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*Preserving America's Heritage*

April 21, 2005

John V. Cogbill, III  
Chairman  
National Capital Planning Commission  
401 9<sup>th</sup> Street, NW, North Lobby, Suite 500  
Washington, DC 20576

Dear Mr. Cogbill:

In accordance with Section 106 of the National Historic Preservation Act (NHPA) and implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), I am writing to convey to you the final comments of the Advisory Council on Historic Preservation (ACHP) on the Old Patent Office Building Courtyard enclosure project. The comments are provided to the National Capital Planning Commission (NCPC) in the form of the ACHP's letter to the Smithsonian Institution dated April 18, 2005 (copy enclosed) and supplemented by our recommendations specifically to NCPC in this letter. The NCPC's approval of this undertaking is subject to Section 106 of the NHPA and 36 CFR Part 800.

We appreciate your letter of April 5, 2005, regarding the ACHP's consideration of this matter. In addition, we are grateful for your agency's participation in, and thoughtful contribution to, the ACHP panel meeting of April 11. NCPC's views regarding the proposal, along with those expressed by others during Section 106 consultation and in oral and written testimony, were carefully considered by the ACHP in developing final comment on the proposal.

We recognize that NCPC has issued concept and preliminary approvals in response to Smithsonian submissions representing earlier versions of the design of the Courtyard enclosure project. Nonetheless, it is our understanding that NCPC's actions were taken with the expectation that the project's ongoing design development and the Section 106 consultation process would offer the Smithsonian opportunities to improve the proposal so as to minimize harm to the National Historic Landmark. We bring to your attention that, since NCPC's concept and preliminary reviews, this proposal has had the benefit of additional scrutiny by the ACHP panel and the Secretary of the Interior pursuant to Section 213 of NHPA. As evidenced by the ACHP's comments and by the Secretary of the Interior's report to the ACHP, the ACHP and the Secretary agree that actions taken by the Smithsonian to date are wholly inadequate to avoid serious adverse effects to both the Old Patent Office and the L'Enfant Plan.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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The ACHP has recommended to the Smithsonian that it "abandon its plans to enclose the courtyard, and that it take steps to return, to the extent practical, the courtyard to its appearance prior to demolition." If the Smithsonian follows that recommendation, the issue of the courtyard enclosure will presumably no longer be before NCPC.

Should the Smithsonian not follow the ACHP's preferred alternative and choose to submit a courtyard enclosure project for NCPC review, we recommend that NCPC deny final approval of the project for the reasons stated in our comment letter to the Smithsonian. If NCPC decides to approve a courtyard enclosure, we recommend that NCPC condition its approval with the requirement that the Smithsonian carry out the remaining applicable ACHP recommendations relating to the design of the enclosure and the treatment of the National Historic Landmark.

We request that you distribute both the ACHP comment letter and the Secretary's Section 213 report to your commissioners for their consideration. In accordance with Section 106 of the NHPA, you must take into account these comments of the ACHP prior to reaching a decision on the courtyard enclosure project. In accordance with Section 110(l) of NHPA and the Section 106 implementing regulations, this responsibility cannot be delegated. Finally, your response to these ACHP comments must be documented in accordance with 36 CFR Section 800.7(c)(4).

I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Nau, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

John L. Nau, III  
Chairman

Enclosures