



March 26, 2020

Sarah Stokely
Program Analyst
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Dear Ms. Stokely,

The Cultural Landscape Foundation (TCLF) is pleased to take this opportunity to comment on the Federal Highway Administration's (FHWA) request, dated March 17, 2020, that the Advisory Council on Historic Preservation (ACHP) render an opinion regarding the FHWA's determination of no adverse effect on the Jackson Park Terrace Historic District in the matter of the ongoing federal undertaking in and adjacent to Jackson Park in Chicago, Illinois. While we reviewed the FHWA's enclosed discussion of our several objections to findings in the Assessment of Effects (AOE), the only one of our disagreements that has been referred to the ACHP under 36 CFR 800.5(c)(2)(i) is the disagreement regarding the Jackson Park Terrace Historic District. It would be helpful for the ACHP to address our other disagreements as well. We also note that many other consulting parties raised equally pertinent objections, which one hopes will not be discarded arbitrarily.

As you know, the FHWA's formal request to the ACHP was accompanied by a "Response to Objection Letters" in which the agency provided comments on TCLF's objections. Included in the FHWA's correspondence is a response from the City of Chicago (item E., p. 10) to our assertion that certain statements in the AOE are invalid and baseless, namely the claim that the city's only practical alternatives were either to approve the Obama Foundation's proposal to occupy Jackson Park or to deny the proposal and lose the OPC altogether. Following a brief account of how it won the bid to host the OPC, the city's answer comes to this:

At no time did the Foundation indicate that it would construct the OPC elsewhere in Chicago, including solely on a private site, given the strong community and governmental support for a park-based site, consistent with the longstanding Chicago history of museum-based cultural recreation in Chicago's parks. The City therefore felt that its practical alternatives were to approve, after substantial negotiation as to design and public access considerations, the OPC at the proposed Jackson Park site or to risk the Foundation's selection of a site outside the region for the project.

Once again, the assertion has been made that the city's only options were to approve the OPC in Jackson Park or "risk the Foundation's selection of a site outside the region for the project." Given the very consequential nature of that claim, and the fact that it has been included as a *prefatory statement in the AOE*, we believe it is incumbent on the FHWA or the city to produce documentation indicating that if the OPC could not be built in Jackson Park, then the Obama Foundation would select a site in another region of the country. If such

documentation does not exist, the statement must be regarded as conjectural and should be removed from the AOE.

We would also like to underscore that the City of Chicago has concluded that it had no practical alternative but to site the OPC in Jackson Park only because the Obama Foundation *did not offer* to build it elsewhere. That statement is most indicative of the posture the city has taken throughout the Section 106 process, and we ask the ACHP to weigh it and its implications carefully when considering whether good-faith efforts to avoid or minimize adverse effects have indeed been made. With that in mind, we add the following remarks to the record in an effort to further clarify our concerns in light of the FHWA's recent comments.

I. The Jackson Park Terrace Historic District

There is considerable confusion about the status of the Jackson Park Terrace Historic District. In its recent communication, the FHWA notes: "Contrary to assertions made by consulting parties, the JPTHHD is not eligible for listing on the National Register under Criterion B." But the FHWA's dismissive tone is inappropriate, not least because the FHWA's assertions are flatly contradicted by its own documentation. The Final AOE, posted on January 16, 2020, states as follows:

The Jackson Park Terrace was determined to be eligible under Criterion A for Woodlawn Community and housing history, Criterion B for its association with prominent community developers Leon D. Finney and E. Duke McNeil and Criterion C for architecture, listing as a historic district in the NRHP on July 10, 2018 per the historic resource survey forms prepared for this project. (p. 63-64)

From that statement in the AOE—the very document that consulting parties are obligated to cite as the basis for their formal objections—one must reasonably conclude that the district is eligible for listing in the National Register under Criteria A, B, and C, and that it was listed in the National Register on July 10, 2018. Those facts are, however, contrary to the Historic Properties Inventory (HPI), which notes that the historic district meets Criteria A and C for listing in the National Register but "does not warrant listing under Criterion B." The HPI also indicates that the district is "an excellent candidate" for the National Register but has not yet reached the age of 50 years. We trust that one can be excused for mistakenly relying on the flawed AOE, as it is, in any case, the historic district's eligibility for listing in the National Register, not the listing *per se*, which necessitates a careful consideration of adverse effects.

In our formal objections, TCLF asserted that the proximity of the Obama Presidential Center to the district would adversely affect the district's setting—the only one of the seven aspects of integrity that the AOE identifies as having been previously "somewhat diminished." In its most recent comments, the FHWA avers that "while the undertaking may impact views of Jackson Park from the JPTHHD, those views do not contribute to the property's historic significance." But that position relies on an especially narrow understanding of the factors that can adversely affect a property's setting.

According to guidance established by the National Register of Historic Places, “setting refers to the *character of the place in which the property played its historical role*. It involves how, not just where, the property is situated and its *relationship to surrounding features and open space*” (emphasis added).¹ So the question under consideration is not solely one of ‘views into parkland,’ but is also, rather, a matter of the character of the surrounding area and the way in which the historic district relates to features and open space in that area, as well as the way those features and spaces relate to the historic district.

To demonstrate the fallacy of the FHWA’s overly narrow interpretation, one only need consider what the agency has *already asserted* about the historic district, namely that its setting was “somewhat diminished” when an eight-story hotel immediately north of the property was demolished and replaced with a parking lot. Does it then follow that *views to the hotel* from within the historic district had formerly contributed to the district’s historic significance? That is an untenable position because there is simply no reason to believe that such views were ever of any significance, and yet it is essentially the position that the FHWA is now taking.

In its rebuttal to our objection, the FHWA also asserts that “the primary setting of the JPTH D is the complex itself, which was intentionally designed to be fenced off and separated from adjacent properties in order to emphasize the sense of community within the JPTH D.” But that, too, runs counter to guidance from the National Register, which says, “These features [that constitute the setting of a historic property] and their relationships should be examined *not only* within the exact boundaries of the property, *but also* between the property and its surroundings. *This is particularly important for districts*” (emphasis added).² Thus the fence that traces the perimeter of the property is immaterial to determining its setting, and one is also left to wonder, once again, why the absence of an eight-story hotel beyond the fence line would exert a greater adverse effect than the presence of a significantly more imposing 235-foot-tall tower and presidential center across the street.

And indeed, the FHWA has *already agreed* that the proximity of the OPC *will affect* the historic district: “The OPC would be visible from the JPTH D, which would affect, but not compromise the setting of the JPTH D.” We believe that, based on the reasoning and standards *already applied* in the HPI’s integrity assessment, those effects would certainly be adverse. A tower more than twice as high as the distance that separates the two sites would loom over and dominate the Terrace district to such an extreme degree that the adverse effect on the district would be undeniable.

¹ See: National Register Bulletin, “How to Apply the National Register Criteria for Evaluation,” p.44 ff.; https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf

² Ibid.

II. The Golf Course Renovation Project

In our formal objection to the AOE, we also stated that the planned “golf course consolidation/expansion project” combines with the undertaking to create a cumulative adverse effect that has not been analyzed. The FHWA has improperly failed to acknowledge this as a disagreement that warrants referral to the ACHP under 36 CFR 800.5(c)(2)(i). However, in an attachment to its letter, the FHWA has responded, in part, as follows:

As explained in the Comment Disposition, while a golf course project was noted in a conceptual framework planning document (namely the 2018 South Lakefront Plan, SLFP), it is not anticipated to be completed or programmed (i.e., funding committed for the project construction) within the next two years. See Comment Disposition, Response to Comment No. 85. The mere fact that the golf course project is mentioned in the 2018 SLFP does not make its effects reasonably foreseeable. The final plans and design for the golf course project are not yet approved. Interim information about the project's layout, design and other critical details are largely aspirational. As such, there is no basis for the type of reasoned analysis that would meaningfully inform federal decision-making.

But we do not rely solely on the mere fact that the golf course project was mentioned in the 2018 SLFP, but rather on a series of separate and related facts that together indicate that plans are clearly underway to expand and consolidate the Jackson Park and South Shore golf courses. Given that such plans, of necessity, involve significantly altering contributing resources to historically designated properties, they should be evaluated along with the undertaking as a cumulative effect on those properties.³

We repeat that there is no applicable statutory or regulatory language that restricts reasonably foreseeable actions to those actions that are “completed,” “programmed,” or “funded” within two years of the undertaking. If that were the standard, then large, costly, and particularly impactful projects could evade the intent of National Historic Preservation Act by cleverly—but dishonestly—manipulating their schedules and plans. We hope the ACHP will be particularly attentive to comments from Jackson Park Watch (dated February 18, 2020; p. 7 ff.) regarding the road closures and the construction of underpasses that, while part of the current federal undertaking, would seem to relate more to the “unforeseeable” golf course project than to any other immediate objective.

³ Cumulative impacts include “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (federal or non-federal) or person undertakes such other actions*. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 CFR 1508.7 (emphasis added).

III. Clarifying the Avoidance Measures Taken by the City of Chicago and the Role of Federal Agencies

In our formal objection to findings in the AOE, we asserted that as reasonably foreseeable effects of the undertaking, the described actions of the City of Chicago are subject to the requirements of Section 106 to consider avoidance, minimization, and mitigation of adverse effects to historic properties. We stand by that claim.

We also observed and discussed at some length that, in documenting the avoidance and/or minimization measures taken thus far, the AOE clearly exhibits a certain schizophrenia, analyzing adverse effects in one part only to label them as integral steps toward avoiding or minimizing adverse effects in another. We continue to assert that, at a minimum, the AOE must be an internally coherent account of the effects of the undertaking.

Cooperation among local, state, and federal authorities to produce the requisite documentation and analyses demanded by the National Historic Preservation Act is essential to the Act's success; but within that nexus of close collaboration, there is perhaps in some cases an unwarranted tendency to elide identities and responsibilities. We know of no serious stakeholder who has suggested that the pertinent federal agencies have the authority to relocate or redesign the OPC, for they clearly do not. The respective agencies do, however, have the sole authority to provide necessary funds, issue necessary permits, and alter necessary agreements. And they have the authority to say 'no' to applications for funding and permits when adverse impacts or other factors so warrant that response. It is also, of course, the federal agencies that bear the ultimate responsibility to ensure full compliance with Section 106, whose goal is not to serve the needs of clients, but to balance the interests of applicants and the public in accordance with federal law.

Sincerely,



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

cc: Reid Nelson, Director, Advisory Council on Historic Preservation; rnelson@achp.gov; Jaime Loichinger, Assistant Director, Advisory Council on Historic Preservation, jloichinger@achp.gov