elizabeths Hospital Final Environmental Impact Statement

Dear Ms. Decker:

The National Trust for Historic Preservation appreciates the opportunity to comment on the General Services Administration's Final Environmental Impact Statement (FEIS) for the Department of Homeland Security (DHS) Headquarters Consolidation at St. Elizabeths. Our comments focus on the failure of the FEIS to adequately resolve the majority of the issues raised by the National Trust and other parties in commenting on the Draft EIS. In particular, the FEIS continues to be plagued by statutory deficiencies in failing to conform to the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C), the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470f and 470h-2(f), and Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c). We would like to incorporate by reference our comment letters of July 16, 2007 and November 13, 2007, and the issues we raised in those letters.

Since consultation pursuant to Section 106 of the NHPA began in 2005, the National Trust, along with many other agencies and interested parties, has strongly objected to large-scale development scenarios that would overwhelm or significantly damage the National Historic Landmark St. Elizabeths Hospital. In its report to the Advisory Council on Historic Preservation, prepared pursuant to Section 213 of the NHPA, 16 U.S.C. § 470u, the Department of the Interior found that development alternatives at a density of 4.5 million gross square feet (gsf) plus parking posed

serious, permanent alterations and destruction of multiple character defining features of the NHL. The cumulative effect of these changes would require that the facility in its entirety be considered for dedesignation as an NHL. The landscape setting so important to the design concept that forms the basis of Landmark recognition will be profoundly altered. . . . In general, this proposal calls for a treatment of the Landmark that is wholly incompatible with its most character defining features.

DOI Section 213 Report, at 3. The interested parties have also raised concerns that a high-security, walled citadel, such as that proposed in the FEIS, would bring little or no economic benefit to the adjacent residential neighborhoods and the surrounding community. Our concerns about economic development and quality of life are also shared by the Brookings Institution. See David Garrison, Deputy Director, Greater Washington Research Program, Brookings Institution, "The Prospects (Revisited) for the St. Elizabeths Hospital Campus" (2007).

In considering the FEIS, it is worth mentioning several critical developments that have taken place over the last few months. First, the National Park Service has not agreed to transfer Shepherd Parkway to GSA for the construction of the primary access road into the proposed development. This continues to present serious questions about the ability of GSA to issue a final decision because the construction of the access road is a requirement for any development beyond Phase I, in accordance with the Final Master Plan. If only Phase I of the Master Plan is implemented, an enormous new U.S. Coast Guard building and associated parking would fundamentally, irrevocably damage St. Elizabeths, bringing little or no benefit to the landmark itself or the surrounding community.

Second, the recently issued Design Guidelines for St. Elizabeths provide guidance, but no mandate, that subsequent changes to the buildings or landscape at St. Elizabeths, including interior alterations to historic buildings, will comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. GSA acknowledges in the FEIS that "it is possible . . . that the alterations necessary to meet current office and shared use needs will have a long-term, moderate to major, direct, adverse effect on the historic fabric of the buildings." FEIS v. 1 at 5-17.

Third, since the Draft EIS was issued in 2007, GSA has commissioned and received a Cultural Landscape Report (CLR) for St. Elizabeths. This report, prepared by Heritage Landscapes and Robinson & Associates, confirms that the West Campus landscape is both highly significant and largely intact. Draft Preliminary Final St. Elizabeths Cultural Landscape Report (Nov. 2007); NTHP letter to GSA (Aug. 11, 2008). In fact, the CLR expanded the known inventory of character-defining landscape features, including visual resources, from 60 to 134. FEIS v. 1 at 4-41.

Finally, despite the extraordinary professional consensus against the level and type of development proposed for St. Elizabeths, GSA has continued to move

forward with a consolidation program amounting to 4.5 million gsf, plus parking, for the site. As detailed in our November 13, 2007 letter on the Draft EIS, the National Trust, the DC Preservation League, the Advisory Council on Historic Preservation, the National Park Service, the Committee of 100 on the Federal City, the National Coalition to Save Our Mall, and the Commission of Fine Arts all concluded in a consensus proposal that a maximum of approximately 2.5 million gsf could be accommodated above-ground at St. Elizabeths West Campus. In response, the Commission of Fine Arts and the National Capital Planning Commission directed GSA to prepare a 2.5 million gsf proposal for St. Elizabeths. In the Final Master Plan and FEIS, GSA studied but rejected a 2.5 million gsf scenario, as it did not meet the goal of 4.5 million gsf for the Department of Homeland Security. In the meantime, a new Administration and Congress have been elected, and it is uncertain that the DHS program will remain the same, that funding a consolidated headquarters will remain a priority, or that the build-out will include funding for the mitigation measures that GSA has promised in the FEIS and draft Programmatic Agreement.

In addition to these general concerns, we raise the following issues:

I. THE NEW ALTERNATIVE 5 IN THE FINAL EIS DOES NOT RESOLVE THE DEFICIENCIES OF THE DRAFT EIS RAISED BY THE NATIONAL TRUST AND OTHER INTERESTED PARTIES.

GSA has made changes to the proposal since issuing the Draft EIS, including deleting Alternatives 1 and 2, modifying Alternative 4, and adding Alternative 5. In spite of these changes, flaws in the FEIS persist.

The primary substantive difference between the FEIS and the Draft EIS released last year is the development of Alternative 5 - the Preferred Alternative - which sites approximately one million gsf of office space and parking on the East Campus of the National Historic Landmark, leaving more than 5 million gsf on the West Campus. Alternative 5 is also the subject of the Final Master Plan submissions to the Commission of Fine Arts and the National Capital Planning Commission. Alternative 5 represents a marked improvement over previous development concepts, in the reduction of density on the West Campus, the retention of historic buildings, and the siting and scale of new construction proposed for the plateau. However, the proposed West Campus density is double what the consulting parties recommended in the August 2007 study, and quintuple the amount that currently exists on the site. Alternative 5 will still fundamentally destroy the

National Historic Landmark. GSA appears to acknowledge this in the FEIS, by stating “[c]onstruction of the new buildings and the parking facilities on the West Campus could have a major, direct, long-term, adverse effect on the characteristics that make the site a NHL.” FEIS v. 1 at 5-17.

It is also troubling that the FEIS provides GSA with an “out” if the City does not approve the proposed East Campus development. GSA states that it “reserves the right to select Alternative 4” in its Record of Decision under NEPA, in the event that Alternative 5 becomes unviable. FEIS v. 1 at 3-29. Alternative 4 proposes more than 6 million gsf of office space and parking on the West Campus alone, and is therefore substantively similar to alternatives proposed in the Draft EIS, which have been rejected as unacceptable by the vast majority of the participating agencies and interested parties.

A. The FEIS Fails to Consider a Reasonable Range of Alternatives.

Even with the inclusion of Alternative 5, the proposed alternatives for St. Elizabeths are nearly identical. Only three alternatives (Alternatives 3, 4 and 5) are fully evaluated in the FEIS, and each alternative represents a level of density that would destroy the National Historic Landmark. Despite the recommendations of the consulting parties and the direction of the Commission of Fine Arts and the National Capital Planning Commission, GSA has failed to produce a viable 2.5 million gsf alternative. As mentioned previously, a 2.5 million gsf “Site Study” is included in the FEIS but rejected as not meeting the purpose and need for the project. FEIS v. 1, 3-11 to 3-17. Instead, Alternatives 4 and 5, representing, respectively, more than 6 million and 5 million gsf on the St. Elizabeths West Campus, have been selected as possible preferred alternatives in the FEIS.

Both Alternative 5 and Alternative 4 would have “major, direct, long-term, adverse effects” on the buildings of National Historic Landmark West Campus, as outlined in the FEIS. FEIS v. 1 at 5-8, 5-17. These alternatives would also have “direct, long-term, major, adverse impacts to St. Elizabeths’ landscape,” FEIS v. 1 at 5-45 and 5-50, as well as viewsheds identified in the CLR, *id.* at 1 5-75 to 5-90, and “several known archaeological resources,” *id.* at 5-90.

In Alternatives 4 and 5, the proposed U.S. Coast Guard building -- the largest single development on the site, at approximately one million gsf -- is a highly intrusive design that would cascade down the character-defining western slopes of the campus. In the course of Section 106 consultation, GSA has attempted to justify the high-intensity development on this parcel by

asserting that portions of the western slopes are regenerated and not historic. However, as discussed in detail in the National Trust's August 11, 2008 letter regarding the St. Elizabeths CLR, the vegetation on the western slopes has changed over time but these areas maintain their essential vegetated character and topography. According to Heritage Landscapes and Robinson & Associates:

Historic views to the West Campus from points on the northern and western banks of the Potomac and Anacostia Rivers endure even though changes in vegetation alter the character of views within the campus. . . . Regenerated, non-historic woodland has replaced fields but the hillsides of the hospital still appear 'green' and vegetated with low-intensity land use. . . . The West Campus of St. Elizabeths hospital is a significant component of the 'green bowl' that is characteristic of the southern and eastern banks of the Anacostia when viewed from the core of Washington, DC.

CLR VII at 20. Both the proposed Coast Guard building and the massive parking structure in the ravine are in direct conflict with the CLR's recommendation that new development should protect the appearance of the green slopes from within and outside the campus. See National Trust letter to GSA (Aug. 11, 2008). The FEIS acknowledges that the proposed construction will alter "the plateau-and-slope landform characteristic of St. Elizabeths," "remove more than a dozen trees dating from the period of significance," and have "major adverse effects on . . . the last remaining ravine on the West Campus that has not been altered." FEIS v. 1 at 5-44.

As proposed, the U.S. Coast Guard building and parking structure will also be in immediate conflict with the Treatment Standard for Parcel 4 stating that "[n]ew construction should be designed as groupings of smaller structures interspersed with landscape areas similar to the character and spatial relationships of the buildings and landscape south of the Center Building." Preservation, Design, & Development Guidelines, Part II, at 75. The National Trust has recommended better ways to accommodate the U.S. Coast Guard at St. Elizabeths, including placing the Coast Guard in adaptively used and moderately scaled new buildings on the campus plateau. However, the density proposed for full DHS consolidation at the site severely limits alternatives for the U.S. Coast Guard.

Over strenuous objections from the National Trust and others, Alternatives 4 and 5 also propose that the Civil War cemetery be segmented from the

National Historic Landmark for the first time in history. The double security perimeter and parking areas proposed by GSA, as well as the looming proximity of the adjacent Coast Guard building itself, will permanently alter the setting of the cemetery. The cemetery was left outside the security perimeter ostensibly to facilitate public access. Rather than mitigating harm, however, this proposal increases damage to the site and underscores the inappropriateness of the proposed use.

B. The FEIS Improperly Defers Significant Aspects of Alternative 5.

1. The FEIS Unlawfully Avoids Evaluating the True Impacts of Alternative 5 by Improperly Segmenting the Project.

GSA unlawfully avoids discussing the full scope of the direct, indirect, and cumulative impacts associated with Alternative 5 by attempting to segment the project. NEPA requires federal agencies to consider actions that are “connected” together in a single EIS. 40 C.F.R. § 1508.25(a). The NEPA regulations issued by the Council on Environmental Quality (CEQ) define actions as “connected” if they “cannot or will not proceed unless other actions are taken previously or simultaneously,” *id.* § 1508.25(a)(1)(ii), or they “are interdependent parts of a larger action and depend on the larger action for their justification,” *id.* § 1508.25(a)(1)(iii). Courts have recognized that NEPA prohibits agencies from “segmenting” the EIS analysis to avoid evaluating the environmental significance of a project. *See Hammond v. Norton*, 370 F. Supp. 2d 226, 244 (D.D.C. 2005), *aff’d in part*, 448 F. Supp. 2d 114 (D.C. Cir. 2006) (citing *Coalition for Sensible Transportation v. Dole*, 263 F.2d 60, 68 (D.C. Cir. 1987)).

In this case, GSA has deferred two critical aspects of Alternative 5, which are connected actions with the West Campus development – the development of St. Elizabeths East Campus, and the “use” of Shepherd Parkway for construction of a major access road. The FEIS acknowledges that the full development proposed in Alternative 5 cannot proceed without these components, and in fact represent interdependent components of the larger development proposal. First, Alternative 5 proposes to locate approximately 1 million gsf of office space and parking on the St. Elizabeths East Campus. The Small Area Plan for the National Historic Landmark East Campus, which governs the development of 1 million gsf of office and parking for the proposal, has not been evaluated. The FEIS gives an incomplete description

of the effects on cultural resources within the Area of Potential Effect and acknowledges that “no studies have been conducted on historic landscapes on the St. Elizabeths East Campus.” FEIS v. 1 at 4-72; 5-17. At the same time, the FEIS concludes that “Alternative 5 could have a major, long-term, adverse effect on the historic character of the North Campus parcel of the East Campus.” FEIS v. 1 at 5-17. Nor has GSA evaluated the impacts on the East Campus in the context of Section 106 consultation.

Additionally, GSA has not adequately evaluated the impact to the National Historic Landmark of the proposed widening of Martin Luther King, Jr., Avenue, SE, which involves “taking land from St. Elizabeths East Campus.” FEIS v. 1 at 4-4; FEIS v. 2 at 2-18 to 2-20. Although not fully analyzed in the FEIS, this proposed alteration will likely adversely affect Buildings #79 and #85, which may need to be relocated. Widening Martin Luther King, Jr. Avenue as proposed may also harm the settings of Buildings #88, #89, #94, and #100, and will irreversibly alter the relationship between the two campuses. FEIS v. 2 at 4-6 to 4-7. We note that the District of Columbia currently controls the St. Elizabeths East Campus, and the proposed road widening in the FEIS has not been approved by the District of Columbia. Nevertheless, this should not exempt GSA from analyzing these potential impacts, especially in light of the fact that such impacts are reasonably foreseeable.

Second, GSA attempts to segment the transportation component of the project regarding the “use” of Shepherd Parkway, which would be required for the proposed western access road associated with all alternatives in the FEIS that meet the purpose and need of the project. FEIS v. 2 at 2-8 to 2-20. Shepherd Parkway is a National Park Service holding within the Fort Circle Parks. In the 2004 Fort Circle Parks Final Management Plan, a proposed new trail linking the fort sites specifically avoids Shepherd Parkway in order to protect “important wildlife habitat.” at 28. The sites of both Fort Carroll and Fort Greble, two of Washington, DC’s defensive Civil War forts, lay in the Shepherd Parkway property; neither of these falls within the primary APE. FEIS v. 1 at 4-28 and 4-72.

Similar to the East Campus, Alternative 5 in the FEIS mentions Shepherd Parkway as part of the primary APE, but does not adequately evaluate the impacts, acknowledging that “[a]n assessment of potential cultural resources . . . has not yet been undertaken.” FEIS v. 1 at 4-19 to 4-28, 4-71 to 4-73, and 5-17; FEIS v. 2 at 4-2 to 4-11. As with the East Campus, the potential effects to Shepherd Parkway have not been discussed in the course of Section 106

consultation. Unlike access to the East Campus, which is only required if Alternative 5 is selected, GSA requires use of Shepherd Parkway for any of its alternatives to be viable.

2. The Use of “Tiering” is Improper to Support GSA’s Deferral for Evaluating the East Campus.

To avoid the segmentation issue, GSA attempts to frame its deferral of the analysis of St. Elizabeths East Campus and Shepherd Parkway as “tiering.” GSA distributed a document entitled “*GSA’s Tiering Approach; DHS Consolidation at the St. Elizabeths Campus*” (Sept. 5, 2008), which attempts to validate tiering in this circumstance as a means of fitting the NEPA decision into DHS’s narrow timeframe. This argument is inappropriate, and does not cure the legal defects of the improper segmentation.

The CEQ NEPA regulations do permit tiering in limited circumstances, i.e.,

when the sequence of statements or analyses is:

(a) From a program, plan, or policy [EIS] to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an [EIS] on a specific action at an early stage (such as need and site selection) to supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues that are ripe for decision and exclude from consideration issues already decided or not yet ripe.

40 C.F.R. §§ 1508.28(a)-(b). However, neither of these circumstances is present in this case. GSA argues that the specific development concept for the East Campus is not ripe, i.e., that it has not decided how to use the 750,000 gsf of office space for the East Campus, and therefore tiering is appropriate. This argument twists the reality of the actual decision being made in the FEIS. The reality is that Alternative 5, if approved, would set in motion the most destructive aspects of DHS’s proposal, i.e., the U.S. Coast Guard buildings. By contrast, analyzing Alternative 5 with more specific information about the use of the East Campus would lead to a much more informed decision about the location of development on the West Campus. Moreover, GSA’s use of tiering is based on its rush to build, more than on any other factor.

In short, GSA is attempting to segment elements of Alternative 5 as a means of avoiding a full evaluation of the proposed projects. Both the St. Elizabeths East Campus and Shepherd Parkway are critical components of Alternative 5. Undermining the credibility of GSA's assertion that these issues these elements of Alternative 5 can be considered at a later date is the fact that GSA has not allocated adequate time for approvals and analysis. Similar to the issues associated with the purpose and need of the project, i.e., that only 4.5 million gsf plus parking can satisfy DHS' requirements, it appears that DHS's timeline for construction supersedes adequate environmental review. In other words, GSA would like to defer an impacts evaluation for these additional, inseparable aspects of Alternative 5, so that at a later date GSA will be forced to accept one action without consideration of alternatives. The FEIS attempts to sanction aspects of Alternative 5 in the Record of Decision, without an evaluation of direct, indirect, and cumulative impacts to two major cultural resources - the St. Elizabeths National Historic Landmark East Campus and Shepherd Parkway. GSA's attempt to segment these aspects of Alternative 5 are unlawful, and GSA should supplement the FEIS to correct these deficiencies before issuing the Record of Decision.

II. THE FEIS DOES NOT SATISFY THE REQUIREMENTS OF SECTIONS 106 AND 110(F) OF THE NATIONAL HISTORIC PRESERVATION ACT.

A. The FEIS Does Not Demonstrate Compliance with the Stringent Requirements of Section 110(f) of the NHPA.

As we have commented repeatedly, GSA has not complied with its responsibilities under the Section 110(f) of the NHPA. As the FEIS notes, Section 110(f) requires that the agency "undertake such planning and actions as may be necessary to minimize harm" to the National Historic Landmark to the "maximum extent possible." 16 U.S.C. § 470h-2(f). Given that each of the proposed alternatives in the FEIS will irreparably damage or destroy the NHL, we believe that Section 110(f) requires that GSA to explore one or more viable alternatives for St. Elizabeths that will not destroy the NHL.

The fundamental problem since the inception of this project has been that the specific criteria included by DHS in the purpose and need statement for the headquarters consolidation are in direct conflict with the preservation of the NHL. According to GSA, these DHS criteria supersede every other planning consideration for the site, including the NHPA. GSA states that "refinements of the Draft EIS alternatives, as evidenced by DHS' re-evaluation of its

headquarters collocation requirement, represent planning and actions undertaken to reduce harm to the NHL to the maximum extent possible, *while still meeting the purpose and need for the project.*" FEIS v. 3 at 3-4 (emphasis added). The National Trust strongly disagrees with this interpretation of Section 110(f) of the NHPA.

Once it was determined by DHS that 4.5 million gsf of office space was needed for the headquarters consolidation, St. Elizabeths should have been removed from the list of potential sites for the project. GSA already had the benefit of more than a year of feedback from the National Trust and other interested parties regarding appropriate levels of density for the site. As discussed in comments on the Draft EIS, GSA also had information from the AEW Capital Management LP (2003) and Jones Lang LaSalle (2005) feasibility studies, which indicated that a density between 1.8 million and 3 million gsf would be appropriate for the site.

Rather than consider alternative sites for this massive new development, GSA cites the "Seat of Government Act," which GSA interprets in the FEIS as requiring that main offices of executive branch departments be located in the District of Columbia. FEIS v. 3 at 5. In the National Trust's comments on the preliminary Draft EIS, dated July 16, 2007, we analyzed the "Seat of Government Act" and recommended that GSA consider the Washington, DC metropolitan area for DHS consolidation. The agency has not pursued this recommendation. GSA notes, moreover, that a possibility exists to obtain a Congressional waiver to locate the DHS facility outside the boundary of the District of Columbia. However, the agency has not pursued this option. FEIS v. 3 at 5. Instead, DHS's specific request "to be near the White House and Congress" is cited in the FEIS, thus elevating the fulfillment of DHS's criteria over and above GSA's compliance with the NHPA.

B. GSA Has Not Adequately Evaluated Direct Adverse Impacts to the St. Elizabeths West Campus Associated with Alternative 5 in the Context of Section 106 of the NHPA.

Many direct adverse impacts to the West Campus of the NHL have not been raised, or have not been fully evaluated, through the Section 106 consultation, as it relates to Alternative 5 in the FEIS. Such a discussion about impacts is also missing from the proposed Final Master Plan submitted by GSA to the U.S. Commission of Fine Arts and the National Capital Planning Commission.

There is no acceptable mitigation that would compensate for the loss of a National Historic Landmark. Regardless, mitigation has not been adequately discussed in the course of Section 106 consultation. The following examples highlight historic elements that were referenced in the impacts discussion in the FEIS, but were not adequately addressed or resolved during Section 106 consultation.

Gatehouse 1. In the course of Section 106 consultation, GSA has repeatedly assured the consulting parties that Gatehouse 1 will be restored and used as a ceremonial entrance for St. Elizabeths. The consulting parties have repeatedly requested complete visual analyses of the Gatehouse setting, given the proposed adjacent screening and parking facilities. GSA's 3-D representation of the gatehouse, recently shown as part of its Master Plan submission to the Commission of Fine Arts and the National Capital Planning Commission, showed the structure intact and restored in its current setting. However, the FEIS makes clear that a "2,400 sf, one story, vertical transportation and security screening addition to the north side of Gatehouse #1 would be approximately three times the size of the historic portion of the building, would alter the small scale Victorian character of the building, and would require demolition of the small unnumbered historic building located just to the north of the gatehouse." FEIS v. 1 at 5-15. Moreover, "construction of underground parking facilities . . . may affect the foundations and stability of Gatehouse #1 and the perimeter brick and stone wall." FEIS v. 1 at 5-15. GSA also notes that the "ramp to the underground parking adjacent to Gatehouse #1 would . . . adversely affect the spatial organization and experience of the entrance drive and the character of the site surrounding the Gatehouse." FEIS v. 1 at 5-16. These adverse effects were not adequately disclosed during the Section 106 consultation.

Additions to Historic Buildings. Proposed additions to historic buildings on the St. Elizabeths West Campus would be extensive under Alternative 5, and have not been evaluated in the course of Section 106 consultation. The FEIS notes that "[s]mall footprint, three to five story additions are proposed at several locations on the south elevation of the Center Building to provide vertical circulation and connections to adjacent structures . . . [these] would require demolition or alteration of the historic building fabric and would conceal the original exterior elevations of the building." FEIS v. 1 at 5-15. These proposed new additions would expand and link historic freestanding buildings into

small compounds, thus adversely affecting the historic buildings and changing the historic relationship among buildings within the campus. FEIS, v. 1 at 5-14 and 5-15. We believe that GSA should consider, where possible, adapting the historic tunnel system at St. Elizabeths to provide connections between buildings, rather than constructing the proposed incompatible connection structures.

Unfortunately, the National Trust is unable to make concrete recommendations regarding building connections and additions, in part because GSA has also failed to discuss the historic tunnel system in the course of Section 106 review. In the FEIS, this oversight is rationalized by a statement that “[i]t was agreed by the consulting parties at a May 25, 2005 meeting that the list of buildings identified as contributing to the National Historic Landmark District by the National Historic Landmark (NHL) registration form would be used for the evaluation of effects.” FEIS v. 1 at 4-29. The National Trust has never agreed that some historic resources at St. Elizabeths should be excluded from consideration, and this approach is squarely inconsistent with 36 C.F.R. §§ 800.4(c)(1) and 800.16(j)(2). All historic resources identified on the site must be taken into account and considered in the course of Section 106 review and federal planning for the site.

Underground Parking Facilities and the National Operations Center. Underground parking, the National Operations Center, and visitor screening facilities – which will destroy the historic landscapes on which they are placed – have been represented in the course of Section 106 consultation by dotted lines, with no indication of the visual impacts from access roads, facility entries and exits. Repeated requests for a detailed visual analysis have gone ignored. In the FEIS, GSA makes clear that the underground Command Center “could compromise the stability of the Center Building foundations and load bearing masonry walls at the upper floors.” FEIS v. 1 at 5-14. Again, this potential adverse effect has not been disclosed in the Section 106 consultation.

Security Measures. The effects of security measures, including the physical and visual impact of the perimeter barriers, have never been fully evaluated. In addition to the double perimeter barrier, for which we have repeatedly requested – and have not received – a detailed visual analysis, the FEIS states that “other aspects of perimeter security include vehicle barriers, guard booths, chemical and radiation detectors, crash lighting, cameras, and an access lane so that the perimeter can be

inspected Constructed features, such as berms, trenches, and/or cables will be used where no natural barriers exist.” FEIS v. 1 at 5-31. The FEIS also notes that portions of the historic wall will be demolished to accommodate Gates 2 and 3. FEIS v. 1 at 5-31. Moreover, GSA has failed to analyze or even fully identify security changes that may be necessary for the existing historic structures to accommodate a DHS program. For example, the FEIS states that for high-security buildings “exterior windows must provide ballistic glazing,” but the implications of this required modification on the architectural integrity of the historic buildings on the St. Elizabeths campus are unknown. FEIS v. 1 at 2-4. Nor have they been disclosed and discussed in the Section 106 consultation.

Landscape and Visual Impacts. Alternative 5 proposes devastating impacts to the historic landscape of St. Elizabeths. If this development proposal moves forward, greater damage than that identified in the FEIS could occur based on unknown impacts of security modifications, construction staging, and underground construction. Currently, the FEIS identifies 55 of 127 contributing landscapes that will be adversely affected by Alternative 5, as well as viewsheds and topographical features. Moreover, “[70] to 75 trees determined by the CLR to be 70 years old or older (of approximately 270) would be removed That number could be higher, depending on the location of new utility trenches.” FEIS v. 1 at 5-46. Significant tree loss is possible throughout the campus, including “more than two dozen” trees in Parcel 1, the oldest and most significant of the designed landscapes at St. Elizabeths. FEIS v. 1 at 5-47. Furthermore, the FEIS states that “Alternative 5 adversely affects, with varying degrees of intensity, 16 of the 20 contributing views identified” in the CLR. FEIS v. 1 at 5-80. These adverse effects have not been adequately disclosed and discussed in the Section 106 consultation.

III. THE FEIS IMPROPERLY EXCLUDES AND DEFERS THE ANALYSIS REQUIRED BY SECTION 4(f) OF THE DEPARTMENT OF TRANSPORTATION ACT RELATING TO SHEPHERD PARKWAY.

The requirements of Section 4(f) of the Department of Transportation Act must be completed prior to final approval of the FEIS because GSA’s preferred alternative is inextricably connected with the “use” of Shepherd Parkway. Section 4(f) prohibits the “use” of historic sites or parks, unless the Federal Highway Administration (FHWA) can demonstrate that there are no

“feasible and prudent” alternatives to the use of the protected land, and that the project includes all possible planning to minimize harm. 49 U.S.C. § 303(c). FHWA has the responsibility to complete the Section 4(f) approval. See 23 C.F.R. § 774.11. The timing for a Section 4(f) evaluation is “as early as practicable in the development of the action when alternatives to the proposed action are under study.” *Id.* § 774.9; see also *Corridor H Alternatives, Inc. v. Slater*, 166 F.3d 368, 373 (D.C. Cir. 1999) (rejecting FHWA’s approval of ROD before completing Section 4(f) evaluation). While GSA is the lead agency for the St. Elizabeths project and for the preparation of the FEIS, the transportation project is an integral part of the entire development.

A review of relevant facts about the transportation component of the St. Elizabeths redevelopment proposal highlights the flawed approach of GSA and FHWA with respect to Section 4(f).

- In the FEIS, GSA establishes its preferred alternative for the development – Alternative 5 – and its preferred alternative for the transportation component – Alternative I-2. GSA intends to finalize these decisions through the Record of Decision sometime in December 2008 – *months* before the FHWA will make the final decision on the transportation component.
- GSA and FHWA acknowledge that the preferred transportation alternative requires the “use” of Shepherd Parkway, which is a National Park Service property.
- To date, the NPS has not agreed to the transfer or “use” of Shepherd Parkway for the project, which is required by 40 U.S.C. § 8124. In fact, the NPS has strongly objected to the transfer or “use” of Shepherd Parkway.
- The preferred alternative for the transportation component is inseparable from the preferred development alternative, because the movement of traffic both to and from St. Elizabeths West and East Campuses requires the Interstate 295-Malcolm X Avenue interchange.
- FHWA proposes to approve the Section 4(f) Evaluation in January 2009, after a 45-day comment period by the National Park Service and consulting parties, and to issue a Record of Decision for the transportation component of the St. Elizabeths project in March 2009.

FHWA intends to satisfy its NEPA and NHPA responsibilities by “signing on” to the FEIS and Programmatic Agreement prepared by GSA.

These facts and the proposed inconsistent timing of GSA’s decision and the FHWA’s proposed subsequent decision raise significant questions regarding Section 4(f). First, the FHWA cannot satisfy the substantive requirements of Section 4(f) if it is constrained by GSA’s FEIS. The FHWA is required to determine whether there are “feasible and prudent” alternatives that would avoid the “use” of the protected Section 4(f) property. 49 U.S.C. § 303(c)(1). By deferring the Section 4(f) analysis until after GSA has already finalized its decision about both the development of St. Elizabeths and the transportation plan on which that chosen development alternative depends, the FHWA’s ability to evaluate avoidance alternatives will essentially be eliminated.

Second, FHWA states that its future Section 4(f) evaluation “will not consider as viable alternatives or mitigation the following: reductions in proposed St. Elizabeth’s Campus development density, changes in the location of facilities on the campus, and revisions to the occupant transportation mode choice.” Letter from Ridenour, FHWA, to Guerin, GSA, at p.2 (Nov. 3, 2008). These exclusions are inappropriate because the development proposal selected in the FEIS is completely dependent upon the “use” of Shepherd Parkway. GSA and FHWA should not be allowed to separate these components of the project as a means of avoiding a discussion about the “use” of the NHL.

The National Trust urges GSA and FHWA to supplement the FEIS to include the Section 4(f) evaluation. This evaluation must document whether or not there are “feasible and prudent” alternatives to the “use” of Shepherd Parkway. Additionally, the evaluation should examine the “use” of elements of St. Elizabeths NHL, which dictate the need to “use” Shepherd Parkway.

IV. CONCLUSION

In conclusion, the National Trust believes the FEIS is plagued by substantial deficiencies highlighted above, and is legally vulnerable to challenge. We urge GSA to correct these deficiencies through a supplement to the FEIS before issuing a Record of Decision.

The National Trust appreciates the opportunity to comment on this important proposal, and we look forward to more collaborative consultation with GSA pursuant to Section 106. Please feel free to contact me at (202) 588-6026, or

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Robert Nieweg, at 202-588-6107, or Nell Ziehl at (202) 588-6040, if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Merritt". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Elizabeth S. Merritt
Deputy General Counsel