

Exemptions from CWA and Justifications

October 16, 2007

DARK ELEGY

Federal Law Applicable to Washington DC Area Sites Commemorative Works Act (40 U.S. Code, Section 89)

- It is clear that when the CWA was written, it never even considered that a completed work of art by those impacted from a historical event could be presented as a memorial in the Nation's Capitol. Therefore, the exemptions required to authorize Dark Elegy as a memorial to all victims of terrorism are reasonable and necessary.
 - Care has been taken both by Congress and agencies to limit growth on the Mall and carefully plan for the future. The Dark Elegy authorizing legislation in no way impedes on the preservation goals of the Mall.
 - Dark Elegy could fit the definition required to place a commemorative work in Area I as “the subject of the commemorative work is of preeminent historical and lasting significance to the United States” or in Area II as “subjects of lasting historical significance to the American people.”
 - We reviewed the 100 sites listed for future memorials and museums as prepared by the National Capital Planning Commission (NCPC) and visited over a dozen that were of interest to the Lowenstein's. Initially, we found 3-4 of interest for Dark Elegy both as a result of their appropriate size and their location.
- Exemptions/Congressional Approval: There have been plenty of exemptions to various requirements of the CWA. I refer you to the Victims of Communism Memorial authorizing legislation as the language/process that DID NOT follow many of the CWA requirements associated with congressional approval of a commemorative work. For example:
 - The authorization was passed as an amendment to a large Foreign Affairs bill (1993).
 - The authorization language was never referred to the House or Senate committees of jurisdiction.
 - The Department of Interior was not offered an opportunity to comment.
 - This memorial was dedicated in DC by President Bush in the summer of 2007.
- Sponsor: HR 3707 mandates that “Suse & Peter Lowenstein” are the sponsors. The Lowenstein's, as individual citizens, do not meet the current criteria for a sponsor under the CWA. There is no need to set-up a non-profit around Dark Elegy since fundraising will not be a part of this effort (the Lowenstein's will use the money received from the Libyan government for the costs of construction and perpetual maintenance associated with permanently placing the memorial).

- **Exemption (sponsor):** The Victims of Communism Memorial which did not incorporate a non-profit as its “sponsor”. The project began with a “committee” (National Captive Nations Committee) and in the legislation was “encouraged (not mandated) to create an independent entity for purposes of constructing, maintaining, and operating the memorial.”
- **Assumption/Inference that Dark Elegy is a memorial only to Pan Am 103 Victims.** Two major points here:
 - **Dedication:** Suse Lowenstein stated on September 11, 1991 that “Dark Elegy is dedicated with deep love to all victims of terrorism.” It is without question that Dark Elegy has long been a memorial to all victims of terrorism and not just recently stated as such in order to comply with the federal CWA as has been implied.
 - **Exemptions to the 25-Year waiting period “after the death of the last surviving member”:** If this were to be applied, there would NEVER be recognition in the form of a memorial for victims of terrorism. Under the CWA, it was recognized that memorials to the following major events were indeed worthy as commemorative works/memorials despite the fact that the 25-year waiting period was not applied:
 - World War II Memorial
 - Victims of Communism Memorial
- **Design Process Exemption:** Dark Elegy will be exempt from the design process since it is an already completed work of art. The CWA only addresses the concept and design of commemorative works as though they are future works of art. There doesn’t seem to be any consideration given to completed works of art such as Dark Elegy.
- **Site Selection Process:** Dark Elegy will comply with the site approval process.
- **Construction/Perpetual Maintenance:** The Lowenstein’s assume responsibility for the construction and perpetual maintenance of Dark Elegy (using the funds from the Libyan government).

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