COMMISSION ACTION

NCPC File No. 6479

PATENT OFFICE BUILDING
COURTYARD ENCLOSURE
G, F, 7th and 9th Streets, NW
Washington, DC

Submission by the Smithsonian Institution

June 2, 2005

Commission Action Requested by Applicant

Approval of final site and building plans pursuant to 40 U.S.C. § 8722(d) and Section 5 of the National Capital Planning Act (40 U.S.C. § 8722(b)(1)).

Commission Action

The Commission finds that:

- The Smithsonian Institution is required under the Planning Act and Public Law 108-72 to submit exterior alterations at the Patent Office to the Commission for review and approval and be subject to the provisions of Section 106 of the National Historic Preservation Act.

- The Smithsonian Institution's prior decisions, construction, and demolition have led to the irrevocable loss of character-defining elements of the Patent Office Building, and precluded or limited the ability of the Commission and others to review the proposal fully, investigate alternatives, and recommend design changes to the proposed canopy.

- Two federal agencies with great expertise in the significance and preservation of National Historic Landmarks—the Department of the Interior and the Advisory Council on Historic Preservation—have stated in writing the significance of the historic courtyard to the character of the Patent Office Building, and the project's adverse effects to the Patent Office Building and to the L'Enfant Plan.

- The Secretary of the Interior on January 28, 2005 reported on the national significance of the Patent Office Building and found that the loss of the courtyard during construction of the auditorium and the Smithsonian's subsequent proposal to enclose the courtyard

caused adverse effect to the National Historic Landmark building and to the L'Enfant Plan

- The Smithsonian Institution, on March 4, 2005, terminated Section 106 consultation.

- The Advisory Council on Historic Preservation's final findings to the Smithsonian Institution and to the Commission (letters of April 18 and April 21, 2005) are that "the ACHP and the Secretary [of the Interior] 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;" and for the Smithsonian Institution "to 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" or, in the alternative, "that the current roof enclosure design be modified to lower its height" and, further, that the Smithsonian Institution "ensure that the south stairs are reconstructed as part of the overall rehabilitation project."

- The Smithsonian Institution and the Commission both have responsibilities toward the Patent Office Building under the Planning Act and the National Historic Preservation Act.

- The Commission is the sole remaining federal agency with responsibilities under the National Historic Preservation Act and is required in Section 106 to:

  - "undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark" and "give special consideration to protecting National Historic Landmarks."

  - give due consideration to the final comments of the Advisory Council on Historic Preservation.

The Commission:

Endorses the findings and recommendations of the Secretary of the Interior and the Advisory Council on Historic Preservation.

Finds that the Smithsonian Institution has caused irrevocable harm to the Patent Office and its setting through the demolition of the original courtyard landscape, and that the proposed canopy will further degrade the character of the Patent Office, a seminal Greek Revival-style building in Washington and the nation and a building of transcendent historical significance.

Disapproves, effective by letter of the Chairman to the Advisory Council on Historic Preservation, the final site and building plans for the enclosure of the courtyard of the Patent Office Building.

Requires the Smithsonian Institution to reconstruct the south façade stairs as an element of the architectural rehabilitation of the landmark's appearance and centrality in the L'Enfant Plan and its historic environs, and as a means of providing integrally designed handicap accessibility to the building's south entrance.

Advises the Smithsonian Institution that the courtyard is subject to Commission review and approval of "open space in and around federal public buildings" under 40 U.S.C. § 8722(d).

Recommends that the Smithsonian Institution return to the Commission with plans to:

- Reconstruct the courtyard in a manner that will rehabilitate its prior design character and setting in relation to the building, including restoration to working order and reinstallation of the two cast iron fountains removed when the courtyard was demolished.

- Plan, design, and implement improvements in the Patent Office reservation that will restore its extent and character, provide handicap accessibility to the building by ramps on the north façade, and incorporate the south stair reconstruction into the realignment of the lawn and fence on F Street and the improvement of the sidewalks and street furnishings around the reservation.

Advises the Smithsonian Institution that this action does not preclude the Smithsonian from submitting a revised design for enclosing the center courtyard.

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Deborah B. Young
Secretary to the National Capital Planning Commission

STAFF RECOMMENDATION

N. Witherell

NCPC File No. 6479

PATENT OFFICE BUILDING
COURTYARD ENCLOSURE
G, F, 7th and 9th Streets, NW
Washington, DC

Submitted by the Smithsonian Institution

May 26, 2005

Abstract

The Smithsonian Institution has submitted final site and building plans for the enclosure of the courtyard at the Patent Office Building. The submission includes the proposed canopy and alterations to the former courtyard. The Smithsonian plans to address site and building plans for the north handicapped ramps, the south façade stairs, and a related site plan in the future.

Commission Action Requested by Applicant

Approval of final site and building plans pursuant to 40 U.S.C. § 8722(d) and Section 5 of the National Capital Planning Act (40 U.S.C. § 8722(b)(1))).

Executive Director's Recommendation

Advises the Commission that:

- The Smithsonian Institution is required under the Planning Act and Public Law 108-72 to submit exterior alterations at the Patent Office to the Commission for review and approval and be subject to the provisions of Section 106 of the National Historic Preservation Act.

- The Smithsonian Institution's prior decisions, construction, and demolition have led to the irrevocable loss of character-defining elements of the Patent Office Building, and precluded or limited the ability of the Commission and others to review the proposal fully, investigate alternatives, and recommend design changes to the proposed canopy.

- Two federal agencies with great expertise in the significance and preservation of National Historic Landmarks—the Department of the Interior and the Advisory Council on Historic Preservation—have stated in writing the significance of the historic courtyard to the character of the Patent Office Building, and the project's adverse effects to the Patent Office Building and to the L'Enfant Plan.

- The Secretary of the Interior on January 28, 2005 reported on the national significance of the Patent Office Building and found that the loss of the courtyard during construction of the auditorium and the Smithsonian's subsequent proposal to enclose the courtyard caused adverse effect to the National Historic Landmark building and to the L'Enfant Plan

- The Smithsonian Institution, on March 4, 2005, terminated Section 106 consultation.

- The Advisory Council on Historic Preservation's final findings to the Smithsonian Institution and to the Commission (letters of April 18 and April 21, 2005) are that "the ACHP and the Secretary [of the Interior] 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;" and for the Smithsonian Institution "to 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" or, in the alternative, "that the current roof enclosure design be modified to lower its height" and, further, that the Smithsonian Institution "ensure that the south stairs are reconstructed as part of the overall rehabilitation project."

- The Smithsonian Institution and the Commission both have responsibilities toward the Patent Office Building under the Planning Act and the National Historic Preservation Act.

- The Commission is the sole remaining federal agency with responsibilities under the National Historic Preservation Act and is required in Section 106 to:

  - "undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark" and "give special consideration to protecting National Historic Landmarks."

  - give due consideration to the final comments of the Advisory Council on Historic Preservation.

Recommends that the Commission:

Endorse the findings and recommendations of the Secretary of the Interior and the Advisory Council on Historic Preservation.

Find that the Smithsonian Institution has caused irrevocable harm to the Patent Office and its setting through the demolition of the original courtyard landscape, and that the proposed canopy

will further degrade the character of the Patent Office, a seminal Greek Revival-style building in Washington and the nation and a building of transcendent historical significance.

Disapprove, effective by letter of the Chairman to the Advisory Council on Historic Preservation, the final site and building plans for the enclosure of the courtyard of the Patent Office Building.

Require the Smithsonian Institution to reconstruct the south façade stairs as an element of the architectural rehabilitation of the landmark's appearance and centrality in the L'Enfant Plan and its historic environs, and as a means of providing integrally designed handicap accessibility to the building's south entrance.

Advise the Smithsonian Institution that the courtyard is subject to Commission review and approval of "open space in and around federal public buildings" under 40 U.S.C. § 8722(d).

Recommend that the Smithsonian Institution return to the Commission with plans to:

- Reconstruct the courtyard in a manner that will rehabilitate its prior design character and setting in relation to the building, including restoration to working order and reinstallation of the two cast iron fountains removed when the courtyard was demolished.

- Plan, design, and implement improvements in the Patent Office reservation that will restore its extent and character, provide handicap accessibility to the building by ramps on the north façade, and incorporate the south stair reconstruction into the realignment of the lawn and fence on F Street and the improvement of the sidewalks and street furnishings around the reservation.

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PROJECT DESCRIPTION

Site

The Patent Office is located on a central reservation of the L'Enfant Plan centered on 8th Street between F and G Streets, NW. The Patent Office Building is bounded by 7th and 9th Streets and F and G Streets, NW. It fills Reservation #8, one of the most prominent reservations in the L'Enfant Plan, situated on the high ridge parallel to F and G Streets, NW and originally envisioned as the site of a national nondenominational church. The building was begun with the south façade in 1836 from a design by Town and Elliott selected by President Andrew Jackson, who also selected architect Robert Mills to oversee construction. The building was constructed in four phases over three decades, and the facades are remarkably consistent given the long construction period. The Patent Office Building--its central location, Greek Revival style, and original purpose--is well known to the Commission and public as an exemplar of the achievements and ideals of the Jacksonian era. It was designated a National Historic Landmark in 1965.

The exterior of the Patent Office has remained remarkably intact without significant alteration through the years, with a notable exception occurring in 1936, when the south portico stair was removed in order to straighten F Street. The Commission was instrumental in restoring the historic alignment of F Street when it approved the MCI Arena in 1995. The reservation and the building are connected visually to other L'Enfant Plan elements by the projection of the building's porticos into the east-west F and G Street rights-of-way. They are also connected through views along the north-south 8th Street right-of-way.

Background

The Smithsonian has appeared before the Commission twice for the proposed canopy over the courtyard. At the Commission's July 2004 meeting, the concept design for the canopy was approved provided that the canopy design was refined to minimize the profile and improve its compatibility with the building and the L'Enfant Plan, and that the cooling tower was lowered below the roof of the existing building. The Commission also required plans and elevations for proposed alterations to the courtyard be included in the submission for preliminary site and building plans.

At the November 2004 meeting, the Commission approved a preliminary design of the canopy that removed the sun screens and adjusted the profile of the canopy's center vault, and lowered the canopy's surface approximately 20 inches at the center vault, following SI's statement that the external profile of the canopy could not be minimized further. The Commission did not accept a revised cooling tower height because it had not been lowered below the roof of the building. At that meeting, commissioners questioned SI's previous decisions and actions about the cooling tower in relation to the canopy and building systems, specifically the mechanical pylons in the courtyard. (As a result, SI asked to present information to the Commission at the December 2004 meeting to explain its prior studies and actions. At the December meeting, at which the Commissioners did not take an action, SI explained that there were no viable alternatives to the proposed location of the cooling tower and that the location of the old cooling tower remained the best option.)

Information submitted by the Smithsonian regarding the courtyard was described in the November staff report as "minimal," and the Commission restated its request for plans and elevations for alterations to the courtyard, although it deferred action on these elements so that the Smithsonian could undertake Section 106 consultation. Also at the November 2004 meeting the staff introduced the reconstruction of stairs on the south façade to correct the previously altered appearance of the south façade and to strengthen the presence of the Patent Office at street level. The District of Columbia Historic Preservation Review Board, advising the D.C. State Historic Preservation Office, had previously recommended this measure. The Executive Director had made the construction of the south stairs a requirement for her October 2004 Finding of No Significant Impact.

At the January 2005 meeting, the Commission approved a concept design for the reconstruction of the south stairs, requiring the Smithsonian Institution to request funds for design development and reconstruction of the stairs in the next budget cycle and to submit the project to the Commission in the current Federal Capital Improvements Program (FCIP).

Proposal

SI's submission includes the installation of a fritted and coated glass canopy in a vaulted diagrid structure, supported by eight columns and resting on the roof of the building, to cover the courtyard. The canopy has three vaults, with the central vault higher than the side vaults. The central vault measures approximately 88 feet in height above the courtyard floor (which has been raised), and approximately 15 feet above the top of the pediment on the south façade. The canopy would be supported on eight columns placed parallel to the north and south courtyard facades. The column locations and footings were established prior to the design competition for the canopy and the submission of the concept design to the Commission. The columns are 64 feet in height and measure 38" in diameter.

The open landscaped courtyard, which dated from the completion of the building in 1869, was demolished in July 2003 for excavation for a below-grade auditorium. The cast iron fountains, original to the courtyard, were removed to storage. The new courtyard would be a granite-surfaced plaza. The construction to extend it to the edges of the courtyard facades, over the courtyard lightwells (moats) on three sides, has occurred. The space would be used for various activities, with a variety of changing interior layouts. Six pylons (measuring 16 feet in height and 32 inches in diameter) would provide heating, cooling, and electrical connections. A window in the north wall of the interior courtyard facade would be cut down to create a door for a self-serve food service room.

The Smithsonian Institution has also submitted conceptual design plans for an open catering kitchen and media screen in a structure at the western end, in front of the stair tower. According to Smithsonian staff, this element is not fully designed because it is not yet funded. The kitchen and media screen would be contained in a free-standing wall measuring 33 feet in length by 4'6" in depth by 13 feet in height. The wall could be extended with additional partitions on either side during its use for events to screen food preparation. A media screen facing the room and measuring 9 feet in height by 16 feet in length would rise to a full height of 22 feet above the floor when in use and descend into the front wall of the structure so that it would not be seen when not in use.

Development Program

Applicant:	Smithsonian Institution
Architects:	Foster and Partners; Smith Group
Project cost:	Estimated $33 million for the canopy and courtyard space, private funds
Completion date:	Museum reopening, July 2006; Canopy installation, Winter 2007

PROJECT ANALYSIS

Executive Summary

The Executive Director recommends that the Commission not approve the final site and building plans submitted by the Smithsonian Institution for the canopy and courtyard. This recommendation is made despite prior concept and preliminary approvals and after serious consideration and review of the project's development and the course of the consultation with the Smithsonian in the past year. The Executive Director concludes that the Smithsonian Institution's past actions and prior and current planning have not succeeded in preserving this National Historic Landmark to the high standards the public has come to expect from the Smithsonian.

The Smithsonian has demonstrated care in both conservation and new design in past projects before the Commission. The Smithsonian manages museum functions in historic buildings of iconic significance to the nation and the Executive Director acknowledges the challenges this presents. It is unfortunate that a desired building program incompatible with the Patent Office Building and its setting has been forced on it.

Explicit in the Commission's discussions with and recommendations to the Smithsonian were expectations that the design would continue to evolve to minimize harm to the building and its setting, and that adverse effects would continue to be resolved during consultation. The staff and commissioners raised strong concerns throughout this past year about the predetermined nature of the proposal and previous actions that limited a consideration of other options. As a result of these prior decisions, the design modifications in the past year have been incremental.

Now before the Commission is the Smithsonian's submission for final site and building plans, which requires an action by the Commission. The Executive Director has considered the facts, weighing the acknowledged adverse effects and the incremental design improvements against the magnitude of the permanent impacts on this landmark building, its courtyard, and its setting in the L'Enfant Plan. Perhaps there could have been other design alternatives and solutions, but the Smithsonian did not, or was no longer able to, propose them for consideration. Analyzing what is presented to the Commission, the Executive Director does not believe the proposal is commensurate with either the Smithsonian's record of stewardship or the national significance of the building and setting.

The Executive Director also has taken into account the Commission's historic preservation responsibilities, and in the current context of the strong advice and recommendations provided by the Secretary of the Interior and the Advisory Council on Historic Preservation, is mindful of the fact that the National Historic Preservation Act requires both the Commission and the Smithsonian to "undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark." The impact of both the alterations that have already occurred and of the proposed changes are too great to meet this requirement of stewardship for the Patent Office Building.

Section 106 Consultation

The staff concurs with Commissioners' previously expressed concerns to the Smithsonian about the delay in beginning Section 106 consultation and about advanced project planning that did not make the preservation of the building and its setting paramount. The Smithsonian has explained to the Commission that the canopy project was added to the rehabilitation project of the building's interior, which was already underway. Staff observed during consultation that the different schedules for the two projects unfortunately exacerbated the insufficient planning and coordination.

The Section 106 consultation was ultimately not successful in reaching agreements that would "minimize harm" to the National Historic Landmark. In staff's opinion, this was due in large measure to the Smithsonian's prior decisions for a specific program for the museums and to prior actions, including demolition of the courtyard and the selection of a specific canopy design based on attendant structural preparation, that precluded or severely limited a meaningful consideration of design alternatives to the canopy or to the courtyard. The Smithsonian selected a vaulted canopy design that was not compatible with an American Greek Revival-style monumental building of its era and that was visible above the Patent Office in a highly significant, National Register-listed and –protected viewshed of the L'Enfant Plan.

As open space in a public building, the courtyard is also subject to the Commission's federal public building approval. The Commission has conveyed concern with the loss of the courtyard. The Smithsonian began demolition of the courtyard for the auditorium in July 2003, which was one month before enactment of Public Law 108-72, which allowed the Smithsonian Institution to be responsible for its own compliance with Section 106. This law had been contemplated and drafted more than a year earlier and its passage was anticipated.

The Smithsonian began its Section 106 review and submitted a concept design to the Commission after it had made major programming and design decisions and taken some actions that were irreversible. At both the July 2004 and November 2004 meetings, the Commission urged the Smithsonian to consult and make progress through the Section 106 process and accepted the Smithsonian's assurances that it would do so. The Smithsonian also conveyed these assurances by letter to the Advisory Council on August 3, 2004. However, the Smithsonian Institution terminated consultation on March 4, 2005 without reaching agreement with other agencies on ways to avoid, minimize or mitigate the adverse effects of the undertaking through terms of a Memorandum of Agreement.

The loss of the historic courtyard landscape was not addressed in a draft Memorandum of Agreement circulated by the Smithsonian. Options for the creation of a new courtyard space with even limited potential to serve as a compatible setting at the center of the historic building were hindered by past decisions and actions and by the current lack of private funds for further design development. For example, prior decisions about the location of functions inside the building created the seeming inability on the part of the Smithsonian to avoid the final submission's proposal to cut down a window on the north elevation of the courtyard to create a door. The one significant mitigation measure put forth at the recommendation of the State Historic Preservation

Officer was the reconstruction of a staircase on the south façade. This had been contemplated as part of the plans for the rehabilitation of the building in 2000 and yet was ultimately not included. This past winter, the Smithsonian endorsed this proposal and responded with a concept design. And yet it was able to agree only to complete the design and construct the stairs subject to the availability of future appropriated funds.

The Commission now has the benefit of the analysis and conclusions of two federal agencies with expertise in historic preservation—the Department of the Interior and the Advisory Council on Historic Preservation. Both of these agencies describe in detail the Patent Office Building's significance to the nation and the nature of the adverse effect to the building due to the loss of the courtyard character and landscape, as well as the adverse effect of the proposed new enclosed courtyard and canopy design. The Advisory Council on Historic Preservation has determined that "the roof enclosure, as now designed, struggles against the Classical expressions of the building's courtyard interior," and the Secretary of the Interior reports that it "poses a major conflict with the historic character and design integrity of the historic structure on both the interior and exterior." The agencies also note the adverse effects to the building and to the L'Enfant Plan from a visible canopy, given the important placement of the Patent Office in the Plan. The Commission also has the benefit of reports of the D.C. State Historic Preservation Office to the D.C. Historic Preservation Review Board, which describe the effect on the building from the loss of the character-defining courtyard at its heart, and the effect on the L'Enfant Plan.

Advisory Council on Historic Preservation's Recommendations to the Commission

The Executive Director recommends that the Commission endorse the Advisory Council on Historic Preservation's final comments and recommendations, in particular:

- The Commission's ongoing Section 106 responsibilities for this project as the sole federal agency responsible for review of the proposal, now that the Smithsonian Institution has terminated consultation and the Advisory Council has issued its final comments

- The Advisory Council's recommendation to the Commission to:

    - Deny approval to the courtyard enclosure and restore as practical the courtyard landscape.
    - Recommend, alternatively, the study of a lower canopy not visible from the building's exterior.
    - In addition, reconstruct the south stairs as part of the rehabilitation of the historic building.

Staff Analysis of the Final Site and Building Plans

Staff concludes that the current proposal fails to address previous concerns regarding the impact of the canopy proposal to the building exterior, the courtyard, and the L'Enfant Plan. The Commission expected that the adverse effects would be addressed adequately through the Section 106 process.

The proposal's effects to the building and to the L'Enfant Plan remain adverse. Thus, the rounded form of the central vault would become a permanent feature of this monumental Greek Revival landmark in the 8th Street vista from Pennsylvania Avenue. The Smithsonian removed the sun screens from the exterior surface and modified the angles of the center vault, but the Commission was informed at its November meeting that the maximum reduction of approximately two feet in the height of the glass surface of the canopy had been achieved, given the design and column placement.

The interior space envisioned by the Smithsonian would be a large room with a granite floor. Staff concurs with the findings of the Advisory Council on Historic Preservation that the resulting space appears "sterile and uninviting," and with the Secretary of the Interior's report which states that the canopy "overpowers the historic space." Critical features are still in the concept stage or not yet in the design phase. Consultation in the latter months focused on the absence of scale-giving features other than the catering kitchen, which itself would be located in front of the western stair tower. Prior plans and construction precluded other locations, in the courtyard or in the building, from consideration. In response to expressed concerns, the Smithsonian redesigned the media screen to be lowered when not in use and the kitchen has been reduced in height, but the utilitarian structure would be the permanent element of an events space that would remain largely open to provide flexibility for seating and banqueting arrangements.

The eight columns would be constructed in two rows in front of the north and south courtyard facades. The diagrid canopy would cast a complicated pattern of shadows on the courtyard walls and floor, as illustrated in the submission materials. The diagrid canopy itself--an admirable structure in another setting—remains, at the end of design development, too complex to simulate lightness or to be reminiscent of open views of the sky. It would remain perpetually incompatible with the balanced neoclassical articulation of the courtyard facades. The canopy and the courtyard walls would compete uneasily to the detriment of both.

The Smithsonian stated that the proposed canopy has been lowered as much as possible, based on its design and engineering. Staff notes that a different design, including one that did not rise above the roof of the building, was never presented for consultation or consideration. While designing a different canopy that was not visible from the exterior would seem at first to be a possible compromise that would allow the Smithsonian to proceed with its programming desires for the museums, the Smithsonian itself noted the difficulty in creating a lower canopy because of the physical stress that it might impose on the building fabric and because of the presence of the higher pediment on the south façade. The Smithsonian also informed the Commission and other agencies that the column locations were selected and stipulated prior to the design competition due to the construction of the below-grade auditorium and that a lower canopy would likely require a different configuration or number of columns and interfere with the Smithsonian's anticipated programming of the space.

The courtyard floor is now proposed to be a hard surface because of the construction of an auditorium below the courtyard. With the loss of the elm trees, the courtyard can not be restored as it existed prior to demolition, but its character as a setting related to the building could be restored to some extent so that it could resume its significant place at the center of the Patent

Office. Handicap access and movement at the courtyard doorways and around and through the space could be maintained even if a landscape plan were designed and installed. The cast iron fountains, dating to the completion of the building in 1867, should not remain crated in storage. They should be visible to the public. They should be restored and installed at the Patent Office.

The staff also endorses the recommendation of the Advisory Council that the south stairs be constructed as an extension of the project to rehabilitate the historic building itself. The Commission has endorsed the Smithsonian's design for a reconstructed staircase entrance as enhancing the appearance of the building in the important 8th and F Street viewshed. As now designed, the stairs also provide a necessary and integrally designed accessible entrance to the museums from the south façade that does not exist at the current entrance constructed in the 1930s.

Further, the staff notes that the proposed ramps on the north façade to provide accessible entry to the museums is proceeding as a separate undertaking and Section 106 consultation. The north ramps are a critical, time-sensitive element for the Smithsonian, since it wishes to have an accessible entrance in time for the reopening of the museums in July 2006. The staff expects to receive a submission from the Smithsonian soon. Staffs from the Smithsonian, Commission, D.C. SHPO, and Advisory Council have discussed the possibility of combining all the desired exterior building and site improvements as one undertaking under a Programmatic Agreement, which the Smithsonian drafted and circulated for comment on May 24, 2005. The undertaking might include the north access ramps, south stairs, site design to realign the south lawn and fence line, and the improvement of the sidewalk and street furniture. The individual components could proceed to project development at different times, with the north ramps being the first project.

Finally, the staff notes the outstanding issue of the cooling tower above the western stairtower. The earlier cooling tower from the 1960s was located there, and its replacement was planned as part of the building's rehabilitation. The cooling tower has been set as far away as possible from views from the courtyard. A lightweight, rectangular housing in a pale neutral color has been designed. The staff suggests that the Commission accept the cooling tower as an in-kind replacement for the earlier cooling tower that has been reasonably and appropriately upgraded in function and appearance.

CONFORMANCE

Comprehensive Plan for the National Capital

The proposed project is inconsistent with policies for historic preservation and stewardship, since it does not meet the Secretary of the Interior's Standards and has been determined by the Smithsonian Institution, the Executive Director, the DC SHPO, the Advisory Council on Historic Preservation, and the Secretary of the Interior to have an adverse effect on the Patent Office Building and on the L'Enfant Plan. In particular, the Secretary's Standard #9 states:

> New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the

historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

The nature and visibility of the canopy, the demolition of the courtyard, and the proposed altered character of the "urban plaza" to replace the courtyard are inconsistent with the Secretary's Standards and therefore cause an adverse effect to the Patent Office. In addition, the view of the building and its setting in the L'Enfant Plan are an adverse effect on the L'Enfant Plan.

Relevant policies in the Preservation and Historic Features element include:

5. Protect and enhance the vistas and views, both natural and designed, that are an integral part of the national capital's image. .

9. Sustain exemplary standards of historic property stewardship.

14. Protect the settings of historic properties, including views to and from the sites where significant, as integral parts of the historic character of the property.

19. Ensure that new construction is distinguishable from historic structures but also compatible with the qualities and character of the setting, in accordance with the *Secretary of the Interiors' Standards for Rehabilitation* and *Guidelines.*

25. Promote continuity in the historic design framework of the nation's capital by protecting and enhancing the elements, views, and principles of the L'Enfant Plan. Both the federal and the District of Columbia government should adhere to these principles in any improvements or alterations to the historic framework.

26. Preserve the historic street rights-of-way and reservations that contribute to the significant system of open space forming the urban design framework of the nation's capital.
28. Protect the reservations that contain historic landscapes and features from incompatible changes or incursions.

33. Protect the reciprocal views along the rights-of-way, as well as to and from the squares, circles and reservations.

Federal Capital Improvements Plan

At its January 2005 meeting, the Commission required the submission of a funding request in the current FCIP cycle with its concept approval of the south stairs. To date, the Smithsonian has not made a submission.

National Capital Urban Design and Security Plan

The Smithsonian has not concluded any studies for future security needs for the Patent Office Building at this time.

National Environmental Policy Act (NEPA)

NEPA requires that federal officials recognize that more than one agency may make decisions about partial aspects of a major action. The regulations further note that the following should be considered in evaluating the impact intensity of the proposed action on any identified cultural or natural resource:

- Unique characteristics of the geographic area such as proximity to historic or cultural resources.
- The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- The degree to which the action may establish a precedent for future actions with significant effects.
- The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places.

In addition, the Commission's Environmental and Historic Preservation Policies and Procedures, dated April 1, 2004, specify that "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 National Historic Preservation Act (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 …."

NCPC staff analyzed, in conformance with the requirements of NEPA, the Supplemental Environmental Assessment (EA) prepared by the Smithsonian Institution for planning and construction of improvements. Staff prepared a Finding of No Significant Impact (FONSI) on October 8, 2004 based on adoption of the Supplemental EA with mitigation.

The 2004 Supplemental EA provides an evaluation of the revised concept design of the courtyard roof that differs from the conventional courtyard roof concept addressed in an initial Patent Office Renovations EA, which the staff commented on in August 2002 but which was not submitted to staff for adoption. The 2004 Supplemental EA addresses long-term effects from the implementation of the proposed roof design as it relates to historic and visual resources. The primary study area for assessing the potential environmental historic and visual impacts is generally within a four to five-block radius of the Patent Office.

The staff's independent review found that the EA conclusions represented an acceptable analysis of the potential environmental impacts of the plans, if mitigated by further actions. Part of that Finding also included the Smithsonian's developing a Memorandum of Agreement under Section 106 of the NHPA.

Visual impacts of the proposal were determined through the EA process to be the most controversial. Sightline studies of the proposed courtyard roof enclosure demonstrate that the

enclosure would not be visible from the nearby perimeter of the POB site due to the roof's low profile and obstructions from the existing structure. However, as views were analyzed from further distances within the Area of Potential Effect, conclusions about impacts were more varied as considered by both Commission staff and consulting parties.

Commission staff has determined the 2004 EA analysis did not reflect a fully comprehensive review of all viewshed concerns and the resulting overall impact of the proposed action on the National Register qualities of the Patent Office—a National Historic Landmark—and also on the L'Enfant Plan, specifically the viewshed of 8th Street, NW between the National Archives and the Patent Office. From south of the Patent Office, the views of the proposed roof enclosure would generally be unobstructed beginning two blocks from the site, or approximately 875 to 900 feet from the building. In this viewshed corridor the density and scale of the area surrounding the POB results in a focused view along the significant 8th Street cross-axis that leads directly to the south portico and pediment of the Patent Office. The existing viewshed terminus of the view from the National Archives focuses on the Patent Office's portico. The introduction of the courtyard canopy's more prominent height and curvilinear form alters the viewshed and the appearance of the building. The canopy overshadows the existing terminal feature of the historic building and viewshed, altering their character. Moreover, the effects of a fully-glazed courtyard structure would be very apparent from the south 8th Street view at night. Levels of diffused light emanating from the courtyard will extend beyond the visibility of the roof itself.

These impacts, as they relate to the south 8th Street viewshed of the L'Enfant Plan, are deemed moderate to major, and adverse to the National Register character of both the Patent Office's place in the L'Enfant Plan and to 8th Street, as determined by the DC State Historic Preservation Officer and the Commission's Historic Preservation Officer.

Staff concludes that the loss of the integrity of the Patent Office can only be mitigated, since the Smithsonian has devised a program and design which cannot avoid or minimize its effects. As a result, the courtyard enclosure must be developed to include direct mitigation to strengthen the historic character and presence of the building, especially in the 8th Street viewshed.

The DC SHPO report to the DC Historic Preservation Board strongly recommended that the project include the reconstruction of stairs at the south portico as a mitigation measure to address the adverse effects of the courtyard enclosure on the POB and the L'Enfant Plan. The Commission staff concurs with the DC SHPO and Historic Preservation Review Board and concludes that the Commission should require reconstruction of the south stairs as mitigation for adverse effects of the project on this National Historic Landmark.

The NCPC staff's conclusion of a Finding of No Significant Impact is based on the EA and Supplemental EA, dated February 2004, August 2004, and the SI supplemental data of October 1, 2004, along with the Commission staff's assessment of visual and historic impacts. Staff has reviewed the action for extraordinary circumstances as sanctioned by NEPA and recommended adoption of the Supplemental EA to the Executive Director with the mitigation of reconstruction of the south portico stairs.

National Historic Preservation Act (NHPA)

Final comments from the Smithsonian Institution and the Advisory Council on Historic Preservation, and the Secretary of the Interior's Report are attached to this staff report. Correspondence and reports since the Commission's January 2005 meeting were distributed to Commissioners on April 29, 2005.

The Commission retains its Section 106 responsibilities, even though the Smithsonian Institution has terminated consultation and the Advisory Council has issued its final comments. The Commission must conclude its Section 106 review with a response to the Advisory Council's findings and an explanation for its actions. Commissioners were previously provided with copies of the Secretary of the Interior's report and of subsequent correspondence between the Advisory Council on Historic Preservation and the Smithsonian Institution leading to the Advisory Council's final comments to the Smithsonian and to the Commission, and the Smithsonian's response to those comments.

The Patent Office is well known as one of the most significant Greek Revival-style buildings in the country. It is also nationally significant for the purpose for which it was built. Further, it is located on one of the most significant reservations in the L'Enfant Plan. It is one of the three monumental federal office buildings initiated with Robert Mills as architect in the 1830s, in the second generation of construction in the nation's capital following the earlier construction of the White House and executive branch complex and the U.S. Capitol. The Washington Monument is Mills' fourth significant project in the nation's capital.

President Andrew Jackson selected Mills as architect of the Patent Office on July 4, 1836. Mills was replaced in 1852 by architect Thomas U. Walter, who completed the building soon after the Civil War. The building's architects took full advantage of the building's setting created by the high topographical ridge running east-west along F and G Streets, by the L'Enfant Plan that exploited that topography, and by the vistas that resulted from the Plan's intention.

The Patent Office was designated a National Historic Landmark in 1965, is sited on a significant reservation of the L'Enfant Plan, and is within the Downtown Historic District and the Pennsylvania Avenue National Historic Site.

> *Given the building's status as a National Historic Landmark, the Smithsonian was required "to the maximum extent possible [to] undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking." The Commission is similarly obligated through its own Section 106 and Section 110 responsibilities under the National Historic Preservation Act.*

The SI formally invited the Advisory Council on Historic Preservation (ACHP) to consult in July 2004. SI began formal consultation in a group meeting with consulting parties on July 21, 2004 (following an introduction of the project to a larger group of interested parties the Smithsonian convened with the architects at an April 2004 meeting.) The Smithsonian determined the Area

of Potential Effect and the adverse effects in consultation with SHPO, ACHP, and NCPC staff at that July meeting and in a subsequent September 15, 2004 meeting with agency representatives. In a September 30, 2004 report endorsed by the HPRB, the SHPO staff elaborated, analyzed, and documented in writing the nature of the adverse effects of the canopy and courtyard enclosure to the National Register qualities of the interior and exterior of the Patent Office itself, as well as to the building as a significant element of the L'Enfant Plan--both in its location and setting and as the focal point of the 8th Street vista.

Consultation continued at several meetings through the autumn of 2004. The Smithsonian Institution drafted a Memorandum of Agreement in December 2004 that included a promise to include the south stairs design reconstruction in its Facilities Capital Plan. The DC SHPO and HPRB are on record as stating that the reconstruction of the stairs, not just the study of it, is the only commensurate mitigation for the adverse effects caused by the courtyard enclosure. The MOA did not contain further design mitigation beyond the modification of the angles of the canopy and its reduction in height by approximately two feet seen by the Commission at its November 2004 meeting. There were no provisions for revising proposed alterations to the courtyard or for reversing alterations that had already occurred or for decisions already made in recognition of its demolition.

The Secretary of the Interior issued a report on January 28, 2005 describing in detail the national significance of the Patent Office and the adverse effects of the courtyard enclosure on the Patent Office and on the L'Enfant Plan. Following receipt of that report, the Advisory Council wrote to the Smithsonian requesting that the Smithsonian consider alternatives to its proposal in light of the report and one further consultation meeting on February 14, 2005. The Smithsonian subsequently terminated consultation on March 4, 2005. The Advisory Council convened a panel of its members to hold a hearing on April 11, 2005 at which it considered the project. The Advisory Council issued its final comments to the Smithsonian on April 18, 2005 and to the Commission on April 21, 2005. The Smithsonian Institution responded to the Advisory Council on April 21, 2005, stating that its decision was to proceed with the project. This correspondence has been forwarded to Commissioners. NCPC's Section 106 and Section 110 (for the protection of National Historic Landmarks) responsibilities are still in force through the conclusion of its decision-making.

CONSULTATION

Coordinating Committee

The Coordinating Committee reviewed this item at its meeting at its June 16, 2004 meeting at the time of concept review and forwarded the proposal to the Commission with the statement that the project had been coordinated with all agencies participating except the D.C. Office of Planning (OP). The participating agencies were: NCPC; the District Department of Transportation; the District Department of Housing and Community Development, the General Services Administration, and the Washington Metropolitan Area Transit Authority.

Commission of Fine Arts

The Commission of Fine Arts (CFA) has an advisory role in the review of this project. It gave concept approval at its June 2004 meeting. In response to a submission requesting final approval at its January 2005 meeting, CFA was supportive of the overall design for the courtyard enclosure but recommended further study of the glazing for the roof enclosure, and of the service wall at the west side of the courtyard. At the same meeting, CFA was unanimous in its decision not to approve the proposed design for the reconstruction of the south stairs, and stated that the entrance should be left as is.