



FINDING OF NO SIGNIFICANT IMPACT

11th Street Bridges Project – Special Use Permit

Anacostia Park

National Capital Parks-East, Washington, D.C.

As part of the proposed 11th Street Bridges Project, the Federal Highway Administration (FHWA), in conjunction with the District of Columbia Department of Transportation (DDOT), seek to obtain a Special Use Permit and air rights from the National Park Service (NPS) for construction of bridge abutments on property administered by the NPS. The project area consists of a 0.3 acre parcel contained within NPS Reservation 343D. The project area also includes 1.03 acres of Reservation 343D over which air rights would be transferred. Reservation 343 D includes portions of the Anacostia Park on both sides of the Anacostia River. The subject 0.3 acre and 1.03 acre parcels are located on the east side of the Anacostia River between the existing 11th Street Bridges. The 0.3 acre parcel includes a portion of the area between the existing DDOT right-of way and Anacostia Drive. The 1.03 acre air rights include the majority of the area between the existing DDOT right-of-way and the Anacostia River. The project area is part of a larger parcel that Congress, in the so-called D.C. Lands Act, Pub. L. No. 109-396, Tit. III, 120 Stat. 2711, (2006), has directed the NPS to convey to the District of Columbia (District), once certain conditions are met. In May 2010 FHWA and DDOT released a Draft Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) followed by an EA in June 2010, which the NPS adopted and upon which made this decision and issued this Finding of No Significant Impact (FONSI). As part of this decision process, the NPS has also recommended that the Department of the Interior (DOI) concur in the Department of Transportation Act Section 4(f) finding that there is no feasible and prudent alternative to the use of this land for these bridge abutments and that all possible planning to minimize harm has been conducted.

The 11th Street Bridges Project is a key component in the District's plans to revitalize the Anacostia River waterfront. In March 2000, federal and District agencies signed an agreement forming the Anacostia Waterfront Initiative (AWI) to transform the Anacostia River into a revitalized urban waterfront. The AWI fostered a number of transportation studies. In 2004, DDOT commissioned the Middle Anacostia River Crossings Transportation Study (MAC Study) that evaluated existing and future transportation needs throughout the area. A leading recommendation in the MAC Study was to replace the 11th Street Bridges to provide safe access between the east and west side of the Anacostia River communities and reconfigure the existing bridges and interchanges to separate the freeway traffic from the local traffic while providing full directional access on the Anacostia Freeway.

DDOT decided to move forward with the 11th Street Bridges Project and FHWA commenced compliance with NEPA by issuing a Notice of Intent in September 2005. A Draft EIS (DEIS) was published in July 2006. A Final EIS (EIS) was published in September 2007, and the Record of Decision (ROD) was issued in July 2008.

On December 4, 2008 FHWA decided to conduct a Re-Evaluation of the EIS. A Re-Evaluation is an assessment of any changes which may have occurred in either the project's concept or the affected environment, and a determination of what effects these changes might have on the validity of the environmental documentation. The Re-Evaluation was performed by DDOT because during the design-build process, design changes to the preferred alternative were proposed after the approval of the EIS. The design changes included: changing the location of Ramp E-1 diverging from the mainline and tying into I Street; changing the Ramp D-1 connector to Southeast Boulevard (12th Street) to two way operations;

changing 11th Street and O Street to an at-grade intersection; changing the 11th Street and Anacostia Freeway Interchange to a single point urban interchange (SPUI); and changing the retaining wall along the connector road from 11th Street to Good Hope Road. This Re-Evaluation did not consider the subsequent design changes that called for the need to construct the new bridge abutments on what is still NPS parkland and to transfer air rights over NPS parkland to DDOT.

This portion of NPS parkland (the project area described above) is located within Reservation 343D, an area known as Poplar Point that NPS is to convey to the District. Finalization of the conveyance is contingent upon decisions which will be made upon the successful completion of an EIS and ROD for Poplar Point. These decisions include certification from the Secretary of Interior that the District has adopted a land-use plan for Poplar Point and accommodated the NPS and the U.S. Park Police if this plan requires the relocation of their existing facilities. The NPS and the District are still engaged in this planning effort. As a result, the project area continues to be administered by the NPS as parkland. Realizing that Congress intends for the project area to be conveyed to the District as soon as the conditions in the law are met, and the fact that the 11th Street Bridges project is already underway, it was determined that the best and most expeditious way to move forward was for NPS to grant a special use permit to DDOT for the construction and other work involving the abutments. This EA was conducted so that NPS could assess this action and consider issuing this permit. In light of the impending conveyance of Poplar Point, the NPS might not need to transfer this smaller area to the District in advance. However, in the event of unforeseen circumstances that would delay the conveyance of Poplar Point, NPS may choose to transfer jurisdiction of the 0.3 acres to the District.

In May 2010, the FHWA and DDOT released a Draft EA following its standard process which included a 30 day public review and a public meeting, and Section 4(f) documentation. Compliance with Section 106 of the National Historic Preservation Act (NHPA), for the actions covered by this EA was accomplished through a June 2010 amendment to the 2007 NHPA Section 106 Programmatic Agreement (PA) that had been entered at the time of the FEIS by FHWA, NPS, and the District of Columbia Historic Preservation Office (DC HPO).

After consultation with DDOT and FHWA, review of the EA and the 2007 11th Street Bridge Project EIS and other NEPA documentation, the NPS, in accordance with 43 CFR 46.320, is adopting this EA and making its decision to issue a Special Use Permit for construction of the bridge abutments and transfer certain air rights as described in this FONSI. This EA fulfills the requirements of NEPA, the applicable regulations, and it meets the policies set forth in the NPS's Director's Order 12, *Conservation Planning, Environmental Impact Analysis and Decision-Making*, and accompanying Handbook. The NPS has also concluded that this action is not inconsistent with the future conveyance of this area to the District pursuant to the D.C. Lands Act. Moreover, the NPS has recommended DOI concur in the Section 4(f) determination for this work.

SELECTED ALTERNATIVE

The NPS accepts DDOT's preferred alternative (Alternative 2) as its Selected Alternative. The Selected Alternative will allow the NPS to grant DDOT a Special Use Permit to construct bridge abutments on NPS parkland and transfer jurisdiction of air rights over NPS parkland and conduct any other conveyances and it does not conflict with the future conveyance of this area to the District. The first component is for NPS to issue the Special Use Permit. Three tenths of an acre of land currently outside the DDOT right-of-way is required to construct the abutments for the proposed 11th Street Bridges Project on the east side of the Anacostia River. During the design-build process, the proposed design was revised to minimize impacts to the Section 4(f) resource to the greatest extent possible. In an effort to minimize impacts, the abutments were moved five feet further to the south. This revision reduced the amount of area required for construction down to 0.3 acres and avoided impacts to the existing sidewalk. In the unforeseen event that the conveyance of Poplar Point is delayed for some undefined period of time

after the activities under the Special Use Permit are completed, NPS may choose to transfer jurisdiction of the 0.3 acres to the District.

The second component of the Selected Alternative is to transfer 1.03 acres of air rights over the Anacostia Park at the location of the proposed 11th Street Bridges from the NPS to DDOT. In 1976 air-rights over the footprint of the 11th Street Bridges that span Anacostia Park were transferred to DDOT for highway purposes. The airspace over the Anacostia Park and between the existing bridges was not included in the 1976 transfer of jurisdiction. Therefore, because the new bridges are to be constructed between the existing bridges, additional air rights over the Anacostia Park must be transferred to DDOT. For this transfer to occur, it must be recommended by the National Capital Planning Commission (NCPC).

It should be noted that in the Draft EA issued by FHWA and DDOT on May 21, 2010, the preferred alternative described a scenario that included the possibility of utilizing the unused existing structural piers of the bridge to construct public use areas such as overlooks and fishing piers. No analysis of this proposal was carried forward in the Draft EA. FHWA and DDOT recognized that the inclusion of this proposal was in error and this was corrected by removing it from the EA which was issued on June 28, 2010 and the FONSI. This proposal is outside of the scope of this NPS decision.

OTHER ALTERNATIVES CONSIDERED

In addition to the NPS Selected Alternative, the EA also analyzed a no action alternative. Under the no action alternative, no Special Use Permit would be issued to DDOT for the construction of bridge abutments on NPS property, which would negate the need to transfer air rights.

As the 11th Street Bridges Project is currently under construction, additional action alternatives were limited to those considering the placement of the abutments elsewhere in this area of Anacostia Park. Pursuant to Section 4(f), FHWA's evaluation concludes there is no feasible and prudent alternative, and NPS is recommending that DOI concur. During the design-build process, the proposed design was revised to minimize impacts to the Section 4(f) resource to the greatest extent possible. As a result, the abutments were moved five feet further to the south. This revision reduced the amount of area required for construction down to 0.3 acres and avoided impacts to the existing sidewalk. Due to the engineering constraints no other alternatives were considered. Moreover, this analysis was conducted in the context that by law, this area is intended to be conveyed to the District once certain conditions are met.

ENVIRONMENTALLY PREFERABLE ALTERNATIVE

While not identified in the DDOT/FHWA EA, the NPS is required to identify the Environmentally Preferable Alternative in their NEPA documents. The NPS, in accordance with DOI and NPS policies and guidance and CEQ's *NEPA's Forty Most Asked Questions*, defines it as the one that "causes the least damage to biological and physical environment." It is the alternative "which best protects, preserves, and enhances historic, cultural and natural resources" (Q6a). After a thorough review of the EA, the NPS identified the Alternative A, the No Action Alternative, to be the Environmentally Preferable Alternative. Alternative A is environmentally preferable because there would be no new impacts, and therefore would best protect park resources and values however it does not meet the overall purpose and need of the project and would not allow for the completion of the 11th Street Bridges Project, a project that is already in progress. It should be noted that the area is currently administered by the NPS; however, once the requirements of the D.C. Lands Act are met, this area will be conveyed to the District as part of a larger conveyance.

MITIGATION MEASURES

Mitigation for the Selected Alternative is contained in the PA, as further agreed to by DDOT and FHWA, and as a condition of NPS issuing a Special Use Permit. Moreover, the NCPC will be considering the transfer of jurisdiction of the air rights and may recommend additional mitigation as part of that process.

DDOT and the FHWA have made environmental commitments in support of all actions associated with the 2007 11th Street Bridge Project EIS. These are contained in the ROD and their FONSI on this EA and include measures to avoid potential impacts, measures to reduce impacts, measures to mitigate impacts, and measures to enhance aspects of the project in order to produce an overall positive impact. These mitigations are detailed in the FEIS and ROD, as well as the 2009 Re-evaluation. Along with mitigation associated with the overall 11th Street Bridges Project, mitigation measures specific to the Selected Alternative include:

Historic and Archeological Preservation

- FHWA, DDOT, the DC HPO, and the NPS entered into an amendment to the PA governing the subsequent investigation and recovery of cultural resources.
- DDOT and NPS will ensure compliance with the PA.
- Construction operations will be immediately suspended near any suspected historic, archaeological, or paleontological item, feature, prehistoric dwelling site, or artifact of historic or archaeological significance and will not resume until the DC HPO has agreed to the resumption.
- DDOT will immediately stop all project-related ground disturbances within 300 feet of the discovery of human remains and notify FHWA, DC HPO, and the DC police or medical examiner. Written permission from FHWA will be required for construction to resume.
- Specific mitigation will be determined for temporary staging areas in and near the construction as appropriate in future design phases.

Water Quality

- There will be compliance with the DC Water Quality Standards for Surface Water (21 DCMR Ch.11), DC Water Management Plan per the Water Pollution Control Act of 1984 (DC Law 5-188), and Section 402 of the Clean Water Act (NPDES).
- Construction contractors will be required to develop and implement spill prevention, control, and countermeasure plans; erosion and sedimentation control plans; and plans for handling and disposal of contaminated soil, groundwater, and river sediment, both known and unanticipated.
- Stormwater will be collected from roadway and bridge surfaces and discharged to the stormwater system or low-impact development (LID) facilities, not directly into the Anacostia River.
- Sediment and erosion control methods will be implemented along the perimeter of the construction site.

ADDITIONAL NPS-REQUIRED MITIGATION MEASURES

Prior to NPS issuance of the Special Use Permit, mitigations will be developed by DDOT and incorporated into a work plan for the construction of the abutments to be approved by NPS. Required mitigation elements in the work plan include:

- Guaranteeing the safety of park visitors and staff from harm associated with the construction of the 11th Street Bridges, emphasizing the fact that no work will occur in the airspace above Anacostia Park during public use hours;
- Detailing how DDOT will minimize, to the extent possible, impacts to public use and park aesthetics from construction staging areas; and
- Limiting access to the construction area via Anacostia Drive to the greatest extent possible.

The NPS will include other conditions in the Special Use Permit as needed and the NPS will implement an appropriate level of monitoring throughout the construction process to help ensure that protective measures are being properly carried out and are achieving their intended results.

WHY THE PREFERRED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT

The NPS has determined through consultation with DDOT and FHWA, the NHPA Section 106 process and review of the EA, that the Selected Alternative can be implemented without significant adverse effects. As defined in 40 CFR §1508.27, significance is determined by examining the following criteria:

Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts that require analysis in an EIS: As described in the EA, cultural resource topics will experience adverse impacts as part of the implementation of the Selected Alternative; however, no significant adverse impacts were identified. Cultural resources were addressed in the EA, and there is a PA in place. All other resource topics were dismissed because the project will result in minor or less impacts to those resources.

The FHWA consulted with the DC HPO and analyzed the potential impacts on Anacostia Park. Investigation for archaeological resources at the 0.3 acre site found that the site had been previously disturbed and not likely to contain any resources. The FHWA determined, however, that the Selected Alternative will result in an adverse effect and this led to the June 24, 2010 amendment of the PA which, for this project, officially completes the NHPA Section 106 process.

Degree of effect on public health and safety: Implementation of the Selected Alternative will not adversely affect public health and safety. During the construction phase, park visitor safety will not likely be impacted. It is a small area, and any area where construction-related activities take place will be closed to the public and a safe detour around the place where these are occurring will be provided.

Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas: No wetlands, prime farmlands, wild and scenic rivers, ecologically critical areas, sites sacred to American Indians, or other significant ethnographic resources occur within or adjacent to the Project Area, and none will be impacted by the actions associated with this alternative. Anacostia Park, however, was established in 1919 and is eligible for listing on the National Register of Historic Places for aspects including its construction, its association with local and national events, such as the Bonus March and for its sea walls, which line either side of the river.

Degree to which effects on the quality of the human environment are likely to be highly controversial: There were no highly controversial effects identified during either preparation of the EA or the public review period. This is the construction of bridge abutments and this work will be conducted following standard, established procedures.

Degree to which the possible effects on the quality of the human environment are highly uncertain, or involve unique or unknown risks: There were no highly uncertain or unique or unknown risks identified during preparation of the EA or the public review period. This project is similar to other bridge construction projects along the Anacostia River and elsewhere.

Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration: It is unlikely that there will be another circumstance quite like this—that after a major transportation project is underway it is discovered that land that the District thought it had already acquired pursuant to federal law but had not yet obtained would be needed immediately to complete that project.

Whether the action is related to other actions with individually but cumulatively significant impacts: Implementing the Selected Alternative will have no significant, cumulative impacts recognizing that it is part of the 11th Street Bridges project that was analyzed in a 2007 EIS and other NEPA documentation and subject to Section 4(f). The EA addressed cumulative impacts for those cultural the resources affected

by the Selected Alternative. Under NHPA Section 106, it has been determined that there will be an adverse effect but because of the small project area, impacts to cultural resources are not likely to be affected by cumulative development outside the Project Area. On the other hand, the anticipated conveyance of Poplar Point to the District will likely have long-term moderate adverse impacts to cultural resources and compliance with NHPA Section 106 will be accomplished at that time. In any event, the project area for the Selected Alternative would be conveyed to the District at that time.

Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources: There will be adverse effects as a result of the Selected Alternative and they are addressed in the PA as amended on June 24, 2010.

Degree to which the action may adversely affect an endangered or threatened species or its critical habitat: No impacts to any state- or federally-listed species are anticipated. The proposed activities would be located entirely within previously disturbed or maintained landscapes, and would require no new work within the Anacostia River. DDOT and FHWA completed the Section 7 consultation for the Endangered Species Act with the National Marine Fisheries (NMFS). A biological assessment was prepared which concluded that the 11th Street Bridges Project is “Not Likely to Adversely Affect” the only listed species, the shortnose sturgeon, in this area. NMFS provided a concurrence letter in August 2006, and was consulted again in June 2009 concerning changes in design of the project, and it concurred that the “Not Likely to Adversely Affect” determination was still valid and no further consultation was necessary.

Whether the action threatens a violation of federal, state, or local environmental protection law:

No federal, state, or local environmental protection laws will be violated.

IMPAIRMENT OF PARK RESOURCES OR VALUES

The NPS has determined that the implementation of the Selected Alternative will not constitute an impairment to the resources or values of Anacostia Park, a unit of the National Park System initially established for recreation and other purposes. This is based on a thorough analysis of the environmental impacts described in the EA, relevant scientific studies, and the professional judgment of the NPS as guided by laws, regulations and guidance including *Management Policies 2006*, in particular Sections 9.2.1.2.2 and 9.2 for decisions on transportation systems and construction and expansion proposals. Section 9.2.1.2.2 requires a Section 4(f) determination; then, that an action not be contrary to public interest or inconsistent with the park’s purposes, that it will not cause health and safety risks, and that it conform to NPS standards. As described in this FONSI, the Selected Alternative essentially satisfies the *Management Policies 2006* requirements, particularly since it will not interfere with the general use of the Park for recreation and other park purposes, moreover, pursuant to the D.C. Lands Act this area is expected to be conveyed to the District once the conditions of that law are met.

As described in the EA, implementation of the selected alternative will not result in major, adverse impacts to a resource or value whose conservation is (1) necessary to fulfill specific purposes identified in the establishing legislation or proclamation of National Capital Parks-East; (2) key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or (3) identified as a goal in the park’s general management plan or other relevant NPS planning documents.

While the Selected Alternative will result in adverse impacts to some of the park’s cultural resources, these impacts are not key to the overall cultural resources of Anacostia Park and will be mitigated through requirements in the work plan, the Special Use Permit and the PA. The impacts that will occur with the implementation of the Selected Alternative will not hamper opportunities to enjoy the vast majority of the area that comprises Anacostia Park and engage in recreational activities.

PUBLIC INVOLVEMENT

The Draft EA was made available for public review and comment on May 27, 2010. On May 21, 2010, a public meeting for June 16, 2010 was announced via e-mails sent to Advisory Neighborhood Commissions, civic organizations, City Council Members, the Mayor's Office and other interested parties, as published in the May 27 – June 2, 2010 edition of the *Washington Informer* and as posted on the DDOT Website.

The Draft EA was posted on the DDOT Website and copies of the EA were available for public review at the following locations in Washington DC: Anacostia Branch Library, 1800 Good Hope Road, SE; 11th Street Bridge Project Office, 1301 M St. SE; DDOT /IPMA offices, 64 New York Avenue, N.E.; and FHWA Offices, 1990 K Street NW, Suite 510.

On June 16, 2010, from 6 to 8 pm, DDOT and FHWA conducted a public meeting to provide information and solicit comments on the Draft EA at the Anacostia Gateway Government Center.

Four representatives from the community attended the meeting and provided four separate comments in support of the overall 11th Street Bridge Project. These comments did not result in any changes to the overall impact analysis or the Selected Alternative that was presented in the EA.

These public involvement activities were in addition to those conducted for the overall 11th Street Bridge Project in connection with the development of the EIS and other NEPA documentation, the Section 4(f) process, and the NHPA Section 106 process.

CONCLUSION

The NPS has selected Alternative 2 for implementation. In light of the impacts described in the EA, the 2007 11th Street Bridge Project EIS and related documentation, the NHPA Section 106 process, consultation with FHWA and DDOT and others, in compliance with NPS and DOI laws, regulations and guidance, professional judgment including recommending that DOI concur on the Section 4(f) determination of FHWA, and in consideration of agency and public comments, we conclude that the impacts that will result from the Selected Alternative will not impair park resources and values and this is a FONSI. Moreover, the Selected Alternative does not constitute an action that normally requires preparation of an EIS. Based on this FONSI, an EIS is not required and will not be prepared.

Recommended:



Alex Romero
Superintendent
National Capital Parks-East

7/21/10
Date

Approved:



Deputy Margaret O'Dell
Regional Director
National Capital Region

7/22/10
Date