

## STATEMENT FOR THE RECORD

**To:** The National Capital Planning Commission

**Re:** NCPC File No. 8778 — New Monumental Arch, Memorial Avenue, Washington, D.C. — Executive Director's Recommendation, Commission Meeting of July 9, 2026

**Submitted by:** John Ayers, Washington, DC

**Date:** July 6, 2026

### Summary of Position

The Executive Director's Recommendation asks the Commission to do something it has no coherent basis to do: approve a design that the same Recommendation finds to be *inconsistent* with a statute (the Height of Buildings Act, or “Heights Act”) it has just reaffirmed is binding on the Project.

The Recommendation then defers the cure for that inconsistency — a reduction of the principal architectural structure by more than one-fifth and a wholesale redistribution of the building's height — to the final-review stage for the Project, as though it were of a piece with the granite finish and the count of traffic-signal poles. It is not.

As a result, approval on this record is premature. It resolves the defining question of the Project — whether a 250-foot structure may lawfully stand at Memorial Circle, and in what form — before the legal and factual predicates that control that question have been settled. That is a rush to judgment, and the Commission should decline to ratify it.

Additionally, and critically, the Commission does not meaningfully engage the Comprehensive Plan's most directly applicable policies and therefore does not adequately support its conclusion that the proposal is generally consistent with the Federal Elements. Further, a general finding of consistency "on the whole" cannot net a specific, mandatory, and internally elevated policy (the Heights Act) down to nothing; where the Plan singles out a directive, holistic balancing does not license overriding it.

### I. "Comment" as a Cover for a Different Building — Mislabeled an "Adjustment"

The Recommendation characterizes the Height of Buildings Act problem — i.e., that the project is inconsistent with law — as one more "comment to be addressed prior to final review." The characterization does not survive contact with what the Recommendation actually suggests are cures for the problem.

Consider the comments the Recommendation directs elsewhere in the same document: fewer traffic-signal poles, the final granite finish, the lighting stanchions, coordination with Arlington National Cemetery on parking. These are genuine refinements — materials, details, counts,

coordination — and none disturbs the building's essential structure. Set beside them, the Height Act "comment" is of a wholly different order.

To comply, the Recommendation states the applicant could:

- reduce the principal architectural structure from 166 feet to 130 feet — a reduction of 36 feet, or roughly 22 percent of the principal structure's height;
- reduce the rooftop habitable structure (the observation deck ) from 24 feet to 20 feet and set it back 1:1 on all sides; and
- treat approximately 100 feet of the remaining height as "statuary or other architectural embellishments" stacked atop the 130-foot structure and 20-foot penthouse to recover the 250-foot total.

That is not a refinement of a building. It is a different building. The Recommendation's own vocabulary discloses the sleight of hand: it calls this an "adjustment to the design of the proposed arch and statuary" — the same diminutive register in which it treats the count of light poles and the choice of granite. Cutting a structure by 36 feet, capping the observation deck, and re-designating 100 feet of the tower as embellishment is not an "adjustment," and labeling it one does not make it a "comment."

The proposed reconstitution has consequences the Recommendation never confronts, not that it should. The observation deck is designed to sit high, "above the primary arch structure and mezzanine," with the statuary above it; the compliance path forces the occupiable observation deck down by more than 36 feet and reorders the building's entire vertical program. Additionally, the Recommendation never explains whether an observation level containing vertical circulation, elevators, life-safety systems, public occupancy, and visitor amenities can perform its intended functions within a reduced 20-foot roof structure. Changes of this magnitude are precisely what preliminary review is meant to settle before approval, not defer past it.

## **II. The Finding of Inconsistency Is the Commission's Own Admission — and It Makes Deferral Irrational, Not Routine**

Preliminary approval does not certify that plans conform to law as drawn; it is approval to advance to final design, subject to enumerated comments. This statement accepts that. The record confirms it: the recommended approval coexists with NHPA compliance that "will be completed prior to final review," DOEE coordination not yet begun, and off-site traffic analysis outstanding. The Commission is reasonably willing to approve preliminary plans while some requirements remain open, because resolving those is what the interval between preliminary and final review is for.

But that principle has an edge, and the Height Act problem falls on the wrong side of it. There is a categorical difference between a requirement whose satisfaction is pending and a requirement the Commission has found the project fails. NHPA compliance is pending — not yet determined. The Heights Act decision is not pending. The Commission has determined it, and adversely: it

"Finds that... the project is inconsistent with the Height of Buildings Act." That is a closed conclusion that the design before the Commission violates binding law.

Once the Commission makes that admission, surely deferral must be justified. Deferring a cure to final review is would seem rational only where the deficiency can be cured through the ordinary refinements design development supplies. It is not rational where the "cure" requires a different building. Having found the violation, the Commission owes a reasoned explanation of why compliance is achievable within design development; the Recommendation offers none, and its own description of the cure — a 36-foot reduction, a re-designation of 100 feet of the tower, a relocation of the occupiable core — is the explanation of why the cure is not an ordinary refinement. An approval predicated on a deferral the Commission has thus effectively refuted is not reasoned decision making; it is a conclusion in search of a rationale.

### **III. The Compliance Path Is Contingent and Unresolved — the Definition of Premature**

The Recommendation does not establish that the compliant, different building it describes is achievable. It asserts that one could be, if a series of determinations — none yet made — break in the applicant's favor. On the Recommendation's own admissions:

1. **The setback is unknown.** The 2014 penthouse allowance requires a 1:1 setback; the Recommendation concedes "the exact dimension of the setback is not marked on the plans."
2. **The embellishment approval has not been granted.** The Height of Buildings Act permits statuary above the limit only when approved by NCPC. The Recommendation states the project "could still reach the desired 250-feet... if NCPC were to approve 100 feet of statuary or other architectural embellishments" — a future, discretionary act not yet performed, embedding the unestablished proposition that roughly 100 feet of a 250-foot tower is exempt "embellishment" rather than the building itself.
3. **The 2014 interpretation is an assumption.** The 20-foot penthouse cap is the Recommendation's reading of the 2014 amendment, presented as such.
4. **The 130-foot ceiling rests on unexamined choices.** The Recommendation applies the 130-foot business-street maximum, derived from the adjacent street width "at its widest point," without defending why the business-street ceiling governs a memorial circle on a federal parkway or why the widest point is the correct measure. Each assumption was resolved in the direction most favorable to approvability.

Approving preliminary plans on the premise that a lawful, buildable design is achievable, when the Recommendation itself has flagged each controlling question as open, is premature by definition.

### **IV. Selective Engagement with the Comprehensive Plan Cannot Justify the Project**

As the record makes clear, at stake with the Project is compositional integrity, not impacted only by height. The record exhaustively establishes that the Lincoln Memorial, Arlington Memorial

Bridge, Memorial Circle, Memorial Avenue, Arlington National Cemetery, and Arlington House are not isolated landmarks that happen to align. They form one ceremonial sequence, held in a single sight line, conceived by the McMillan Commission as "a complete work of civic art" — a phrase now codified in Policy POS.A.2 (Parks & Open Space Element, p. 13). A 250-foot arch and a 130-foot arch both sever the composition; height compliance does not cure a siting problem, because the harm is not only that the structure is too tall but that a dominant structure of this scale and type does not belong at the pivot of this sequence at any height. That harm is not aesthetic preference; the Comprehensive Plan translates it into specific, mandatory directives. A finding of consistency cannot survive contact with those directives — which is why the Recommendation does not engage them.

Several codified policies apply directly, and the applicant's own submission supplies the facts that trigger them. Policy UD.B.3.1(2) directs prevention of "visual incursions into the rights-of-way," "particularly important at... termini of radial and axial avenues" (Urban Design Element, p. 27) — and Memorial Circle is such a terminus. Policy UD.B.5.1 directs protection of "linear views" of major skyline elements (Urban Design Element, p. 33); the Technical Addendum defines a visual incursion as an element that "detracts from the preeminence of a major national resource along a view corridor," "visually severs major landscape elements," or "detract[s] from the character of historic, cultural, or other open space areas" (Technical Addendum, p. 11) — and the applicant's own "View from Lincoln Memorial — After" (Slide 64), among several others, shows the arch satisfying all three at once.

Policy HP.A.2 directs protection of "the reciprocal views... to and from squares, circles, and reservations" (Historic Preservation Element, p. 5) — the Lincoln–Arlington reciprocal view is the designed meaning of this site, and the Recommendation's own viewshed finding concedes the arch will "fully obstruct" it from the terraces. And Policy POS.C.5 does not invite balancing: it directs the government to "avoid the introduction of visual incursions... that would detract from the views of national memorials..." (Parks & Open Space Element, p. 29). "Avoid" is not "weigh."

These sit within a set of at least twelve numbered Federal Element policies with which the proposal conflicts — UD.B.1.3, UD.B.1.4, UD.B.3.1(2), UD.B.4.1, UD.B.5.1, HP.A.2, HP.D.3, POS.A.1, POS.A.2, POS.A.7, POS.C.5, and POS.C.6.

**The Recommendation did not ignore the Comprehensive Plan; it engaged it selectively.**

Its principal supporting citations are not the policies most directly applicable to this proposal. Instead, the Recommendation relies primarily on Policies POS.A.8 and POS.A.12 — policies addressing the adaptation of designed landscapes to accommodate contemporary programmatic needs, changing uses, access, and maintenance. The Recommendation characterizes these as broad "balance new uses and contemporary needs" policies, folds Historic Preservation Policy HP.D.3 into that same balancing exercise, and then invokes a "holistic approach" to conclude that the project is "generally consistent" with the Comprehensive Plan.

What the Recommendation does not do is equally important. It does not meaningfully engage the directive policies most directly implicated by this proposal, including those requiring the Commission to avoid visual incursions, preserve reciprocal views, protect the Monumental Core, reinforce the Height of Buildings Act, and preserve Washington's horizontal character. Nor does it address NCPC's own Memorials and Museums Master Plan, which states that "the existing circle at the west end of Memorial Bridge is not viewed as appropriate for the location of a future memorial." Reaching for broad policies that accommodate change while passing over the Plan's more specific "avoid" and "protect" directives — particularly where the Recommendation itself finds that the proposal will fully obstruct a nationally significant reciprocal view — is not a balanced application of the Comprehensive Plan. It is a selective one.

**The "holistic" finding cannot lawfully swallow a directive the Plan singles out.**

The Recommendation reaches "generally consistent" by treating every policy as a factor to be balanced "on the whole." But the Plan does not leave the Height Act to be balanced: **Policy UD.B.1.3 makes reinforcing the Height Act a directive**, and the General Counsel's own memorandum — in this record — states the Act is "woven throughout" the Federal Elements and is cites the Plan's recognition of the Height Act as one of the "two... most formative contributors to Washington's form and character." The Commission has separately found the project is inconsistent with that Act. A general finding of consistency "on the whole" cannot net a specific, mandatory, and internally elevated policy down to nothing; where the Plan singles out a directive, holistic balancing does not license overriding it. So the finding is not merely in tension with the Height Act determination — it uses a general consistency conclusion to nullify a specific command the Plan itself makes controlling. That is not balancing; it is the erasure of a governing policy, and it is the selective-engagement defect reduced to a single, undeniable provision.

**V. The Recommendation Does Not Demonstrate Reasoned Decision-making**

The Commission's review is not discretion at large. It is a statutory function under the National Capital Planning Act (40 U.S.C. § 8722), exercised against a framework — the Comprehensive Plan, "the road map for NCPC's land use planning and development decision-making processes" (Comprehensive Plan Introduction, p. 11) — that the Commission has bound itself to apply, culminating in an approval that carries legal effect. Authority of that kind carries a duty of reasoned decision-making: the Commission must examine the relevant evidence and articulate a rational connection between the facts it finds and the action it takes. An agency that "entirely fail[s] to consider an important aspect of the problem," or "offer[s] an explanation... that runs counter to the evidence before" it, has not met that duty. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see 5 U.S.C. § 706(2)(A).

On this record the Recommendation departs from that duty repeatedly, and every departure runs in the same direction — toward an outcome fixed before the analysis. It found "general" Comprehensive Plan consistency by citing the Plan's two (arguably inapposite) "balance new uses" policies while passing over every directive "avoid/protect" policy the project triggers, and without

engaging NCPC's own 2001 Memorials and Museums Master Plan, which declares this site inappropriate for a memorial. It found the project inconsistent with a binding statute and recommends approval anyway, based on a cure it has not shown is achievable and, according to the record, that the airport's One Engine Inoperative (OEI) protective surface independently forecloses at 250 feet. It credited a limited FAA feasibility review while never engaging the reported penetration of that protective surface. It relied on a NEPA Finding of No Significant Impact that contradicts its own Section 106 finding of an adverse effect. And it recommends approval over the State Historic Preservation Officer's formal objection.

A single such lapse might be defended as a judgment call. This many — each ignoring or resolving an open question in favor of the outcome and against the Commission's own findings, its own adopted plans, and the record — is not a judgment call. It is a decision reached first and reasoned backward. The proper disposition is not approval subject to comment, and not approval subject to redesign, but denial.

Finally, I am compelled to note a comment made during the Commission's June meeting, when Commissioner Blair observed: In my view, the fact that the scale is so grand is part of the allure. ...I think it is a testament to how great we are a country...Frankly, I think that's how the President means it, too." I appreciate the candor of that observation, because it illustrates precisely why Congress created this Commission. The National Capital Planning Commission was not established to determine whether larger monuments are more inspiring. It was established to apply objective planning principles that preserve the carefully composed civic landscape of the Nation's Capital. Congress further required that the 5 citizen appointees, including the 3 presidentially appointed members, have "experience in city or regional planning." That requirement reflects Congress's expectation that decisions of this magnitude would be guided by at least some level of informed planning judgment — not by subjective preference. Personal admiration for a proposal's scale is entirely understandable. But it is not a planning principle, and it cannot substitute for the disciplined application of the Comprehensive Plan and the laws this Commission is charged with administering.

The Commission should deny the preliminary site and building plans.

Respectfully submitted,

John Ayers

July 6, 2026