



February 17, 2020

Matt Fuller
Environmental Programs Engineer
Federal Highway Administration
3250 Executive Park Drive
Springfield, IL 62703

Dear Mr. Fuller,

As a designated consulting party to the National Historic Preservation Act Section 106 review and the National Environmental Policy Act (NEPA) review underway for Jackson Park, The Cultural Landscape Foundation (TCLF) is pleased to comment on the Assessment of Effects (AOE; “Assessment of Effects to Historic Properties: Proposed Undertaking In and Adjacent to Jackson Park, Chicago, Illinois”) publicly released by the City of Chicago on January 16, 2020.

TCLF formally and strenuously objects to the following findings in the AOE, which are discussed in further detail below:

- Contrary to the AOE, we believe that the undertaking will have an adverse effect on the Jackson Park Terrace Historic District.
- Contrary to the AOE, we believe that the planned “golf course consolidation/expansion” project in Jackson Park must be analyzed as a reasonably foreseeable action that when combined with the undertaking creates a cumulative effect.
- Contrary to the AOE, and in accordance with federal regulations codified in 36 CFR Part 800—Protection of Historic Properties, we believe that the described actions of the City of Chicago *are* subject to the National Historic Preservation Act’s requirements to consider avoidance, minimization, and mitigation of adverse effects to historic properties.
- Contrary to the AOE, with regard to several statements proffered in Section 5.0: Avoidance and Minimization of Effects, we believe that the unaltered cause of an adverse effect cannot rationally be regarded as a measure that avoids, minimizes, or mitigates the adverse effect.

Before proceeding to address the above points, we would like to bring your attention to a statement in the AOE that is particularly problematic because its source is unclear, and its veracity is questionable. The following appears in Section 5.1.1: City Action (p. 75): “In considering the proposal, the City had two practical alternatives: (1) deny the [Obama] Foundation’s proposal and lose the opportunity to host the OPC, or (2) approve the

Foundation’s proposal subject to development limits and obligations to preserve park uses and public access.”

Because of its placement and its sweeping implications, the statement seems to be the foundational assumption for much of what follows it. We are, therefore, prompted to ask: Has the FHWA been given any documentation to support the statement, or can the FHWA point to any communication between the Obama Foundation and the City of Chicago that has indicated that the Foundation would withdraw the Obama Presidential Center from Chicago unless the city approved “the Foundation’s proposal subject to development limits and obligations to preserve park uses and public access”?

Thus far, the public record points to a different conclusion. For example, an article published on May 3, 2017, in *Hawaii News Now*, with the headline [“Obama: Presidential library 'had to be' in Chicago, not Hawaii”](#), opens as follows:

“Proposals to build Barack Obama's presidential library anywhere but Chicago—including one that would've seen it built on an eight-acre parcel in Kaka'ako—were never going to be seriously considered, the former U.S. president said Wednesday. "Although we had a formal bidding process to determine where the presidential library was going to be, **the fact of the matter was it had to be right here on the South Side of Chicago**," Obama said.” [emphasis added].

And on February 27, 2018, during a [town-hall-style meeting](#) (posted on YouTube), former president Obama told the crowd that when it came to where the OPC would be built, “that part was easy” [20:25]. After speaking at length about the significant role that Chicago’s South Side had played in his life and career, he said [22:16]: “**and I became president because of the South Side of Chicago**,” before concluding [22:28], “**so we were going to have the presidential center on the South Side of Chicago**.” [emphasis added].

It is thus unclear why such a conclusory statement about the city’s “practical alternatives” was included in the AOE, whether the FHWA supports the statement as fact, and on what basis the agency would do so. At least one other practical alternative suggests itself: The City of Chicago could have worked with the Obama Foundation and the University of Chicago to secure a South Side location for the OPC that did not include public parkland listed in the National Register of Historic Places, thus eliminating the need for reviews under the National Historic Preservation Act. We therefore suggest that the statement in question be removed from the AOE. If it remains, we request to see the evidentiary basis on which it is made.

I. The undertaking will have an adverse effect on the Jackson Park Terrace Historic District.

As described in the AOE (Section 3.7.4; p. 63 ff.), the Jackson Park Terrace Historic District is located on the west side of South Stony Island Avenue at 6018–6050 S. Stony Island Avenue and 6040–6050 S. Harper Avenue. The district is directly opposite—and fewer than 100 feet distant from—the location proposed for the Obama Presidential Center (OPC)

campus in Jackson Park. The district was recently determined eligible for listing in the National Register of Historic Places under Criteria A, B, and C.

Comprising 24 low-rise apartment buildings and one nineteen-story building, the Jackson Park Terrace complex opened in 1974 and was designed by “renowned African-American planners and architects” Whitley/Whitley Architects and Planners, Inc. The AOE further states that the historic district derives its significance from the fact that it was a “landmark development of the local African-American community in response to the threat of neighborhood urban renewal.”

The [guidelines](#) of the National Register of Historic Places define integrity as a property’s ability to convey its significance. Integrity is determined by seven separate aspects, or qualities: Location, Design, Setting, Materials, Workmanship, Feeling, and Association. According to the AOE, the Jackson Park Terrace Historic District retains “a high degree of integrity” in six of those seven aspects, with the seventh aspect, that of Setting, having been “somewhat diminished” by “substantial changes” to areas directly north and south of the district. The AOE describes those changes thus: an eight-story hotel immediately north of the property was demolished and eventually replaced with a parking lot, and low-rise apartments to the south were replaced by new low-rise apartments in 1980, two years after the district’s Period of Significance ended. It is difficult to understand how replacing low-rise units with other low-rise units to the south of the historic district has affected its setting in the least.

The AOE (Section 3.7.4.2, p. 64) adds that “the historic district has continuously maintained its physical and visual relationship with Jackson Park and the Midway Plaisance.” But it concludes: “While the OPC Museum Building will be visible, the property’s setting with the visual and physical relationship between the property and Jackson Park and the Midway Plaisance will be maintained and none of these changes will cause effects to features that contribute to the significance of the Jackson Park Terrace Building and its eligibility to be listed on the National Register.” The analysis here is untenable. For if the historic district’s setting had been “somewhat diminished” by removing an eight-story building to its north, how could it be that after constructing the OPC’s 235-foot-tall tower and other buildings directly opposite the district, “the property’s setting with the visual and physical relationship between the property and Jackson Park and the Midway Plaisance will be maintained”?

Contrary to the findings in the AOE, it seems abundantly clear that the proposed OPC campus would completely alter the visual relationship between the historic district and Jackson Park, given that, since the time of its construction, the Jackson Park Terrace complex has enjoyed uninterrupted views into the relatively flat, sylvan setting directly to its east, across South Stony Island Avenue. The western perimeter of Jackson Park was designed to be visually permeable, lined with trees that define the landscape’s edge while allowing lightly veiled views into it. The OPC tower and associated buildings would demonstrably obstruct views into the park and beyond from the historic district, much altering the skyline in the process. We therefore believe that the undertaking will have an adverse effect on the Jackson Park Terrace Historic District.

II. The planned “golf course consolidation/expansion” combines with the undertaking to create a cumulative effect that has not been analyzed.

In its consideration of cumulative effects (Section 3.8, p.68 ff.), the AOE states that its analysis “assesses the result of combining the effects of the undertaking and other past, present, or reasonably foreseeable actions potentially affecting the same historic properties at the same time.” It then goes on to analyze the combined effects of the undertaking and a handful of “unrelated projects, several of which are noted in the 2018 South Lakefront Framework Plan” (AOE, p. 69). But the so-called “golf course consolidation/expansion project,” which features prominently in the [2018 South Lakefront Framework Plan](#) (2018 SLFP), is not analyzed in the AOE.

In addition to occupying an important place in the 2018 SLFP, a document that purportedly “sets a course for the evolution of the south lakefront parks...”, the golf course project is reasonably foreseeable for the following reasons:

(a) It has been publicly discussed at length with stakeholders on multiple occasions by Michael P. Kelly, then serving in his capacity as general superintendent and CEO of the Chicago Park District.

(b) Professional golfer Tiger Woods, chosen by former president Obama, has publicly agreed to lead the design of the project, [saying](#) that “It’s exciting to create something for the public right there in president Obama’s front yard/back yard...”

(c) The Chicago Park District has approved and since [modified a contract](#) with SmithGroup JJR, an engineering consulting firm, to “implement the 2018 South Lakefront Framework Plan recommendations for Jackson Park including the preparation of design and bid documents for: **the renovation of the Jackson Park golf course, driving range and other support facilities...**” (emphasis added).

(d) The Chicago Park District has [confirmed to local media outlets](#) that fundraising for the project is well underway.

Despite these uncontested facts, after Landmark Illinois, an official consulting party to the Section 106 review, enquired in writing about how the golf course project would be addressed in regulatory reviews, the FHWA responded as follows in its [Comment Disposition](#), released on January 16, 2020:

The golf course consolidation/expansion proposal is independent from this undertaking and the associated Federal review process. The golf course consolidation/expansion proposal contained in the 2018 SLFP is not included 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. If any federal approval, funding, or permit is required for the golf course consolidation/expansion in the future, then Federal requirements

(including Section 106) would be the responsibility of the relevant Federal agency. The approval of the undertaking described in the AOE does not force or require golf course consolidation/expansion and is therefore an independent project.

But contrary to that response, there is no applicable statutory or regulatory language that restricts or defines reasonably foreseeable actions as those actions that are “completed,” “programmed,” or “funded” within two years of the undertaking. Neither should labelling the golf course project as an “independent project” exclude it from the AOE, the more so because the projects that *are* analyzed as cumulative effects in the AOE are themselves characterized as “unrelated projects” (AOE, p. 69) with regard to the undertaking.

Dr. Thomas F. King, formerly of the Advisory Council on Historic Preservation, is a widely read and widely recognized expert on the implementation of the National Environmental Policy Act and the National Historic Preservation Act. Dr. King’s *Cultural Resource Laws and Practice* (AltaMira Press), now in its fourth edition, is a standard text in the field. With regard to cumulative effects, Dr. King [concluded](#) as follows in a 2006 paper presented at a meeting of the Committee on Historic and Archaeological Preservation in Transportation: “Waiting to consider the effects of a project until it’s funded not only would make cumulative impacts analysis impossible, it would stand the whole NEPA process on its head.”

With these and other facts presented, we therefore submit that the exclusion of the “golf course consolidation/expansion project” from analysis in the AOE is arbitrary, erroneous, and highly consequential. The project should be analyzed as a reasonably foreseeable action that when combined with the undertaking creates a cumulative effect. Doing so is all the more imperative given the ACHP’s direct enquiry, in its [letter dated August 22, 2019](#), as to whether “the proposed undertaking will result in the properties no longer being listed in the NRHP.” In response to that enquiry, the Illinois Department of Transportation reviewed the continued National Register of Historic Places (NRHP) eligibility of Jackson Park and Midway Plaisance in light of potential adverse effects stemming from the undertaking; but, as we have asserted, that review did not benefit from knowledge of the full range of effects on the historic resources, because the AOE did not include the golf course project as a cumulative effect. Absent the complete analysis, the FHWA’s actions must be regarded as deficient, and the full range of effects on historic properties will remain unknown.

III. As reasonably foreseeable effects of the undertaking, the described actions of the City of Chicago are subject to the National Historic Preservation Act’s requirements to consider avoidance, minimization, and mitigation of adverse effects to historic properties.

The following is stated in the AOE at the beginning of the discussion of avoidance and minimization of effects (Section 5.1.1, p. 75):

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.

Those statements are contrary to federal regulations, promulgated by the Advisory Council on Historic Preservation (ACHP), that compel federal agencies to consider the “reasonably foreseeable” effects of the federal undertaking (36 CFR 800.5(a)(1)), not just the effects that the agency directly controls. In this case, the federal undertaking has, from the beginning of the Section 106 review, been collectively defined as authorizing federal funds for road work; amending a federal grant agreement; closing roads and relocating extant facilities; and “the construction of the OPC in Jackson Park.”

For its part, the ACHP has reinforced the fact that the City of Chicago's actions are indeed “part of the undertaking” and that, accordingly, the FHWA should make a reasonable and good faith effort to consider the effects of those actions. One notes that the ACHP is owed deference in interpreting the National Historic Preservation Act because it is the primary agency responsible for administering the statutes, as has been affirmed in recent case law.

It is also noteworthy that the pertinent statements in the AOE are contrary to others made by the FHWA in its [letter to the ACHP](#) dated September 24, 2018, in which the former responded to an enquiry regarding the premature work on a track-and-field facility in Jackson Park. In that letter, FHWA Division Administrator Catherine Batey wrote as follows:

*The relocation of the track and field is an indirect effect from the proposed Federal action to convert a portion of Jackson Park from recreational to non-recreational use in order to construct the OPC. **Therefore, as part of the Federal review process, the effects of relocating the track and field within Jackson Park will be taken into account as part of the Section 106 and NEPA processes.** We have requested the City not complete their work on the new track and field facility until the Federal review process is completed (emphasis added).*

Although the relocation of the track-and-field facility neither was nor is under the control of the FHWA, the agency nonetheless correctly identified the activity as an indirect effect of the federal action that should, therefore, be taken into account in the Section 106 and NEPA reviews. As such, when the agency intervened, work on the track-and-field facility ceased. The FHWA's more recent position, in which the agency has abdicated its responsibility to consider the effects of the city's actions, is misguided and inconsistent. Three federal agencies must sign agreements, issue permits, and supply funds in order for the Obama Presidential Center to be built as planned in Jackson Park. If the FHWA does not engage in good faith efforts with consulting parties to consider avoidance, minimization, and mitigation of adverse effects resulting from the undertaking, then the agency's actions must be regarded as deficient.

IV. The unaltered cause of an adverse effect cannot rationally be regarded as a measure that avoids, minimizes, or mitigates the adverse effect.

In the AOE's discussion of "Minimization Measures" (Section 5.2.1, p. 77ff.), several measures are mentioned that cannot possibly avoid or minimize adverse effects, because they themselves are the unaltered causes of adverse effects, as is clearly documented elsewhere in the AOE. Among such measures that are said to avoid or minimize adverse effects are the following:

- (a) "The proposed OPC site lies on the western perimeter of Jackson Park, using a footprint that concentrates primary physical change within a small area of the historic property (approximately three percent). While some nearby historic resources are affected, the perimeter location avoids impacts to many historic resources in other parts of the historic district. (p. 78)"

But the AOE states (p. 41) that "Overall, physical changes concentrated in the western perimeter of Jackson Park and the east end of the Midway Plaisance would impact adjacent park areas originally differentiated by the Olmsted firm, including the lagoons, fields, lake shore, and museum grounds. The changes alter the legibility of the design of the cultural landscape in ways that diminish the integrity of spatial organization demonstrated by internal divisions of the property."

Therefore, if placing the OPC campus on the western perimeter of Jackson Park was intended as a measure to avoid an adverse effect, then that measure has failed. Furthermore, if one were to regard the western perimeter location as a measure that avoids adverse effects, then, by that rationale, placing the OPC in *any* location within the historic district could be regarded as avoidance, so long as any other single location could be shown to impose greater adverse effects.

- (b) "This location [of the OPC site] also avoids physical adjacency to the most prominent historic building in the park, the Museum of Science and Industry (MSI), while also avoiding the primary north-south visual axis to and from the MSI within the park. Doing so helps reduce visual competition with the MSI and helps moderate any effect on the historic dominance of the MSI in the cultural landscape of Jackson Park. (p. 78)"

But the AOE states (p. 43) that "The prominence of the Museum of Science and Industry building, which is part of the overall composition and design intent of balancing park scenery with specific built areas, is diminished by the addition of new prominent buildings within the historic district."

Here again, the location of the OPC within the historic district is *the cause* of the adverse effect to the Museum of Science and Industry and cannot, therefore, be regarded as a measure that avoids the adverse effect. If the claim of avoidance were accepted, then one could equally posit that as long as some greater adverse effect on the Museum of Science and Industry were *possible* (such as its outright demolition), then the OPC's location has avoided an adverse effect on the museum, which is an absurd proposition.

- (c) “The height of the prominent OPC Museum Building enables a smaller footprint within the historic property than if the building were shorter. (p. 78)”

That statement deserves magnification. Here, the claim seems to be that the exceptional height and prominence of the OPC tower are factors that avoid or minimize adverse effects on historic properties. But, in fact, the AOE (p. 53) states as follows: “Tall buildings exist outside of the historic property but not within it. Within this historic property, the comparatively low-lying Museum of Science and Industry building was intended as the only building to be a “dominating object of interest” inside of Jackson Park and the Midway Plaisance. The OPC Museum Building affects views within this historic property by drawing specific focus to an exceptionally prominent building.”

Statement (c) is an example of a ‘false dichotomy’—a logical fallacy in which two opposing outcomes are presented without considering other relevant possibilities. In this case, a claim has been made that the OPC museum building must either be exceptionally high and prominent, or it must occupy more of the ground plane. Ignored here are several other relevant possibilities, including placing a greater portion of the facilities underground, or, perhaps most obviously, reducing the interior area of the building.

- (d) “The placement of the outdoor recreation amenities and the Program, Athletic, and Activity Center echoes the intended location of the outdoor gymnasium and an associated facility in early plans by Olmsted. (p. 78)”

But the AOE states (p. 52) as follows: “The area designed and designated by the Olmsted firm as an outdoor place for exercise (he used the term “gymnasia”) retains the designed composition and general form of two, symmetrical open fields surrounded by canopy trees that are joined in the middle by the layout of the Western Perimeter Playground and English Comfort Station (Appendix A, Exhibit 4a: 1-7). Olmsted’s use of “men’s gymnasium” and “women’s gymnasium” for the north and south fields refers to the original meaning of the word as a general place of exercise, rather than as a room or building for enclosed sporting activities. Part of the Library Building, lawns, picnic areas, and a playground replace the open athletic field and track of the existing north field/gymnasium. Historic walks designed parallel

to existing historic roadways will be removed between the north field/gymnasium along Cornell Drive and between Cornell Drive and the Midway Plaisance (South Roadway; eastbound). The changes to this portion of the historic property are not consistent with the *Secretary of the Interior's Standards* that stipulate the need to preserve contributing historic features and discourage 'placing a new feature where it may cause damage to, or be intrusive in spatial organization and land patterns.'"

Here, the placement of outdoor recreation amenities and other buildings is *the cause* of the serious adverse effects. Were the forms, placements, and dispositions of those amenities and buildings truly compatible with the spatial organization and land patterns in the area of Olmsted's original gymnasium, then the AOE would have regarded their presence as being consistent with the *Secretary of the Interior's Standards*, rather than reaching the opposite conclusion.

- (e) "The orientation, location, and materials of the Museum Building have been developed with attention to views from the historic property and the skyline surrounding. (p. 78)"

While the meaning of that sentence is elusive, the reference to materials that are somehow attentive to views from the historic property can certainly be dismissed. For the AOE states, "New materials with modern functions differ from historic materials at a scale and intent that does not conform to the *Secretary of the Interior's Standards*. (p. 43)"

- (f) "The OPC's landscape design employs traditional Olmsted typologies within the park in order to provide a greater degree of compatibility with the park as a whole. For example, the more formal or urban typology is reflected in the plaza and campus area; the wooded landscape typology is reflected in landscaping and plantings around the site, including the Woodland Walk; the wet landscape typology is reflected in the Lagoon Walk; and the field landscape typology is reflected in the Great Lawn. Using typologies that are broadly congruent with the historic design practices of Olmsted helps minimize the effect of the OPC on the historic cultural landscape." (p. 78).

But the AOE states (pp. 42-43) that several elements of the OPC's landscape design are *the causes* of adverse effects: "The subtle berms at the edges of the north field/gymnasium (outer edge of the park and S. Cornell Drive) within the western perimeter are altered"; "The sunken topographic bowl of the Perennial Garden/Women's Garden is altered"; "Historic vegetation patterns are altered," including "canopy trees surrounding playing fields, street trees at the park perimeter, and terraced planting beds of the Perennial Garden/Women's Garden within the western perimeter."

In conclusion, TCLF objects to these several findings in the AOE. We do, however, appreciate the opportunity to comment as a consulting party, and we look forward to

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resolving these issues in accordance with federal guidelines and statutes. We do so in the sincere hope that the already substantial work of the many agencies, stakeholders, and consulting parties will not be invalidated.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line that tapers to the right.

Charles A. Birnbaum, FASLA, FAAR
President + CEO
The Cultural Landscape Foundation

Cc: Abby Monroe, Chicago Department of Planning and Development; Eleanor Gorski, Chicago Department of Planning and Development; Jaime Loichinger, Advisory Council on Historic Preservation; Anthony Rubano, Illinois State Historic Preservation Office; Juanita Irizzary, Friends of the Parks; Margaret Schmid, Jackson Park Watch; Ted Haffner, Openlands; Lucy Lawliss, National Association for Olmsted Parks; Michael McNamee, Save the Midway!; Lisa Dichiera, Landmarks Illinois; Ward Miller, Preservation Chicago