

Jackson Park Watch

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July 4, 2018

Eleanor Gorski, Department of Planning and Development

John Sadler, Department of Transportation

City of Chicago

Via Email: eleanor.gorski@cityofchicago.org, john.sadler@cityofchicago.org,
dpd@cityofchicago.org

Re: NEPA Review Process

Dear Ms. Gorski and Mr. Sadler:

We write you in your role as the facilitators for the on-going Section 106 review of the proposals to construct the Obama Presidential Center (OPC) in Jackson Park including related costly road changes that will likely significantly affect the surrounding human environment. This role has been delegated to you by the Federal Highway Administration, which oversees the various federal reviews triggered by the OPC proposals. In this role you have been conducting not only the impact review required by Section 106 of the National Historic Preservation Act of 1966, but also the development of key documents for the federal reviews as mandated by the National Environmental Policy Act of 1969 (NEPA).

In an April 18 letter to you, we expressed serious concerns and questions about the NEPA process, focusing on the draft Purpose of and Need for Action statement, dated February 6, 2018, that had been posted on the City of Chicago [website](#) entitled “Environmental Review of Jackson Park Improvements.” Having had no response from you and now noting that a second statement – the draft Alternatives To Be Carried Forward (ATBCF) document, dated April 18, 2018 – was posted on the same website at an unknown date just prior to the May 17 Plan Commission hearings, we write to reiterate and expand on our statement of concerns about the process by which the required federal reviews are being defined and implemented and the threat such a flawed process poses for the successful implementation of the plans for the OPC. We ask that you address the following points which we elaborate below:

- (i) lack of clarity and detail about the process for public participation and meaningful contribution in the NEPA review of the proposed road changes to accommodate the OPC;
- (ii) improper scoping of the draft Purpose of and Need for Action statement that is crucial for a hard look at the actual consequences of the actions related to the OPC;
- (iii) fatal flaws in the definitions established by the draft Purpose and Need statement;
- (iv) fatal flaws with the No-Action Alternative baseline that is defined in the draft Purpose and Need statement and applied in the ATBCF document;
- (v) omissions and inadequacies in the draft Alternatives To Be Carried Forward (ATBCF) document;

- (vi) based on the flawed No-Action Alternative baseline utilized in the ATBCF document, substitution of a deeply flawed Section 4(f) review for a legitimate review as required in the U.S. Transportation Act of 1966;
- (vii) absence of information about the parallel review of the OPC proposal for compliance with the National Park Service's Urban Parks and Recreation Recovery Act of 1978 (UPARR) legislation and the issue of replacement parkland.

I. Lack of clarity and detail about public participation in the NEPA review process

We have attended and participated in the public meetings during which you initiated the federal review process on December 1, continuing on March 29. While these meetings have focused on the Section 106 review mandated under the National Historic Preservation Act of 1966, you outlined a review process that entails multiple kinds of assessments (see [slide on p. 14](#) of the December 1 presentation). The outline specifies that, in the review of the plans relating to the OPC, the National Environmental Policy Act of 1969 is the procedural umbrella for all substantive reviews (e.g., Section 106, Section 4(f), Section 404) and as such it should provide the guiding principles and organizational structure for the entire review process. Yet the actual schedule of meetings and reviews seems to be out of order and segmented. Thus, the Section 106 review has proceeded in advance of and without the necessary initial definition of the NEPA review – the Purpose of and Need for Action statement – being concluded; indeed the Section 106 kick-off meeting was held two months before the date on the draft Purpose and Need statement. We are further concerned that the reviews that are to be conducted under NEPA guidelines are occurring improperly and in a way that segments and separates the various reviews and does not allow for the proper evaluation of cumulative impacts or for appropriate public comment and engagement across the full NEPA process.

What is the full, detailed schedule for the NEPA review process? How and when will public comment be incorporated? How will the results of the Section 106 review be incorporated into the NEPA review? How will the information from the other various reviews be consolidated for evaluation?

II. Flaws in the process of developing the Purpose and Need Statement

As we noted in our letter of April 18, in addition to being produced after the review process began, the draft Purpose of and Need for Action Statement was developed without proper public engagement. Such public review was omitted by claiming, retroactively and incorrectly, that prior public meetings had directly addressed the purpose and need as part of the NEPA process, an assertion that is demonstrably inaccurate. You have neither responded to our stated concern nor has any corrective action been taken to develop a proper Purpose and Need Statement that at the very least reflects the full range of impacts from the OPC. Further, the recent posting of the draft ATBCF document seems to imply that we are now considered to have concluded scoping, despite no hearings on the matter, and are now in the phase of developing alternatives, having somehow closed the door on critical preliminary steps.

When and how will you solicit public participation in the scoping process for defining the NEPA Purpose and Need Statement? We note that posting documents on a website is not adequate public notice. As with other City notices, there should be publication in a newspaper(s), with full disclosure of the schedule for comments and public meetings, and with the allowance of adequate time for public review. How will you publish and invite public participation in all phases of the NEPA process?

III. Flaws in the Purpose and Need Statement

Beyond the improper scoping process for the Purpose and Need Statement and the resulting need to re-do the scoping process with proper public participation, there is the flawed nature of the draft Purpose and Need Statement that you have put forward.

That Purpose and Need Statement alleges that the roadway changes are needed "...to meet the planning and development objectives for Jackson Park as described in the 2018 South Lakefront Framework Plan." (cit. 1.1 Proposed Action, pp. 1) This effort by the City to invoke the Park District's South Lakefront Framework Plan (SLFP) as a basis for the Purpose and Need Statement is fallacious and should be disregarded. In reality, the SLFP is an *ex post facto* plan that was premised on the assumption that the OPC and related road changes were in place and was created as an attempt to legitimize and give cover to those pre-existing plans. The SLFP process was launched on June 21, 2017, a month after the OPC plan was unveiled. CDOT presented its fully developed road proposal at that same June 21 meeting. Neither the OPC plan nor the CDOT plan resulted from or was substantively changed by the SLFP community meetings and in fact discussion of these plans was disallowed at those meetings. Further the OPC and CDOT applications were presented to the Chicago Plan Commission before the SLFP process was concluded. The truth of the matter is found later in that same paragraph, which states the actual reason for the proposed road changes: "Closures of the eastbound Midway Plaisance and Cornell Drive between 63rd Street and 59th Street are necessary to accommodate the development of the Obama Presidential Center." (same Cit.)

Based on the initial incorrect and disingenuous assertions concerning the Purpose and Need Statement, this flawed Statement comes to the improbable conclusion that the Project Need is to be defined as accommodating changes in travel patterns and improving bicyclist and pedestrian access and circulation *resulting from the OPC-driven closures of the eastbound Midway Plaisance and Cornell Drive between 63rd Street and 59th Street*. Further, and equally improbably, the draft Project Need asserts that "Needs were identified based on the effects of the No-Action scenario, which assumes the roadway closures as described in Section 1.1 are in place and the OPC is constructed in Jackson Park." (cit. pg. 4, 2.0 Project Need)

This deeply flawed Purpose and Need Statement must be redone to acknowledge the actual situation: the proper Purpose and Need for this NEPA review is to assess the impact of the proposed OPC design and the related road changes on the current configuration of the roadways in Jackson Park and on the Park itself.

When will development of a proper Purpose and Need Statement take place? How will public comment be incorporated?

IV. Flaws in the No-Action Alternative Baseline

As noted above, the Purpose and Need statement is fatally flawed in that it includes the impetus for the transportation changes (construction of the OPC and related road changes) in the No-Action Alternative baseline.

As presented in the draft statements, the No-Action Alternative baseline is clearly an example of bootstrapping whereby the plan for the OPC and related road changes that is to be evaluated is itself

included in the definition of the baseline, a baseline that presumes that portions of Cornell Drive and the Midway Plaisance have already been closed and that the OPC has been constructed. Such a presumption runs contrary to law, practice and common sense. We note that such circular logic was ruled illegal in the case of the proposed Illiana Expressway. The No-Action Alternative baseline should properly include, in addition to the current configuration, only roads that would otherwise be closed or improved even if the OPC were never built in Jackson Park.

The effort by the City to invoke the Park District's South Lakefront Framework Plan (SLFP) as justification for No-Action Alternative baseline is fallacious and a red herring, as explained above. The draft ATBCF statement itself candidly admits that "[c]losures of South Midway Plaisance and Cornell Drive between 63rd Street and 59th Street are necessary to accommodate the development of the Obama Presidential Center." (Section 2.1 at 3). At best, the SLFP's proposed road closures provide alternatives for consideration, but not the baseline.

Last, the road alternatives only cover a portion of the impacted area, excluding relevant neighborhoods and community concerns that provide reasoning for different alternative solutions. Although we previously raised this issue with you, we have not received a response as to why the agencies continue to use a flawed definition and scope of a baseline alternative.

What steps will you take, and by when, to establish a proper No-Action Alternative as the baseline for the federal reviews?

V. Flaws in the ATBCF draft document

A proper NEPA review must rigorously explore and objectively evaluate all reasonable alternatives for achieving the purpose and need for the project. Yet because of the fatally flawed No-Action Alternative baseline definition for this review, the draft ATBCF document does not adequately assess all available alternatives with regards to traffic configurations. As further discussed below, Jackson Park Watch commissioned an independent analysis of the proposed road changes (*attached*) and submitted it in May to the City's Plan Commission. That analysis identifies significant potential problems with the CDOT-developed proposal, and also includes a potential alternative that is less costly to tax payers, far less disruptive to the historic design of Jackson Park, and is in fact very similar to a proposal advanced by the Park District and Project 120 as recently as 2016. A legally defensible NEPA process would evaluate this reasonable alternative against the proposed one as well as a proper No-Action Alternative baseline.

Further, the ATBCF document does not fully address factors relating to noise; traffic; wildlife/habitat; air & water quality; and socioeconomic issues, as outlined at the Section 106 kick-off meeting on December 1, 2017. Instead, it presents preliminary Section 106 findings as if they were final. The socioeconomic analysis is vital, given the current, well-known controversies concerning the likely impact of the OPC on the Woodlawn and South Shore communities on property values, rents, property taxes, and the resulting displacement of long-term residents. Sufficient attention to environmental issues such as wildlife/habitat and air & water quality is likewise essential. None of this has been fully addressed. To that point, we (and many other consulting parties) have already expressed our concern about the implication in your earlier communications that there would be only a far less thorough Environmental Assessment without opportunity for public review or discussion. For a project of this scale and scope it is evident that an Environmental Impact Statement (EIS) is required. It appears through the various submissions

and statements that your goal is to avoid conducting an EIS. That too is contrary to law and practice, and unless corrected may be subject to additional remedial action that will also lead to further delays and ultimately to a process that will need to be amended and/or corrected and redone. The purpose of an Environmental Assessment is to determine whether an EIS is warranted due to significant effects to the human environment. Here, we already understand this would likely to occur. In addition, public outcry is a second ground for conducting an EIS, especially when the project will likely involve serious impacts. For these reasons and others, we continue to assert that an EIS is not only warranted – it is required by law.

When will you prepare a revised ATBCF statement that addresses all of the aspects of a proper NEPA review as outlined at the December 1, 2017 kick-off meeting of the Section 106 process, as referenced above? When will you prepare a revised ATBCF statement that includes consideration of all reasonable alternatives, including the traffic analysis commissioned by Jackson Park Watch? How will the public comment period be scheduled to allow for appropriate public review of the Alternatives analysis?

VI. Attempt in the ATBCF document to substitute a flawed Section 4(f) review

The draft ATBCF document, building on the deeply flawed definitions of both the Purpose and Need Statement and the No-Action Alternative baseline, proposes to substitute a flawed review of the undertaking for the mandatory, substantive review required by Section 4(f) under the U.S. Department of Transportation Act of 1966. Under the terms of Section 4(f), Jackson Park is a “Section 4(f) property.” The undertaking as properly defined – construction of the OPC in Jackson Park and related road changes – proposes to convert portions of Jackson Park into roadway. Section 4(f) requires that, before approving the use of Section 4(f) property for a project requiring approval by FHWA as in this case, the FHWA must determine that there is no feasible and prudent alternative that avoids the Section 4(f) property or that the project has a *de minimis* impact, something that is clearly not the case here.

As noted above, Jackson Park Watch commissioned an alternative to the proposed road changes and submitted it to the City including DPD and CDOT in mid-May. The alternative proposal is feasible and prudent. In accordance with the 4(f) requirements noted above, in your capacity as proxies for the FHWA, you must review the Jackson Park Watch alternative to the road changes that are being proposed to accommodate the OPC siting in Jackson Park.

When will you prepare a revised ATBCF statement that incorporates a proper Section 4(f) review of the alternative traffic plan commissioned by Jackson Park Watch?

VII. Status of and NEPA coordination with the parallel review for UPARR compliance

At the March 29 meeting, Ms. Gorski, introduced the proposal to relocate the baseball diamonds that would be displaced by the OPC project to an area in the Midway Plaisance immediately west of Stony Island Avenue and east of the Metra tracks. This was identified as required under the UPARR program, yet another aspect of the required federal reviews now underway. While we have been told that this particular relocation proposal has been withdrawn, the question of the relocation of the baseball diamonds remains outstanding along with additional specific requirements of conversion of recreational parkland to non-recreational uses under UPARR. We would like to understand the status of the UPARR review and how it is to be coordinated with the NEPA review.

Additionally, the broader issue of replacement parkland is very much unresolved. Instead, the Obama Foundation has advanced the assertion that only *one acre* of its proposed 19.3-acre site requires replacement parkland, and that concrete plazas, green rooftops, and green spaces open to the public but under private control constitute appropriate public parkland. This assertion is completely unsupported. The OPC proposal would result in a significant diminution of public park land in Jackson Park. This impact must be addressed and explained in an accurate fashion, and real mitigation measures considered and ultimately adopted.

What is the status of the UPARR review? What are the next steps in the UPARR review? When and how will the findings of that review be incorporated into the NEPA review?

* * *

Given the complexity of these various federal reviews and the importance of the Obama Presidential Center that is the subject of the reviews, we again ask that you provide confirmation and clarification of the full process, indicating the allocation of responsibilities among the federal agencies and the schedule for the reviews. But the first order of business is to assure that the reviews can proceed legitimately and effectively. That can be accomplished only by the development of a Purpose and Need statement (and a related ATBCF document) that reflects NEPA law and practice and will ensure a proper review of these current proposals. Without such proper procedures, there is the possibility of delays as reviews will likely have to be redone.

We look forward to your response.

Sincerely,

Brenda Nelms and Margaret Schmid
Co-presidents
Jackson Park Watch

Attachment: CDOT's Transportation Plan for the Obama Presidential Center in Jackson Park: A Review and Alternative

cc: Matt Fuller, Federal Highway Administration; David Clarke, Department of Transportation; Jeffrey Durbin, National Park Service; Abby Monroe, Chicago Department of Planning and Development; Rachel Leibowitz, Illinois State Historic Preservation Office; Bonnie McDonald and Lisa DiChiera, Landmarks Illinois; Jerry Adelman, Ted Haffner, and Stacy Meyers, Openlands; Ward Miller, Preservation Chicago; Juanita Irizarry, Lauren Moltz and Fred Bates, Friends of the Parks; Charles Birnbaum, The Cultural Landscape Foundation; Dan Marriott, National Association of Olmsted Parks; Betsy Merritt, National Trust for Historic Preservation; Michael McNamee and Karen Rechtschaffen, Save the Midway; Bronwyn Nichols Lodato, Midway Plaisance Advisory Council; Walter Kindred, SSCC Advisory Council; Naomi Davis, BIG; Jawanza Malone, Kenwood-Oakland Community Association; Alex Goldenberg, STOP; Jack Spicer, Promontory Point Conservancy; Herbert Caplan, Protect Our Parks