United States Senate

WASHINGTON, DC 20510

June 15, 2026

The Honorable Doug Burgum
Secretary of the Interior
U.S. Department of the Interior

Jessica Bowron
Acting Director
National Park Service

Jennifer Madello
Superintendent, George Washington Memorial Parkway
National Park Service

Submitted via parkplanning.nps.gov and ncr_planning@nps.gov

Re: Comments on the Section 106 Assessment of Effects Report and Draft Programmatic Agreement, Triumphal Arch at Memorial Circle (PEPC Project No. 136973, Document No. 151576)

Dear Secretary Burgum, Acting Director Bowron, and Superintendent Madello:

We write as Ranking Members of the United States Senate and House of Representatives committees and subcommittees with jurisdiction over the construction of monuments in the Nation's Capital to comment on the Assessment of Effects Report (Report) and draft Programmatic Agreement for the proposed Triumphal Arch at Memorial Circle. We oppose this project in the strongest terms and object to execution of the draft Programmatic Agreement. The National Park Service (NPS) is assessing the effects of an undertaking that Congress has never authorized and that two federal statutes squarely prohibit. Section 106 consultation cannot supply that missing authority, and no programmatic agreement can resolve the adverse effects of a project the NPS has no power to build.

Most fundamentally, the Commemorative Works Act[1] provides that a commemorative work may be established on land administered by the NPS in the District of Columbia and its environs "only as specifically authorized by law." The proposed Arch meets every element of the Act's coverage: it is a monument designed to perpetuate in a permanent manner the memory of a significant element of American history, the Nation's 250th anniversary; it would stand on land the NPS administers within Lady Bird Johnson Park; and Memorial Circle lies within Area I of the map Congress wrote into the statute. Because the site is in Area I, the Act requires a second, separate approval, under which Congress must enact a law ratifying the Area I location within 150 days of the Secretary's notification, following a determination that the subject is of preeminent historical and lasting significance to the United States. Congress has enacted no such laws. Analysis we requested from the Congressional Research Service in January reached the same conclusion:

[1] 40 U.S.C. §§ 8901–8909; see § 8902(a)(2) (incorporating Map No. 869/86501 B).

absent these authorizations, construction of an arch in Memorial Circle would not comport with the Commemorative Works Act. Since 1986, every memorial placed on federal land in the capital under the Act, more than forty in all, has come to Congress first. The World War II Memorial alone required two acts of Congress before the NPS issued a construction permit. The Arch's sponsor has sought no act at all.

Additionally, this proposed project independently violates 40 U.S.C. § 8106, which Congress enacted in 1912 and which provides that a building or structure "shall not be erected on any reservation, park, or public grounds of the Federal Government in the District of Columbia without express authority of Congress." The NPS proposal describes a 70,072-square-foot building on five levels, with security screening halls, a gallery floor that may include a café and gift shop, five elevators, and an observation deck 161 feet above grade. That is a substantial building on NPS parkland in the District by any definition, and no express authority of Congress exists for it. Notably, neither the Report nor the draft Programmatic Agreement identifies any act of Congress authorizing the undertaking; the only authority either document invokes is Executive Order 14252. An executive order is not an act of Congress. It cannot substitute for the authorization that § 8106 and the Commemorative Works Act demand. We have presented these arguments to the United States District Court for the District of Columbia as *amici curiae* in *Lemmon v. Trump*, No. 1:26-cv-00544, and we incorporate that brief here by reference.

The proposed Arch would also defy the height regime Congress has imposed on the capital for more than a century. The Height of Buildings Act of 1910 (DC Height Act)[2] caps buildings at 130 feet, with a single exception permitting 160 feet along one stretch of Pennsylvania Avenue. The Report states that the Arch's principal architectural component would rise approximately 166 feet, higher than the most generous limit anywhere in the Act, and that surmounting statuary would carry the total to approximately 250 feet. The Report further explains that shorter designs were evaluated and dismissed in part because only a 250-foot arch was considered representative of a 250th anniversary. Whatever the dubious merits of this arithmetic, Congress, not the Executive, decided in 1910 that Washington would remain a horizontal city, and Congress has preserved that judgment ever since. The Administration cannot claim a federal exemption from the DC Height Act with one hand while dispensing with the congressional authorization the Commemorative Works Act and § 8106 require with the other. A departure of this magnitude from the capital's settled vertical order is precisely the kind of decision the law reserves to Congress.

Beyond its illegality, the Arch would deface one of the most deliberate and historic sightlines in America. The Report's own historic summary recounts that the McMillan Plan of 1901–1902 proposed Arlington Memorial Bridge and its axial landscape to link the planned Lincoln Memorial with Arlington House, the former home of Robert E. Lee, in a composition intended to "physically and symbolically unite North and South." The bridge, completed in 1932, joins the memorial to the President who preserved the Union with the home of the general who led the armies against it, and Memorial Circle is the hinge of that composition. The corridor commemorates reconciliation after the Civil War. It does not commemorate triumph, and a triumphal arch is its antithesis. The NPS's own findings confirm the damage: Appendix D concludes that the undertaking would adversely affect, directly and indirectly, Arlington Memorial Bridge, whose 35-foot granite pylons "would be removed or diminished," along with the Memorial Avenue Corridor, Lady Bird Johnson

[2] Act of June 1, 1910, ch. 263, 36 Stat. 452 (codified as amended at D.C. Code § 6-601.01 et seq.).

Park, Arlington National Cemetery (including views from Arlington House and the Kennedy Gravesite to the Lincoln Memorial and the Washington Monument), Arlington House itself, the Lincoln Memorial, the National Mall, and the Washington Monument grounds. Witnesses at the 1986 hearings on the Commemorative Works Act cited the historic visual axes of the Lincoln Memorial and Arlington Cemetery as a specific example of the sightlines the Act was enacted to protect. Even the most monumental schemes contemplated for Columbia Island in the 1920s, twin columns crowned with winged victories, were conceived as emblems of reunion, and they were abandoned in favor of the open composition that stands today. The Report's assurance that a 250-foot arch would frame this view rather than block it concedes the point: the view was never meant to be framed by anything.

We also object to the indefensibly truncated Section 106 comment process, which falls short of the law. The NPS has allowed ten days, June 5 to June 15, for public comment on a 250-foot undertaking that its own Report concludes would adversely affect historic properties across the monumental core, in a review the Report acknowledges is subject to the heightened duty of Section 110(f) of the National Historic Preservation Act to minimize harm to National Historic Landmarks to the maximum extent possible. Ten days of public comment cannot discharge that duty. The draft Programmatic Agreement recites that an environmental assessment has been published and a finding of no significant impact issued, yet no such assessment or finding appears anywhere on the project's public planning record, where the only posted document is the Section 106 package itself. If those recitals describe actions already taken, the finding preceded any public review of the assessment; if they describe outcomes merely anticipated, the draft presumes the very conclusions this consultation exists to inform. The same draft recites, in the past tense, a consulting parties meeting dated June 15, the day this comment period closes, and it still contains placeholders for the number of historic resources affected. A consultation conducted on this schedule, toward a conclusion reached before it began, is not the process Congress prescribed.

Because Congress has enacted no laws authorizing this commemorative work, NPS must take the only course allowed by law: suspend the Section 106 process, decline to execute the Programmatic Agreement, issue no construction or special use permits, and undertake no ground disturbance at Memorial Circle unless and until Congress provides the express authorization these statutes require. Without such legal authorization, any officials who order this project forward would do so in their personal capacities, not the sovereign's. Where an officer's powers are limited by statute, the Supreme Court has held, action beyond those limits is "individual and not sovereign"; it is *ultra vires* and sovereign immunity offers it no shelter, and courts may grant relief against the officer personally.[3] In other words, these officials would be answerable as individuals, and the exposure does not end with an injunction. Appropriated funds may be applied only to the objects for which Congress appropriated them, and an official who obligates funds for construction Congress has never authorized also risks violating the Anti-Deficiency Act, whose sanctions run against the responsible officer personally: suspension without pay, removal from office, and, for knowing and willful violations, criminal fines and imprisonment.[4] Furthermore, firms engaged to carry out the work bear a parallel risk, because a contractor's immunity from suit is derivative and holds only where its authority to carry out the project was validly conferred and not exceeded.[5] No

[3] *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689–690 (1949).
[4] 31 U.S.C. §§ 1301(a), 1341, 1349–1350.

valid authority has been conferred here. Every official who directs this work, and every firm that performs it, proceeds at their own peril.

If the Administration believes the semiquincentennial warrants a permanent commemorative work in the capital, the path is open and well worn; it runs through Congress, as it has for every memorial since the Continental Congress approved the first, an equestrian statue of George Washington, in 1783.

We appreciate the NPS's consideration of these comments.

Sincerely,

Angus S. King, Jr.
United States Senator
Ranking Member,
Subcommittee on National Parks

Jared Huffman
Member of Congress
Ranking Member, Committee on Natural Resources

Martin Heinrich
United States Senator
Ranking Member, Committee on Energy and Natural Resources

Jeffrey A. Merkley
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
United States Senate
Committee on Appropriations

Maxine Dexter, M.D.
Member of Congress

Yassamin Ansari
Member of Congress

[5] *Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 20–21 (1940); *see Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 672–674 (2016).