



# openlands

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February 18, 2020

Ms. Abby Monroe  
Public Participation Officer  
City of Chicago Department of Planning and Development  
121 N. LaSalle Street, 10th Floor  
Chicago, IL 60602

Dear Ms. Monroe,

Openlands is submitting these disagreements to the Final Assessment of Effects to Historic Properties (AOE) as a consulting party for the Section 106 process for the proposed undertaking in and adjacent to Jackson Park. As a consulting party, we appreciate the amount of work between the draft and final AOE release to review and incorporate important information and comments and many of our previous comments have been addressed through the revisions presented in the final AOE. Despite these welcome revisions, we feel that significant disagreements still remain.

## **1. Comment Disposition # 120: Avoidance and Minimization**

Our comments on avoidance and minimization for the Draft AOE were reflected in the disposition of comments. Despite the disposition response, we still raise this as a legitimate concern and disagreement regarding the impacts of the undertaking on the historic resources of Jackson Park. AOE Sections 5.1 and 5.2 discuss avoidance and minimization, citing several examples and attempts to avoid and minimize the adverse effects of the undertaking. We summarize and present our disagreements in a case by case basis.

- A. Actions: “The actions of the City described in this report (authorizing construction of the OPC, closing roads, and relocating an existing track and field in Jackson Park) do not require Federal funding or approval and, therefore, are not subject to the NHPA’s requirement to consider avoidance, minimization, and mitigation of adverse effects to historic properties. The Federal agencies do not have sufficient control to condition project approval for the construction of the OPC, closing roads in Jackson Park, or relocating the existing track and field in Jackson Park.”
  - Yet in Section 1.3, the AOE states in part that “The purpose of the FHWA action is to (1) address changes in travel patterns resulting from closing roadways in Jackson Park,…”
  - Furthermore, in this same section, the AOE states: “The FHWA administers the Federal-Aid Highway Program, which makes available Federal funding to state departments of transportation and local agencies for roadway projects. The Chicago Department of Transportation (CDOT) proposes to use Federal-aid highway funding for roadway construction activities to mitigate traffic impacts from the proposed closure of roadways within Jackson Park.”
  - Lastly, also in 1.3, the AOE states: “Prior to the authorization of Federal-aid highway funds, the FHWA must ensure the transportation project meets all Federal requirements, including

but not limited to compliance with the National Environmental Policy Act (NEPA), Section 4(f) of the United States Department of Transportation (USDOT) Act of 1966, and Section 106 of the NHPA.”

**These passages highlight the flawed argument that the FHWA claims. Based on this reading, the FHWA cannot abrogate its responsibilities in requiring avoidance and minimization efforts as stated in Item A above while still upholding its responsibilities under bullet point three. Simply, the FHWA does have the responsibility and the sufficient control to consider the existing conditions as the baseline alternative for avoidance and minimization.**

- B. Process: “Nevertheless, the opportunity to avoid adverse effects presented itself indirectly to the City through its own municipal approval process. The governing bodies of the City and the Chicago Park District approved the construction of the OPC in Jackson Park or Washington Park, with the Foundation ultimately selecting the Jackson Park location.”
- In Section 5.1.1 the AOE indicates “The municipal process included 11 public hearings (4 in 2015 and 7 in 2018) and over 50 community meetings on the OPC and related infrastructure and open space improvements.”
  - In Section 5.2.1, the AOE indicates: “In addition, through an iterative process with frequent public input, the design of the project reflects extensive minimization efforts to address the historic resources and character of the historic property, including specifically Olmsted’s designs for Jackson Park. As a result, the design of the OPC avoids or minimizes many effects on the historic cultural landscape.”

**We agree that there were an exhaustive number of meetings held surrounding both the Obama Presidential Center and the South Lakefront Framework Plan. We do, however, disagree that the content of these meetings, at least as it regards the OPC and the road closures, has been ineffective to the AOE’s point of view towards maximizing the full range of opportunities associated with avoidance and minimization. Yes, the public had a choice of plan elements through the Park District’s presentation of three different plans with multiple plan elements. However, in all three of these plans, the depiction of both the OPC and the identified road closures were consistent to the current design without variation or altered detail. With no opportunity or public input to avoid or minimize neighborhood and historic impacts, this steadfast and rigid representation diminishes the search for valid avoidance and minimization opportunities and a thorough and thoughtful public engagement process. Furthermore, previous comments submitted by Openlands reflect the myriad ways the design of the OPC counters the principles intended by Olmsted. These range from impacts to views, impacts to park topography, and impacts to building and road hierarchy.**

- C. FHWA Alternatives: “The FHWA alternatives analysis (available on the project website, [www.tinyURL.com/JPIImprovements](http://www.tinyURL.com/JPIImprovements)) considered a wide range of proposed improvements to meet the FHWA’s purpose and need, while avoiding or minimizing impacts to historic properties and other resources.”
- To avoid any effects to historic properties by the project, the FHWA considered a No-Action Alternative and an alternative to implement Congestion Management Process Strategies.

**The exploration of alternatives by the FHWA make the same mistake the City made in its own process. It assumed the OPC and post-construction road closures and reconfigurations**

were a foregone conclusion. Therefore, the No-Action-Alternative incorporating the OPC and the desired road closures and reconfigurations became the baseline for the No-Action-Alternative. Simply, there would be no road closures or road reconfigurations but for the OPC. Had the FHWA not short-changed and narrowly defined its responsibility to fully vet all reasonable alternatives based on an existing conditions baseline, a legitimate No-Action-Alternative would have explored avoidance and minimization efforts. A legitimate No-Action-Alternative would have either kept the road configuration as is, or minimally altered them via road-diets and other pedestrian and traffic friendly measures.

## **2. Comment Disposition #130: UPARR and Replacement Parkland:**

The clarifications and additional information regarding UPARR in the Final AOE text are informative. However, we still have significant concerns regarding UPARR and the quantity of replacement parkland that must be addressed and provided.

- A. Section 1.1 of the AOE presents the following math associated with the accounting for the amount of required replacement parkland:
- “(1) a 4.6-acre rectangular space within the OPC site on which the building campus will be situated, and (2) strips of parkland along existing roadways (approximately 5.25 acres) to accommodate proposed transportation improvements.”
  - To meet this requirement the City has proposed to replace the converted parkland with 5.2 acres of open space on the east end of the Midway Plaisance (east of the railroad embankment), and approximately another 7.75 acres of new parkland created from road reconfigurations and road closures within Jackson Park.
- B. Section 1.2 of the AOE and the disposition response state: “The UPARR regulations do not mandate acre-for-acre replacement of recreation land.”

**While 36 CFR § 72.72 does not mandate an acre for acre replacement, there is no language present to the contrary either. And this interpretation arrives at the heart of the UPARR issue. Both the Obama Foundation and the City argue that they are generously exceeding the 9.85 acres lost by providing 12.95 acres of replacement park. Meanwhile, the total of parkland lost is actually 24.55 acres due to the combination of parkland lost to the Lakeshore Drive expansion and the entire 19.3 acres within the OPC footprint. While the OPC and the City argue that as much as 14.7 acres of the OPC site will still be publicly available, they have not released details to attest for this. For instance, neither the Obama Foundation or the City has indicated whether or not this portion of the park will operate similarly to Maggie Daley and Millennium Parks with a private security patrol that curtails familiar park activities (running, biking, ball playing, etc.). The insidious advance of publicly-owned-private-parks into Chicago’s park vernacular is inconsistent with the City’s 150-year commitment to provide truly public open spaces and facilities. Nor has the Obama Foundation or the City responded to the questions of limiting park usage due to security measures while President Obama is present. While acre for acre mandates are explicitly missing from 36 CFR § 72.72, item (b) 4 of CFR § 72.72 states: “In the case of assisted sites which are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved, the unconverted area must remain recreationally viable or be replaced as well.” We argue that because of the lack of information presented above as to the accessibility to and nature of park activities immediately adjacent to the OPC, these impacts cannot be currently known. Therefore, a larger tract of replacement parkland equaling the totality of the 24.55 acres must be considered for UPARR replacement.**

### **3. Comment Disposition #130, #133: Cumulative Effects of Replacement Parkland and Chicago Parks Golf Alliance Project:**

We disagree with the disposition response that the Chicago Parks Golf Alliance project should not be included in the list of cumulative effects “as a ‘reasonably foreseeable action’ because it is not completed or programmed (i.e., funding committed for the project construction) within the next two years.”

Moreover, we feel that the UPARR project should also be included on the cumulative effects list precisely because it is a reasonably foreseeable action. We note that neither project is currently considered within the undertaking, despite the existence of the UPARR replacement parkland as a necessary condition within the AOE. Omitting both elements from the cumulative effects allows them to slip through without a separate Section 106 review and significantly under-documents the impacts of what reasonably and clearly is the larger undertaking. Both are reasonably foreseeable actions for the following reasons:

- A. As the AOE indicates in Sections 1.2 and 3.5.2.2. The UPARR replacement parkland is required by the undertaking and therefore is a reasonably foreseeable action. The AOE indicates and recognizes that it will likely be relocated “to the east end of the Midway Plaisance (east of the railroad embankment and viaduct).” While the AOE also states that “the change in legal status of these areas does not in itself cause physical effects on historic properties” we note that this change in status is separate from the proposed design for the mandated UPARR replacement parkland. Therefore, the design plan should be either included within the undertaking itself or be recognized as part of the cumulative effects as a “reasonably foreseeable action” given the historic nature of the Midway and the potential impacts of this separate but required project.
- B. While the disposition response indicates that funding does not exist for the Chicago Parks Golf Alliance project, recent [articles in the press](#) within the past six months indicate that City Aldermen are actively courting and supporting the project. Furthermore, funds for this effort are being actively raised by a non-profit and can be secured at any time with nothing more than one or two generous benefactors. Additionally, Tiger Woods, the project designer [has linked the project to President Obama](#). Despite the recent press and the reasonable linkage to the undertaking, the Chicago Parks Golf Alliance project is neither part of the undertaking nor included on the list of foreseeable projects. The golf course project also necessitates the closure of Marquette Drive. The closure of Marquette Drive directly contributes to the need for other road alterations (widening and reconfiguring) that cannot be decoupled from the OPC project. The position by the City and the Obama Foundation that the golf course should not be included as part of the undertaking is egregiously flawed and should be reversed before proceeding further.

As a consulting party, we disagree on the scope elements, process, and segmentation of the AOE reviews. Both Section 106 and NEPA reviews allow a hard look at the impacts of projects. Similarly, both Section 106 and NEPA apply to all actions carried out, assisted, or licensed by the Federal Government in historically significant areas. This “hard look” cannot be applied in an inconsistent manner to the benefit of certain aspects of the project while ignoring others. As the AOE states, “the undertaking comprises the construction of the OPC in Jackson Park by the Obama Foundation, the closure of roads to accommodate the OPC and to reconnect fragmented parkland, the relocation of an existing track and field on the OPC site to adjacent parkland in Jackson Park, and the construction of a variety of roadway, bicycle and pedestrian improvements in and adjacent to the park.” The federal actions, therefore, cannot legitimately confine their scope, quantities, and design elements and processes of these reviews without recognizing that the OPC is the legitimate promulgator of the undertaking and is therefore inextricably tied to the federal actions and vice versa.

We look forward to further discussing these issues, disagreements and objections throughout the remainder of the Section 106 process in the hopes that the impacts presented by the undertaking to the historic nature of Jackson Park, the Midway Plaisance and the Boulevard system can be avoided or minimized.

Very truly,

A handwritten signature in black ink, appearing to read "G. Adelman", with a long horizontal flourish extending to the right.

Gerald Adelman  
President and CEO, Openlands

cc: David Clarke, Federal Highway Administration; John Fowler, Advisory Council on Historic Preservation; Matt Fuller, Federal Highway Administration; Jaime Loikinger, Advisory Council on Historic Preservation; Samir Mayekar, City of Chicago; Lee Terzis, National Park Service

