

CONSULTING PARTIES EDUCATIONAL RESOURCES FOR THE SECTION 106 PROCESS

This information is provided to the consulting parties as an educational resource for the “Resolve Adverse Effects” phase of the Section 106 process.

Overview

The City of Chicago, through the Department of Planning and Development (DPD) and the Chicago Department of Transportation (CDOT), is working on several roadway improvement projects in Jackson Park that will support the Obama Presidential Center (OPC) and the South Lakefront Framework Plan update.

When these projects are completed, they will support a revitalized Jackson Park. Since it was originally designed by renowned landscape architects Olmsted & Vaux in 1871, Jackson Park has undergone multiple transformations in the last one hundred years which have altered the original design, including the World’s Columbian Exposition in 1893.

The Chicago Park District’s *South Lakefront Framework Plan* (1999) outlined many of the proposed improvements now under consideration. The Park District recently completed a planning process (in April 2018) to update the South Lakefront Framework Plan, specifically for Jackson Park and South Shore Cultural Center. The 2018 Framework Plan update provides a plan for the next several years to respond to neighborhood needs and historic context, provide a vision for improvements, serve as a planning tool and outline priorities to deliver improvements in a coordinated manner.

Various proposed park projects and accompanying roadway changes within Jackson Park require a federal-level environmental review under the National Environmental Policy Act (NEPA) as well as consultation under Section 106 of the National Historic Preservation Act (NHPA).

NEPA requires Federal agencies to assess the effects of their actions on the environment, and Section 106 of the NHPA requires Federal agencies to consider the effects of their actions on historic properties. There are different procedural requirements for each of these laws, and they are commonly completed concurrently. For this project, the National Park Service serves as the lead Federal agency for the NEPA process and the FHWA serves as the lead for the NHPA process. The U.S. Army Corps of Engineers (USACE) is a cooperating agency under NEPA and is participating under the NHPA.

This coordinated process is encouraged by recent Federal policies announced in [Executive Order 13807](#) and further detailed in a [Memorandum of Understanding](#) implementing the principle of “One Federal Decision” for proposed infrastructure projects. This policy direction allows for a comprehensive review of all potential effects of the Federal decisions

Purpose of the Consulting Party Meetings

The consulting party meetings provide a process for FHWA, NPS and USACE to work with the City of Chicago, the State Historic Preservation Office, IDOT and the consulting parties to consider potential measures to avoid, minimize or mitigate the effect of the proposed Federal actions, as described briefly below:

Federal Highway Administration – Proposed Action: approval of potential funding for traffic improvements to address changes in travel patterns resulting from closing roadways in Jackson Park and to improve bicycle and pedestrian access and circulation in Jackson Park.

National Park Service – Proposed Action: approval of the proposed partial conversion of Jackson Park to non-recreation use based on the replacement of lost recreation land and opportunities with their equivalent, as reflected in an amended grant agreement under the Urban Park and Recreation Recovery Act (UPARR).

U.S. Army Corps of Engineers – Proposed Action: approval of proposed discharges of fill material into waters of the United States in Jackson Park and alteration of a Federally-funded ecosystem restoration project under the Great Lakes Fishery & Ecosystem Restoration (GLFER) program.

Scope of the Consulting Party Meetings

Section 106 of the National Historic Preservation Act (NHPA) (now codified at 54 U.S.C. 306108), requires agencies to (1) consider the effects of their undertakings on historic properties and (2) offer the Advisory Council on Historic Preservation an opportunity to comment. The Federal agencies are not mandated under the NHPA to adopt measures to avoid, minimize or mitigate adverse effects to historic properties.

The Advisory Council on Historic Preservation (ACHP) issued regulations, found at 36 CFR 800, which prescribe the process for implementing Section 106 of the NHPA. The regulations acknowledge that the goal of the consultation process is to seek ways to avoid, minimize or mitigate any adverse effects on historic properties (36 CFR 800.1(a)). The Section 106 regulations do not provide a definition of “mitigation”; however, in the National Environmental Policy Act (NEPA) context, “mitigation” is broadly defined to include (1) avoiding the impact altogether, (2) minimizing impacts, (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment, (4) reducing or eliminating the impact over time, or (5)

compensating for the impact by replacing or providing substitute resources (40 CFR 1508.20). FHWA embraces this broad, all encompassing, definition of mitigation.

The FHWA has considered many avoidance and minimization efforts, and those that are feasible have been incorporated into the undertaking. Those avoidance and minimization efforts are documented and described in the Assessment of Effects documentation (dated January 2020) and the 36 CFR 800.11(e) documentation (dated March 16, 2020). Those documents have been shared with all consulting parties and are also available on the City of Chicago's website: https://www.chicago.gov/city/en/depts/dcd/supp_info/jackson-park-improvements.html.

Moving forward, FHWA will consider additional avoidance, minimization, or mitigation measures proposed by consulting parties.

However, avoidance or minimization measures that have previously been proposed by consulting parties, and dismissed, will not be re-considered. For example, the Federal agencies considered comments from multiple consulting parties suggesting that the Obama Presidential Center (OPC) be relocated outside of Jackson Park to avoid an adverse effect to historic properties. The Federal agencies concluded that they cannot require the City of Chicago to change the location of OPC from Jackson Park to another location nor can they require changes in the scope or design of the OPC site because it is not within the scope of their Federal authorities to do so.

Resolving Adverse Effects – Q&A

- *What happens during the “resolve adverse effects” step of the Section 106 process?*

The Federal agency consults with the Illinois State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), if they are participating, and all other consulting parties to identify avoidance, minimization, and mitigation measures that can be incorporated into the project. Those measures that are agreed upon are memorialized in a Memorandum of Agreement (MOA). Execution of the MOA, and its submittal to the ACHP by the Federal agency, concludes the Section 106 process.

- *Who decides which measures are included in the MOA for resolving the adverse effect?*

The measures to include in the MOA are developed in consultation with the Federal agencies, the Illinois SHPO, the ACHP, and consulting parties. Consulting parties are encouraged to offer ideas for potential measures to resolve the adverse effect. Ultimately, it is the Federal agency's decision which measures will be included.

- *What does a MOA look like?*

The ACHP provides template MOAs that agencies may use in developing project specific agreement documents. FHWA will use a template from ACHP as a starting point

for this project agreement. Those template documents are available on the ACHP website (<https://www.achp.gov/sites/default/files/2018-06/GAD%20template%20MOA%202015.pdf>).

- *Who approves the MOA?*

The required signatories on a MOA are the Federal agency, the SHPO, and the ACHP (if they are participating in consultation). Once these agencies sign the MOA, it is considered fully executed. The Section 106 process is considered complete when the Federal agency files the fully executed MOA with the ACHP.

- *Can other parties sign the MOA?*

The Federal agency may ask other parties to sign the MOA as either “invited signatories” or as “concurring parties.” It is FHWA’s practice to include parties that assume a responsibility under the terms of the MOA as “invited signatories.” For this project, FHWA anticipates requesting the National Park Service, the United States Army Corps of Engineers, the Illinois DOT, the Chicago DOT, the Chicago DPD, and the Chicago Parks District to be invited signatories. Through consultation, if additional parties are identified that will have a responsibility under the MOA, then those parties will also be invited signatories. FHWA will invite all other consulting parties to be “concurring parties” to the MOA.

- *What is the difference between an “invited signatory” and a “concurring party?”*

An invited signatory has the same rights to seek amendment or termination of the MOA as a required signatory; a concurring party does not. The MOA is considered fully executed once the required signatories have executed the agreement.

Mitigation Examples

Rehabilitation of the Julia Lathrop Homes

Completed in 1938 as one of the first federal public housing developments in Chicago, Lathrop Homes includes thirty-one structures set in a landscape designed by landscape architect Jens Jensen. In 2011, the Chicago Housing Authority (CHA) announced plans to rehabilitate the complex as mixed income/mixed use community. The complex was listed in the National Register of Historic Places in 2012. Because federal funds would be used for the rehabilitation, the project was subject to the Section 106 process that resulted in mitigation measures including a permanent exhibit on-site interpreting the history of housing complex as well as the work of social reformer Julia C. Lathrop, collecting oral histories from residents and panel discussions on the history of the site.

Chicago Transit Authority (CTA) Red-Purple Bypass Project

The CTA is rebuilding 9 miles of track and station infrastructure that has been determined eligible for the National Register. Because the Federal Transit Administration is funding a

portion of the project, the Section 106 process was followed. Mitigation measures including seeking public input on visual preferences for track structures, an exhibit in the project area on the history of the elevated system, documentation of the historic track structure prior to any demolition and a preferential option to relocate rather than demolish the historic Vautravers Building.

43rd Street Bridge Replacement

Constructed in 1938 and 1954, the pedestrian bridge over the IC Tracks and Lake Shore Drive at 43rd Street was deemed eligible for the National Register. The plan to replace the bridge with a new structure led to Section 106 review resulting in a Memorandum of Agreement (MOA) finalized in 2019. Mitigation measures included documentation of the historic bridge pursuant to the Illinois Historic Engineering Record (HIER) and providing signage on or adjacent to the new bridge interpreting the significance of the historic bridge.

Additional Section 106 resources:

- Additional resources can be found on the city's website:
https://www.chicago.gov/city/en/depts/dcd/supp_info/jackson-park-improvements.html
- Regulations issued by the Advisory Council on Historic Preservation (ACHP) spell out the Section 106 review process, specifying actions Federal agencies must take to meet their legal obligations. The regulations are published in the Code of Federal Regulations at 36 CFR Part 800, "Protection of Historic Properties," and can be found on the ACHP's Web site at www.achp.gov.
- A Citizen's Guide to Section 106 Review:
<https://www.achp.gov/sites/default/files/documents/2017-01/CitizenGuide.pdf>
- *Code of Federal Regulations at 36 CFR Part 800, "Protection of Historic Properties"*,
https://www.ecfr.gov/cgi-bin/text-idx?SID=918e1575a465ffa5a6336e11a0f1782f&mc=true&node=pt36.3.800&rgn=div5#se36.3.800_16