

Jackson Park Watch

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April 21, 2020

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

Subject: FHWA April 14, 2020 E-Mail Regarding “Conclusion of Assessment of Effect – Consulting Party Notification”

Dear Mr. Fuller:

We are in receipt of your e-mail of April 14, 2020 addressed to “Dear Consulting Parties.” In it you outline your proposed “NEXT STEPS” to be taken in the Section 106 process to resolve the adverse effects to historic properties. There are two issues raised in the e-mail that we believe it necessary to address.

In that email, you state “The consulting party meetings will provide a foundation for what mitigation is and what it should accomplish, seek ideas and input from consulting parties on mitigation ideas proposed, provide a forum to discuss the mitigation measures proposed and which ones are feasible to implement. . . .”

We write to register a strong objection to your e-mail’s sole reference and focus on “mitigation” which suggests an effort to narrow the consultation with consulting parties to mitigation alone. In fact, any such consultation that focuses solely on mitigation of adverse effects would be contrary to the statutory framework outlined in 54 U.S.C. 300301 and its implementing regulations. Instead, the future consultations with consulting parties are required to discuss first, avoidance of adverse effects, second, minimization of adverse effects, and then, only if and after those options are thoroughly considered, is it proper to consider mitigation measures.

This is not the first time that such concerns have been raised relative to such efforts to improperly narrow the scope of review. Prior communications between FHWA and various consulting parties have underscored the requirement that proposals to resolve adverse effects cannot be limited to mitigation, and must follow the statutorily mandated legal order: avoidance, minimization, and then, as a final resort, mitigation. For example, in its August 22, 2019 letter to Ms. Arlene K. Kocher, District Administration, FHWA, the Advisory Council on Historic Preservation (“ACHP”) referred to the need to “properly characterize the nature and intensity of the adverse effects to the cultural landscapes of Jackson Park and Midway Plaisance in a way that will enable *informed consideration of avoidance, minimization, or mitigation measures*”

(emphasis added). As noted by the ACHP, avoidance and minimization must be considered, and are to be done in the order as noted, before consideration of mitigation measures.

We also object to your proposal to conduct this mandatory consultation in a webinar format. To meet the letter and spirit of the statutory framework, there must be actual, legitimate, interactive consultation concerning possible ways of resolving adverse effects. Given the number of consulting parties, the seriousness of the adverse effects and the extremely large nature and scope of the undertaking, it is likely that the required consultation will involve multiple, lengthy meetings. All parties, including FHWA, must come to such consultations without predetermined outcomes or improper limitations on format or time before even starting. A webinar meeting such as the one staged in January of this year – which featured a lecture-like presentation accompanied by significant and multiple communication problems which curtailed even basic participation – is not up to the requirements of the mandated consultative process, and your proposal to utilize that format should be withdrawn

In light of the COVID-19 restrictions now in effect, we urge that the consultative meetings be postponed until the easing of restrictions which would then will allow for in-person meetings, albeit most likely with masks and social distancing. Such timing will not only allow for more meaningful participation by the consulting parties, but also will allow a larger number of participants as the various health and safety risks created by the pandemic will have subsided. Alternatively, and if conditions do not permit for in-person meetings, a decision can be made down the road to use Zoom or an equivalent meeting technology that has been utilized and found effective in multiple business settings, so that there will be a forum that will allow for the proper presentation of multiple ideas and for thorough dialogue and discussion of each proposal.

We appreciate your attention to these concerns and look forward to your response.

Sincerely,

Brenda Nelms and Margaret Schmid
Jackson Park Watch

cc: Jaime Loichinger and Sarah Stokely, Advisory Council on Historic Preservation; 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; Eleanor Gorski, Chicago Department of Planning and Development; 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; Maurice Cox Chicago Department of Planning and Development; Gia Biagi, Chicago Department of Transportation; Samir Mayekar, Deputy Mayor, City of Chicago

