



CHICAGO DEPARTMENT OF TRANSPORTATION  
CITY OF CHICAGO

September 14, 2018

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Federal Highway Administration  
Illinois Division Office  
Division Administrator

On August 21, 2018, the Advisory Council on Historic Preservation wrote to the Federal Highway Administration (FHWA) in response to a concern raised by The Cultural Landscape Foundation about the removal of trees within Jackson Park in early August and whether their removal implicated a federal undertaking subject to the requirements of the National Historic Preservation Act (NHPA). The FHWA has discussed the issue with the City of Chicago and the National Park Service (NPS).

The City and the Chicago Park District undertook this work in the sincere belief and understanding that the work was appropriate, prudent, and in conformance with federal law. But in light of the concerns expressed by the federal agencies, the Chicago Park District will stop construction of the new track and field, until dialogue with relevant federal agencies confirms that resumption of work is appropriate. The only continuing work on the site at this time will consist of demobilization activities. This work may continue for several days and is necessary to ensure site security and public safety, including but not limited to, filling holes and removing and/or storing materials and equipment. The City has concluded it is imperative to allay any doubts about the intentions of the City with respect to the federal reviews currently under way, in which the City has been an engaged participant and supporter from inception.

Factual Background

In the first week of August 2018, the Chicago Park District, one of the City's sister agencies, began site preparation for building a new track and field in Jackson Park. The work to date has consisted of removing specific trees and grading the surface in preparation for construction. The new 8-lane, 400 meter track and field is intended to provide an improved amenity for the community in the form of a wider turf field to accommodate a full soccer program in Jackson Park, which is not practical at the existing field location. The Park District anticipated continuing construction into early autumn. The new track and field replaces two baseball diamonds within Jackson Park. Programmed uses of the ball fields are being relocated to other ball fields to ensure continuity of programming. The existing track and field, which is nearing the end of its contracted useful life (installed in 2011, warranty expires on 10/13/2019), has not been affected by the work on the new track and field and remains in place pending final federal and municipal action concerning the Obama Presidential Center (OPC) and planned traffic improvements.

The Obama Foundation agreed to donate the funds for the new track and field, placing no conditions on the donation related to approval of the OPC. The work lies entirely outside the area proposed for the OPC and outside the area where proposed traffic improvements may be made in the event the OPC is constructed and Cornell Avenue is closed. The goal of the track and field project is to provide an improved recreational facility and to avoid disruption in the use of the existing track and field in the event the OPC project is built.

The Chicago Park District submitted an application for approval of the new track and field under the Lake Michigan and Chicago Lakefront Protection Ordinance in January 2018. In its presentation to the Chicago Plan Commission on May 17, 2018, the City stated: "It is anticipated that construction can start yet this spring and that the new track and field will be operational for fall sports later this year in 2018."<sup>1</sup> Following the public hearing in May, the Chicago Plan Commission approved the construction of the new track and field in Jackson Park just north of East 63<sup>rd</sup>/East Hayes Drive and east of Stony Island Avenue. The Chicago Park District held multiple public meetings that addressed the construction of the new track and field.<sup>2</sup> In addition, the new track and field was addressed during the preparation of the South Lakefront Framework Plan update, which involved ten public meetings between June 2017 and March 2018.<sup>3</sup>

### Perspective

The City and the Chicago Park District commenced work on the new track and field with the sincere understanding that it conformed to federal law. We'd like to briefly explain why we reached this conclusion. First, the work does not commit the City or the federal government to any particular course of action with respect to the projects that are subject to federal approval. Second, the track and field is not receiving federal funding. Third, the project does not constitute a conversion of a recreational use to a non-recreational use. Finally, the new track and field is not interdependent with the OPC project. Although the proposed OPC would displace the existing track and field, the City is not federally obligated to build a new track and field in Jackson Park. Rather, the Chicago Park District decided very early in the planning process that the track and field was a vital community resource and that Jackson Park was the optimal location for it. Municipal approval for its construction, like its funding, is not conditioned on whether the OPC project moves forward. Nor does the track and field constitute mitigation under UPARR for the partial conversion associated with a portion of the contemplated OPC. Instead, the City and NPS are reviewing a possible UPARR mitigation site in the eastern portion of the Midway Plaisance, which lies outside Jackson Park.

We acknowledge this is a complex issue. The City discussed the construction of a new track and field at this location in Jackson Park with NPS fairly early in the process. The City described the Park District's intent to build a new track and field to the south of the existing track and field, and to replace one of the two baseball fields that would be removed as a result of the new track and

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<sup>1</sup> Chicago Plan Commission, Transcript of Meeting – AM Session, May 17, 2018, p. 43.

<sup>2</sup> For example: Public meeting hosted by Obama Foundation at McCormick Place (Feb. 27, 2018); Jackson Park Advisory Council (Mar. 12, 2018); Woodlawn Stakeholders Meeting (Apr. 20, 2018); and Fifth Ward Meeting (May 5, 2018).

<sup>3</sup> Specifically on June 21, 2017; June 24, 2017; June 27, 2017; July 13, 2017; September 25, 2017; September 27, 2017; December 7, 2017; December 11, 2017; March 13, 2018; and March 14, 2018.



field work in another location within Jackson Park. In viewing the totality of changes within Jackson Park, NPS concluded that the overall result of the Park District's reconfiguration of recreational resources within the park would be the loss of one baseball field and noted that the Midway Plaisance might be a suitable site for replacement recreation.<sup>4</sup> The City did not understand this guidance to mean that the recreational reconfiguration work within Jackson Park should not proceed as planned and discussed. We understood that the absence of federal authority over this local work permitted it to move forward to support the Park District's mission to serve the recreational needs of Chicago communities.

In July 2018, prior to beginning work on the track and field, the City and the Park District contacted NPS to confirm our understanding that the work did not constitute a federal action subject to federal review. It was our understanding that NPS agreed that the new track and field did not constitute a conversion and therefore was not a federal action subject to federal review. In hindsight, we should have contacted FHWA for concurrence as well. We would not have initiated the work had we believed either agency would disagree.

The City is deeply invested in the federal review process, and all work related to the new track and field is stopping out of respect for the process and the individuals and agencies involved, consistent with the way we have acted all along. At no time has the City remotely contemplated acting with the intent to adversely affect historic property, much less to do so for the intended purpose of evading federal review. The City has worked tirelessly with internal and external experts in historic preservation, and in collaboration with the FHWA, NPS and consulting parties, to identify and appropriately protect historic properties in and around Jackson Park. The City's record of support for FHWA and NPS in the fulfillment of their responsibilities under federal law is clear from the extensive efforts by the City to assist in gathering and analyzing information on historic properties and potential environmental impacts in the areas of potential effect from the proposed federal actions. This commitment is unchanged.

#### ACHP Letter

The ACHP's letter of August 21 notes the concerns of The Cultural Landscape Foundation about the removal of trees within Jackson Park as part of site preparation for the new track and field. ACHP cautioned FHWA (and indirectly NPS and the City) to be mindful of NHPA Section 110(k). This legal provision addresses a circumstance in which a federal applicant, "with intent to avoid the requirements of section 106 [of NHPA], has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur."<sup>5</sup> The City believes the foregoing summary of the facts and the perspective of the City establish the City's proper intentions. Accordingly, the City believes the application of Section 110(k) would be inappropriate and unjustified.

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<sup>4</sup> Letter dated March 8, 2018, from Joel Lynch (Chief, State and Local Assistance Division, National Park Service) to Eleanor Gorski (Deputy Commissioner, Department of Planning and Development, City of Chicago), p. 2.

<sup>5</sup> 36 CFR 800.9(c)(1).

Conclusion

We respectfully request the FHWA and NPS to consider the foregoing in responding to the ACHP's letter of August 21. If either agency has further questions, please do not hesitate to contact me.

Sincerely,



Rebekah Scheinfeld

cc: Matt Fuller (FHWA)  
Joel Lynch (NPS)  
Michael Kelly (CPD)  
David Reifman (DPD)  
Anthony Quigley (IDOT)