

Jackson Park Watch

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February 18, 2020

Matt Fuller
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Federal Highway Administration
3250 Executive Park Drive
Springfield, IL 62703
Via E-mail: matt.fuller@dot.gov

Re: Section 106 Review – Assessment of Effects to Historic Properties From the Proposed Undertaking in and Adjacent to Jackson Park

Dear Mr. Fuller:

As a consulting party to the Section 106 review of the proposed changes to Jackson Park and the Midway Plaisance to accommodate the construction of the Obama Presidential Center (OPC), we write to state our points of agreement and our objections to the Assessment of Effects to Historic Properties (AOE) that was issued on January 16, 2020 and presented to consulting parties in a webinar on January 23, 2020.

In this comment letter we will address the following:

- I. Definition of the Undertaking
- II. Flawed Analytical Framework for the AOE
- III. Determination of Adverse Effects on Jackson Park, Midway Plaisance and Chicago Park Boulevard System
- IV. Adverse Effects on Other Historic Properties
- V. Foreseeable Actions and Cumulative Effects on Historic Properties Not Included
- VI. UPARR and Parkland Replacement Issues
- VII. Improper NEPA and 4(f) Deferrals
- VIII. Avoidance, Minimization, and Mitigation

I. Definition of the Undertaking

We agree with the expansive definitions of the undertaking that are used in the AOE, including the new acknowledgement of the role of the US Army Corps of Engineers (USACE) in addition to the Federal Highway Administration (FHWA) and National Park Service (NPS). Specifically, the Introduction (Section 1.0, p.1) states that “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,¹ 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.” That phrasing is utilized in the Project Overview: “For the purpose of assessing effects to historic properties under Section 106, the above described Federal actions (conversion approval, Federal funding for transportation improvements, and USACE permits) and the local actions (approval of the construction of the OPC, road closures and track and field relocation) are collectively referred to in this AOE as the undertaking.” (Section 1.1, p. 4) The definition is further clarified in Appendix F – Public Comments and Responses with the statement for Comment 220 that “this Section 106 process evaluates not only the direct effects to historic properties from the Federal actions, but also the indirect effects of private and City actions (including the OPC and road closures) and additional foreseeable actions.” All of these variations acknowledge that the undertaking is the entire set of changes proposed for Jackson Park and the Midway Plaisance and that it is regarded as a collective whole.

II. Flawed Analytical Framework for the AOE

Despite the inclusive definition of the undertaking noted above, however, the analytical framework advanced by the FHWA² improperly undermines and defeats that definition and is deeply flawed in at least two ways:

- First, the FHWA asserts that it is appropriate to separate the undertaking into a “Federal action” segment that falls under the NHPA’s [National Historic Preservation Act] requirements that the lead Federal agency “consults with consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on the historic properties,”³ and a “non-Federal” or “City action” segment that is exempt from that requirement (Section 5.1.1, p. 75).
- Second, by using such terms as “post-construction” (Section 3.1.2, p. 24) and in its own statement that “the purpose of the FHWA action is to (1) address changes in travel patterns *resulting from* [emphasis added] closing roadways in Jackson Park...” (Section 1.3, p. 8), the FHWA also asserts that the baseline for any review that does occur should be the condition of the park and surrounding historic neighborhoods *after the OPC is constructed and all of the roadway changes have occurred*.

We object strenuously to the attempt by the FHWA to segment the undertaking, contrary to the requirements of the NHPA and standard practice for Section 106 reviews and contrary to common sense. We note that we have previously stated our concerns about this approach in our earlier responses as a consulting party (January 4, 2018; April 18, 2018; August 26, 2019), including its implications not only for the Section 106 review but also for the subsequent National Environmental Policy Act (NEPA), 4(f), and Urban Parks Recreation and Recovery program (UPARR) reviews (see separate sections below). We object equally strenuously to the

¹ Historical note: this parkland was never “fragmented,” but was laid out this way in the original Olmsted design.

² Because the FHWA is the lead Federal agency with responsibility for this Section 106 review, we refer to the FHWA in our comments throughout.

³ 36 CFR § 800.6 (a)

attempt to use a post-construction baseline that renders the requirements to consider adverse effects of the full undertaking through avoidance, minimization, and mitigation virtually meaningless. We objected (in a second letter of April 18, 2018, specifically regarding the NEPA Review Process, that is part of the record) to the FHWA's assertion of a similarly flawed framework in the draft NEPA documents that it produced and remain posted on the City's web site⁴ even though it has since been replaced as the lead Federal agency for the NEPA review.

Flawed Assertion of Insufficient Federal Control. Based on this flawed analytical framework – use of a “post-construction” baseline and segmentation of the undertaking – the FHWA declares that “[t]he 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” (Section 5.1.1, p. 75).

In fact, as further detailed below, there are inextricable connections between the “Federal” and “non-Federal” actions related to the undertaking that mandate full and complete review of the total undertaking under the applicable statutes and regulations. The “City Actions” could not occur but for actions of the FHWA itself, the US Army Corps of Engineers, and the National Park Service.

FHWA Action Required: The Use Agreement between the City of Chicago and the Obama Foundation was included as Appendix “D” of the ordinance (O2018-7136) passed by the Chicago City Council on October 31, 2018⁵, which approved plans for the OPC and related road changes. The Use Agreement contains language that directly ties the alleged non-Federal “City action”⁶ of closing Cornell Drive between 59th and 63rd Streets to the FHWA action to be taken *prior to that closure*. Section 4.14 of the Use Agreement, Closure of Roads within OPC Site, is directly relevant: “The Foundation acknowledges, however, that the permanent closure of the Cornell Segment depends on the completion by the City of transportation improvements on Lake Shore Drive, Hayes Drive, and the portion of Stony Island Avenue located between East 63rd Street/Hayes Drive, and the North Midway Plaisance Segment, and certain utility work within the right-of-way of the Cornell Segment.”

In fact, as will be shown immediately below, the City is unable to complete the listed “transportation improvements” without action by and funding through the FHWA. Stated

⁴ https://www.chicago.gov/city/en/depts/dcd/supp_info/jackson-park-improvements.html. Scroll down to Additional Resources and look under National Environmental Protection Act (NEPA) Documents. The FHWA draft NEPA documents are dated February 6, 2018, April 18, 2018, and June 27, 2018.

⁵ [Journal of the Proceedings of the City Council of the City of Chicago, Illinois](#), October 31, 2018, Volume 1, pp. 85891-86004. Note that the Use Agreement can only be executed when the federal reviews are complete. Note also that the federal review process might alter the proposed OPC and road changes given the requirement for consideration of measures to avoid, minimize and/or otherwise mitigate their adverse effects.

⁶ Review of the Use Agreement shows that the Obama Foundation, not the City of Chicago/CDOT, is to remove the “Cornell Segment” and the “South Midway Plaisance Segment” of the existing roadways after the City has arranged for permanent closure of these roadway segments and has had them vacated (see especially Section 4.14., Closure of Roads within OPC Site). More importantly, it shows that the “City” (CDOT and/or FHWA) must first complete “transportation improvements” on Lake Shore Drive, Hayes Drive, and a portion of Stony Island Avenue before the Cornell Segment can be permanently closed. Note that some of the actions described in the AOE as “City actions” would actually be taken by the Obama Foundation. *Ibid.*, p. 85903.

differently, FHWA action is required to facilitate and enable the addition of the needed travel lanes on Lake Shore Drive and a portion of Stony Island Avenue and to make the needed changes to Hayes Drive prior to the permanent closure of Cornell Drive but for which the closure of Cornell Drive between 59th and 63rd Street could not occur.

This inextricable connection between the City/non-Federal action and the FHWA/Federal action can also be seen in the language of the AOE itself. In *Roadway Changes* (Section 1.1.1.2, p. 4), the roadway changes that the City proposes are described not only as “permanent roadway closures and removals within Jackson Park: Cornell Drive between 63rd Street (Hayes Drive) and 59th Street...and the eastbound portion of Midway Plaisance between Stony Island Avenue and Cornell Drive,” but also as those outside the Park – “widening Lake Shore Drive (Hayes Drive to 57th Drive) one travel lane to the west; removing parking and replacing it with a travel lane in each direction on Hayes Drive (Cornell Drive to Lake Shore Drive; widening Stony Island Avenue (67th Street to 65th Place) one travel lane to the east; widening Stony Island Avenue (65th Place to 59th Street) one travel lane in each direction; and the associated intersection improvements on each roadway.” This City action closely resembles if not entirely matches that of the FHWA, that states “...the roadway alterations considered under the proposed FHWA action occur along Lake Shore Drive, Hayes Drive, and Stony Island Avenue and their intersecting roadways,” establishing a clear connection between the City’s “non-Federal” action and the FHWA’s “Federal” action (Section 1.3, p. 9).

US Army Corps of Engineers (USACE) Action Required: As shown above, the widening of Lake Shore Drive and changes to Hayes Drive are required before the City action of closing segments of Cornell Drive and the Midway Plaisance can take place. USACE action is required for this roadwork to proceed. The roadwork on Lake Shore Drive and Hayes Drive required for the City action to proceed requires USACE approval of a permit to allow expansion of the 59th Street bridge abutment on Lake Shore Drive as well as USACE approval of a permit to dewater a portion of the lagoon under Hayes Drive to complete bridge improvements on that road (Section 1.4, pp. 9-10).

Additionally, the City’s proposal to utilize the east end of the Midway Plaisance, a wetland, for UPARR replacement land may require USACE approval. Finally, the proposed changes to Lake Shore Drive and Hayes Drive would require removal and/or alteration of portions of the GLFER project nearing completion in Jackson Park, also requiring USACE permission.

Here again there is a direct and clear connection between the proposed City action and the Federal actions but for which the City action could not be executed.

National Park Service (NPS) Action Required: The City action authorizes the citing of the OPC in Jackson Park and the modification of roads in the Park to accommodate that location of the OPC. These plans require the conversion of parkland now devoted to recreational use to non-recreational functions. Because of UPARR grants previously given to the City to improve the Park, NPS approval of this so-called “conversion” is required.

While this applies most specifically to the City’s controversial proposal to utilize the east end of the Midway Plaisance as the main location for UPARR replacement land, it also means that the

plan to construct the OPC itself, located as it is on UPARR parkland, cannot proceed without NPS approval of UPARR replacement plans. Here again is a clear tie between the City action and a required Federal action without which the City action could not proceed.

Consideration of these three clear and direct links between the proposed City action and the actions of the three Federal agencies *but for which the City action cannot proceed* demonstrates that “Federal” and “City/non-Federal” actions related to the OPC and related roadway changes are inextricably tied together; the idea that the undertaking can be segmented is a fiction. *But for* these Federal actions, the plan approved by the City cannot be executed. The assertion that “City actions” are separate from “Federal actions” and thus exempt from the NHPA requirements to consider avoidance, minimization, and mitigation is thus exposed as a fallacy.

III. Determination of Adverse Effects on Jackson Park, Midway Plaisance, and Chicago Park Boulevard System

We appreciate that the FHWA followed the advice of the Advisory Council on Historic Preservation to take a more expansive approach in revising the draft AOE in order to provide a more detailed description and assessment of the adverse effects of the undertaking on the cultural landscape of Jackson Park and the Midway Plaisance. We also appreciate the addition of the Chicago Park Boulevard System Historic District (the “CPBS Historic District”) to the historic properties to be evaluated for adverse effects. These additions continue to recognize the breadth of the adverse effects that would be caused by the proposed undertaking on those areas.

We agree with the conclusions presented in Section 3.5 of the AOE, stating that the undertaking – directly, indirectly and cumulatively – would have severe adverse effects on the historic integrity of Jackson Park Historic Landscape District and Midway Plaisance, diminishing the sense of the historic period and the careful design by the Olmsted firm for the spatial organization of the park. Section 3.5.2.1.1 (pp. 41-43) provides a detailed “Summary of the Adverse Effect to the Cultural Landscape,” addressing spatial organization, land use, views, circulation, topography, vegetation, and structures.

We also agree with the conclusion presented in Section 3.6 that the undertaking, by inflicting severe adverse effects on Jackson Park and Midway Plaisance, would also have an adverse effect on the CPBS Historic District.

IV. Adverse Effects on Other Historic Properties

We disagree with and object to the AOE’s assertion that there will be no adverse effects on other historic properties or historic districts near or immediately adjacent to Jackson Park and the Midway Plaisance (Section 3.7, pp. 58-66). In particular, we disagree with and object to the failure to find adverse effects on the following historic resources: the Jackson Park Terrace Historic District; a significant portion of the Hyde Park-Kenwood Historic District; the South Shore E. 67th Street Apartment District; the Windemere Hotel/Apartments; Jackson Towers; the Hyde Park East Historic District; and multiple individual historic properties in each of these areas.

Instead, we conclude that the FHWA's failure to recognize that those properties will suffer adverse effects is due to its use of the flawed analytical framework already discussed. Thus, rather than reviewing the projected impacts of all of the proposed road closures and realignments on historic properties and districts and comparing conditions at present with those projected to occur after the road changes, the FHWA does two things:

- First, it considers only conditions after these changes have been made, that is, post-construction: "The purpose of the FHWA action is to (1) address changes in travel patterns *resulting from* [emphasis added] closing roadways in Jackson Park, and (2) improve bicycle and pedestrian access and circulation" (Section 1.3, p, 8). Stated differently, the FHWA analysis of adverse effects on historic properties and historic districts assumes that the road changes and their impacts *are already in place*; for the purposes of its analysis, it uses the post-construction condition of the park as its baseline.⁷
- Second, in keeping with its segmented approach to the undertaking, the only effects the FHWA assesses are the impacts of the FHWA-supported widening of Lake Shore Drive and Stony Island Avenue and alteration of Hayes Drive (which, in comparison with doing nothing after the segments of Cornell Drive and the Midway Plaisance are closed, would indeed ease traffic problems resulting from those closures), and of the addition of bicycle lanes and pedestrian crossings. No analysis of the impacts of the so-called "City action" of closing Cornell Drive between 59th and 63rd Streets and a segment of the Midway Plaisance between Stony Island Avenue and Cornell Drive has taken place to date.

This framework has multiple consequences for the resulting analyses.

Traffic: We and others have noted in prior communications that the FHWA has failed to provide any analysis of the changes in traffic on the local neighborhood streets resulting from the closure of segments of Cornell Drive and the Midway Plaisance in Jackson Park. The present AOE fails once again to provide any meaningful analysis of traffic changes in local neighborhoods resulting from these closures. An [analysis by raSmith](#), a national consulting firm, identified a number of shortcomings in the data presented in the City-commissioned Traffic Impact Study by Sam Schwartz that directly demonstrate the need for a more robust analysis of traffic impacts in the local area (see raSmith study, p. 1) Significant changes in traffic volumes or patterns on local roads in historic neighborhoods could introduce visual, atmospheric, and audible elements that could diminish the integrity of historic districts and historic properties in them, and could bring about major alterations in their settings. Properties at risk include those already noted above: the Jackson Park Terrace Historic District; a significant portion of the Hyde Park-Kenwood Historic District; the South Shore E. 67th Street Apartment District; the Windemere Hotel/Apartments; Jackson Towers; the Hyde Park East Historic District; and multiple individual historic properties in each of these areas. Absent any analysis whatsoever of traffic changes on

⁷ Note that the FHWA attempted to use the post-construction condition of the park as the baseline in the NEPA documents it posted on the City website (see above, Footnote 4). JPW and other consulting parties submitted comments objecting to this at the time. Since the National Park Service was subsequently made the lead agency on the NEPA review, it appears appropriate that new documents prepared by the actual lead agency with a proper baseline should be submitted and the other drafts be withdrawn.

these neighborhood roads, such potential adverse effects cannot (and should not) be credibly dismissed.

Parking: Similarly, the loss of existing on-street parking in Jackson Park and the anticipated impact of OPC visitors seeking free parking on local roads in historic neighborhoods in the vicinity of the OPC has not been addressed. The raSmith analysis of the Traffic Impact Study also identified numerous gaps in the analysis of parking data (see raSmith study, p. 2). The assertion that "... there are plans to provide a total parking supply in excess of existing parking via new on and off-street parking" (Section 3.2.2, p. 31) when no such plans have been made public, when no details are known, and when no timeline or committed funding exist is completely inadequate. Significant increases in individuals seeking to park their vehicles in historic neighborhoods, coming and going through the day, could well negatively impact the integrity and feeling of the historic district. Data and analysis, which have not been adequately provided to date, are called for.

Noise: The FHWA has used the same post hoc baseline in its analysis of the changes in noise when it refers to "the change in noise level (post-construction) as a result of the FHWA action" (Section 3.1.2, p. 24) in its Noise Analysis. Not surprisingly, given this approach, it finds "no effect."

Since it appears that the FHWA has used this segmented and post-construction baseline in all of its analysis of adverse effects on other historic properties and historic districts – that is, looking at projected impacts on traffic, parking, and noise *after the road changes have been made* rather than comparing traffic, parking, and noise *now* with projected traffic and parking *after the road closures in Jackson Park have taken place* – it is not surprising that the FHWA finds no adverse effects.

Legitimate analysis of the impacts of the closure of the roadways in Jackson Park on traffic, parking, and noise levels on historic properties and historic districts outside of the Park must take place before the FHWA's current conclusions can be accepted as conclusive. Analysis of the *complete* undertaking is essential. That can and must occur in the next phase of the Section 106 process, which should include all of these historic resources.

V. Foreseeable Actions and Cumulative Effects On Historic Properties Not Included

We object to the omission of the proposed merger and expansion of the Jackson Park and South Shore golf courses from the list of foreseeable actions that should be taken into account in assessing the incremental impact of the undertaking on the environment as addressed in Section 3.8 (pp. 68-72). We find it particularly puzzling that the golf course project is not included as a foreseeable action because elements of the Federal action embraced by the FHWA – the construction of two underpasses (under Jeffrey just north of 67th St. and under South Shore Drive at 67th St.) – as well as the closure of Marquette Drive (defined in the AOE as a City action) are not related to the OPC, but instead are directly related to the golf course project and would not be pursued but for that project. The rationale behind those underpasses is to connect segments of the enlarged golf course for use by golfers and golf carts; the labeling of them as

“pedestrian underpasses” is, at best, incomplete. The plan for the golf course project, with its expanded park footprint, was revealed in mid-2017 in conjunction with the plans for the OPC and the road changes. The timing was not an accident, but an indication of the total dependence of the golf project on the proposed road changes, similar to the dependence of the OPC on those same Federal actions. The golf project may be independent of the OPC, but it definitely has been discussed in tandem with the OPC as part of the proposed changes to Jackson Park and South Shore Cultural Center Park. Further, the proposed road changes incorporate specific plans that link directly to the golf project. If the golf project is not considered as a foreseeable action with cumulative effects for the undertaking under review, then the relevant underpasses that are golf-specific and the changes to Marquette Road should not be included in the infrastructure changes proposed for review now.

We have previously expressed our concern about this issue (letter of April 18, 2018), but the omission seems particularly grievous given the list of other activities that are included in the AOE (Section 3.8.1, p. 68). The explanation given in Comment 85 is that the golf course project is not “programmed (i.e., funding committed for the project construction) within the next two years.” That same caveat could be applied to other projects on the 3.8.1 list – e.g., improvements to the Osaka Garden, other improvements on Wooded Island, Jackson Park Harbor Navigation Improvement project, or potential improvements to the Columbia Bridge. This approach to assessing the cumulative effects of the undertaking is arbitrary and capricious.

VI. UPARR and Parkland Replacement Issues

While the AOE correctly finds that the Midway Plaisance will be adversely affected by the undertaking, the City continues to assert that the east end of the Midway Plaisance between the Metra tracks and Stony Island Avenue should serve as the site for the UPARR replacement recreational land. The AOE also expands the claim that the closure of Cornell Drive between 59th and 63rd Streets and “certain” other roadways will “also satisfy UPARR” (Section 1.1.1.3, p. 6). This land, already in the park but currently covered by Cornell Drive between 59th and 63rd Streets, the eastbound segment of the Midway Plaisance roadway between Stony Island Avenue and Cornell Drive, and other segments of roadway designated for removal, totals approximately 7.75 acres. The AOE report wants to count this both as UPARR replacement land and as parkland replacement more broadly.

The National Park Service has not yet approved the City’s proposal to use this site for UPARR replacement land. Nor should it, for the City’s continued insistence on identifying the east end of the Midway Plaisance park as UPARR replacement land is highly problematic in multiple ways.

While the City has insisted that the parkland replacement must be in Jackson Park, UPARR legislation (Section 72.72.b.3.ii) does not require that the replacement parkland be located at or adjacent to the same site: “Replacement property need not necessarily be directly adjacent to or close by the converted site. This policy provides the administrative flexibility to determine location recognizing that the property should meet existing public recreation needs. While generally this will involve the selection of a site serving the same community(ies) or area as the converted site, there may be exceptions.”

The east end of the Midway is already part of an historic park on the National Register of Historic Places. Utilizing this plot as replacement parkland would not add to public parkland, but would in fact diminish it through double-counting. The UPARR designation should be applied to new parkland that would add to that available to local residents.

Also questionable is the implication that this land could serve a specifically “recreational” function, one that does not appear to comport with UPARR requirements. There is no detailed design for this proposed UPARR replacement, meaning that effective review is impossible; even if there were appropriate design to review, there has to date been no legitimate community process to consider the proposal.

Finally, the City’s proposal would potentially have an adverse effect on the historic parkland, but whether and when a separate Section 106 process would be launched has not been specifically discussed and identified. The manner in which the actions are being proposed and discussed makes it appear that somehow the UPARR selection can circumvent Section 106 review, when in fact the City’s problematic proposal creates the necessity for a separate and detailed Section 106 review associated with its proposal.

Some additional concerns include but are not limited to the following:

- The land in question includes a seasonal wetland, as has been pointed out by the USACE. Historically both the proposed OPC site and this Midway site were marshy, and the far eastern end of this proposed replacement parkland area now experiences standing water for a noticeable portion of the year. It is well documented that water levels in Lake Michigan have recently risen substantially and that extensive flooding is occurring in multiple areas in Jackson Park. The City and Park District have asserted that the area could be engineered so as to end the problem of standing water, but said at the same time said that no studies of the issue have been completed, that no cost estimates are available, and that the cost of any such work would be borne by City taxpayers. Given the existence of the wetland as a natural feature, the predictions of continuing increases in Lake Michigan water levels, and the ready availability of other replacement parkland sites in the near neighborhoods, the selection of other sites seems prudent.
- The UPARR legislation states that "the [replacement] property should meet existing public recreations needs," but there is no available analysis comparing the number of children who might use a playground in that location with the number of children who might use new playgrounds in other locations in the near neighborhoods. The nearest school serving young children in the area (the University of Chicago Laboratory Schools Earl Shapiro Campus) already has playground facilities and the adjacent residential high rise on 59th Street at Stony Island Avenue has an enclosed playground area as well. An additional consideration in assessing need should be the proximity of the Midway site to the playground to be erected as part of the OPC campus, which will be situated at approximately E. 61st Street, a block to the south along Stony Island Avenue.

- The area in question has an active roadway to the east and two busy roadways on both the north and south, indicating that safe access to the site could be problematic. There is no designated parking area, current street parking will be diminished by the proposed road changes, and weekday parking is already very limited. Here again no data has been presented.

In the recent webinar discussing the AOE, a key question was asked: If additional potential UPARR replacement sites in the community are identified, will the NPS consider those sites? The answer was in the affirmative. We strongly encourage the NPS to pursue this route.

Beyond UPARR, there are serious concerns about the need for legitimate parkland replacement.

If the current OPC plan to build in Jackson Park proceeds, the City/Chicago Park District should provide actual replacement parkland equivalent to the entire 19.3-acre site. As noted above, the assertion that vacated roadway within the confines of the OPC site constitutes new public parkland defies common sense. Assertions that the OPC site itself, even in part, is the equivalent of public parkland is equally illogical for several key reasons.

One key issue is governance of the site. The draft agreements to be signed between the City and the Obama Foundation – if the federal review processes approve the OPC and UPARR plans as they currently exist – do assert that the OPC campus will be, for the most part, open to all for some uses some of the time. These same agreements give the Obama Foundation control of the site for 99 years and allow it to maintain, operate and control the site and the activities and visitors to the site. The agreements also recognize that the U.S. Department of Homeland Security must review and approve security measures. These governance features in themselves differentiate the proposed OPC site from public parkland in major ways.

Additional analysis reveals that the space will not be actual public parkland or public space at all. As is currently the case with Millennium Park in downtown Chicago, which is also not under the control of the Chicago Park District, this space could readily be closed to the public for unspecified events. Private security, not Chicago Park District security, would control the area. There are a myriad of unanswered questions concerning the use of the minimal amount of actual green open space that would be left for picnicking or informal leisure and recreation. Whether and how a family or church group might obtain a permit for a picnic on the OPC site is completely unclear, whether gatherings with amplified music would be permitted is unknown, whether frisbee would be allowed is likewise unknown. The list goes on.

A look at the description of what should be anticipated on the OPC site (Section 1.1.1.3, pp. 5-6) shows that the current largely open, largely green space used for a broad range of recreational, leisure, and family activities will be replaced by a far more structured, built up, and restricted area with many more restrictions on activities the community will be allowed to enjoy. While there may be a place for such a more formal and structured site, it is certainly not the same as an actual public park.

VII. Improper NEPA and 4(f) Deferrals

The attempts by the FHWA in the current Section 106 review to segment the undertaking for the purpose of largely nullifying the NHPA requirement to consult with consulting parties to consider ways to resolve adverse impacts and also to use a post-construction baseline in the analysis so as to further limit the effectiveness of the review raises multiple questions beyond the impacts in the present Section 106 review itself.

One relates to the fact that FHWA seeks to defer numerous issues related to traffic and parking to the NEPA review. We question this on two grounds.

First, we are in the Section 106 review of effects on historic properties. The criteria described in 36 CFA 800.5(a)(1) apply. It is entirely appropriate to assess the likely effects of the proposed changes in traffic and parking on neighborhood streets and local roads on the overall integrity of the historic properties and relevant historic districts during the current Section 106 review. Analysis of the type of detailed local data that we have called for is required to accomplish that effectively. This task remains to be accomplished, not deferred. The failure to do so impacts the designation of no adverse effects on properties, effectively nullifying such designations.

Second, as has been noted, the FHWA's flawed analytical framework would carry over to the NEPA review that is to follow. If the FHWA succeeds in restricting the scope and baseline of the NEPA review to the post-construction state of Jackson Park, the Midway Plaisance, and the surrounding neighborhoods and to "Federal actions" only, the scope of review and the questions to be reviewed would be so limited and insignificant as to render any NEPA review toothless and largely irrelevant.

Separately, the FHWA's analytical approach also has significant implications for the mandatory 4(f) review required pursuant to the Department of Transportation Act of 1966. In our letter of August 26, 2019, commenting on the draft AOE released July 29, 2019, we commented extensively on the 4(f) issue. We incorporate those comments concerning the important of a legitimate 4(f) review here via reference to that letter. Continuing to apply such a post-construction baseline reflects a decision to improperly avoid a legitimate 4(f) review. We repeat for the record that a legitimate 4(f) review – one considering all possible feasible and prudent alternatives to minimize harm to Jackson Park – must be completed for a proper and complete Section 106 review to be performed.

We and others have also called for an Environmental Impact Statement. (EIS) rather than an Environmental Assessment, given the size, scope, and controversial nature of the full undertaking. Efforts to segment the project or otherwise short circuit the necessary reviews through improper baselines and other actions discussed above so to try and avoid an EIS are not proper in and of themselves.

VIII. Avoidance, Minimization, and Mitigation

Section 5.0, Avoidance and Minimization of Effects, appears to be a summary of efforts the FHWA and City claim to have already made to avoid or minimize impacts to the historic properties. We note that the AOE concludes that, in spite of these alleged efforts, the undertaking

will still have significant adverse effects to Jackson Park, Midway Plaisance, and the CPBS Historic District, a conclusion with which the City and involved Federal agencies agree.

Given that determination, we anticipate that consistent with the appropriate, expansive definition of the undertaking in the AOE report and consistent with the requirements of the National Historic Preservation Act, the FHWA and City will now consider ways to resolve adverse effects in consultation with the consulting parties, addressing first ways to avoidance the adverse effects, then to minimize them and, finally – only as a last resort – to mitigate them. For these efforts to be more than window-dressing, these must involve actual dialogue and consideration of alternatives. The consulting parties were not involved in any way in the efforts the FHWA and City claim to have made during the design of the OPC and roadway changes; that must now change. In that regard, we agree with the comment from the representative of the Advisory Council for Historic Preservation during the webinar of January 23, 2020, who indicated that multiple meetings to properly discuss and analyze avoidance and minimization measures should be planned and expected.

The final paragraphs of the report (Section 6.0, p. 82) state that the Federal agencies and the City “will explore measures to further avoid, minimize, or mitigate adverse effects to historic properties from the Federal actions” but then in the following, concluding sentences make reference only to mitigation measures. The implication is that only mitigation is to be seriously considered and that no new discussions of avoidance or minimization will be considered; such a process violates the applicable statutes and regulations as well as established practice. Furthermore, we object to any effort to avoid required consideration of avoidance and minimization of the adverse effects on the entire undertaking. We object both as a matter of policy and of fact to the assertion that the actions of the City described in the AOE do not require Federal funding or approval and so are not subject to NHPA’s requirement to consider avoidance, minimization of adverse effects: the “City’s actions” absolutely depend on Federal funding and approval, without which they cannot proceed, and therefore they are rightly subject to NHPA regulations.

We would like to comment on ways to resolve the adverse effects.

- Avoidance: Clearly, the most effective way to resolve the adverse effects of the OPC and roadway designs on Jackson Park and the Midway Plaisance and to move the OPC project forward would be to relocate the entire project to the alternate site that was originally envisioned, at the juncture of 55th St./Garfield Blvd and MLK Jr. Drive. That site, with no building in Washington Park itself, might not have to undergo the current federal review process. It was found in the Obama Foundation’s own due diligence work to have a considerably more beneficial economic impact on the community than the Jackson Park site, bounded as that site is by residential and institutional development. If the so-called “Washington Park” site had been chosen, construction of the OPC would be well advanced. There are many who advocate such a relocation as the most expeditious way to move the OPC forward. Similarly, given that the City’s proposal to use the eastern portion of the Midway Plaisance to satisfy UPARR requirements for replacement parkland would have an adverse impact on the Midway Plaisance park, the avoidance option would be to seek space elsewhere in the community for this purpose. The change

of location, perhaps to West Woodlawn or other nearby park-poor areas, would greatly improve the value and beneficial impact of the project for the community.

- **Minimization:** We would also like to advance suggestions about how to minimize the adverse effects of the undertaking to Jackson Park and Midway Plaisance, some of which were included in our letter of August 26, 2019. Minimization presents several options that would be compatible with the possibility of siting the OPC in Jackson Park but with a different and redesigned footprint. Such options include:
 - keeping Cornell Drive open, but with a narrowed profile, traffic calming features and multiple enhanced pedestrian crosswalks;
 - retaining the east bound segment of the Midway Plaisance given its importance to the iconic design linking the Midway and Jackson Park;
 - retaining the Perennial/Women’s Garden in its present state but with improved accessibility;
 - right-sizing the OPC museum tower to make it compatible with the Olmsted design for the park that established the Museum of Science and Industry as the dominant building;
 - retaining more of the mature trees on the OPC site and throughout the park;

We look forward to opportunities to discuss these and other ways of resolving the adverse effects of the OPC and roadway changes on Jackson Park and the Midway Plaisance in dialogue with the FHWA and City and other consulting parties.

Sincerely,

Brenda Nelms and Margaret Schmid
Co-Presidents
Jackson Park Watch

cc: Abby Monroe, Chicago Department of Planning and Development; Arlene K. Kocher and David Clarke, Federal Highway Administration; Lee Terzis, Joel Lynch and Morgan Elmer, National Park Service; Colin Smalley, US Army Corps of Engineers; Nate Roseberry, Chicago Department of Transportation; Heather Gleason, Chicago Park District; Brad Koldehoff, Illinois Department of Transportation; Anthony Rubano and CJ Wallace, Illinois State Historic Preservation Office; Jaime Loichinger, Advisory Council on Historic Preservation; Maurice Cox and Eleanor Gorski, Chicago Department of Planning and Development; Gia Biagi, Chicago Department of Transportation; Samir Mayekar, Deputy Mayor, City of Chicago; Bonnie McDonald and Lisa DiChiera, Landmarks Illinois; Gerald Adelman, Ted Haffner, and Stacy Meyers, Openlands; Ward Miller and Mary Lu Seidel, Preservation Chicago; Juanita Irizarry, Lauren Moltz and Fred Bates, Friends of the Parks; Charles Birnbaum and Scott Craver, 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; Jack Spicer, Promontory Point Conservancy; Michal Safar,

Hyde Park Historical Society; Naomi Davis, BIG; Jawanza Malone, Kenwood-Oakland
Community Association; Alex Goldenberg, STOP