

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PROTECT OUR PARKS, INC.,	)	
<i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:21-cv-02006
	)	
PETE BUTTIGIEG, <i>et al.</i> ,	)	Judge John Robert Blakey
	)	
Defendants.	)	
_____	)	

**FEDERAL DEFENDANTS' MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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List of Acronyms

ACHP	Advisory Council on Historic Preservation
AOE	Assessment of Effects to Historic Properties
APA	Administrative Procedure Act
CDOT	Chicago Department of Transportation
CPBSHD	Chicago Park Boulevard System Historic District
CWA	Clean Water Act
EA	Environmental Assessment
FHWA	Federal Highways Administration
FONSI	Finding of No Significant Impact
GLFER	Great Lakes Fishery and Ecosystem Restoration
HPI	Historic Properties Index
MFR	Memorandum for Record
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NPS	National Park Service
OPC	Obama Presidential Center
RHA	Rivers and Harbors Act of 1899
RP 3	U.S. Army Corps of Engineers Regional Permit 3
TCLF	The Cultural Landscape Foundation
UPARR	Urban Park and Recreation Recovery Act
USACE	U.S. Army Corps of Engineers

Introduction

The City of Chicago (City) approved the construction of the Obama Presidential Center (OPC) in Jackson Park, on the City's south side. Plaintiffs Protect Our Parks *et al.* unsuccessfully challenged that decision in this Court.¹ Continuing their efforts to stop construction of the OPC in Jackson Park, Plaintiffs now bring claims under federal law against the National Park Service (NPS), the Federal Highway Administration (FHWA) and the Army Corps of Engineers (USACE), none of which have the authority to compel the City to change its decision.

That is not to say that the City's decision to place the OPC in Jackson Park did not implicate statutes those agencies are charged with administering. It certainly did. But what Plaintiffs fail to grasp is that those statutes assign the federal agencies discrete and limited roles. Time and time again, under various legal guises, Plaintiffs attempt to fault the Federal Defendants for not analyzing in-depth an alternative that would locate the OPC outside of Jackson Park. But none of the federal statutes Plaintiffs rely on gives the federal agencies authority to override the City's decision.

Plaintiffs' few arguments that address the federal agencies' analysis are no more meritorious because the agencies took a hard look at the environmental consequences of their actions and their conclusions are both well supported by the record and entitled to deference. Because Plaintiffs have failed to clearly show a likelihood of success on the merits, this Court should deny their Preliminary Injunction Motion (ECF 30).

¹ In both the prior litigation and in this litigation, Protect Our Parks is one of several plaintiffs.

Factual Background

I. CHICAGO APPROVED JACKSON PARK AS THE SITE OF THE OPC.

This Court is already familiar with the process by which the City decided to authorize construction of the OPC in Jackson Park and close portions of three roads within the Park. For purposes of review of the federal actions now at issue, the most important point about the City's authorization is one this Court has already recognized: the City controls the location and characteristics of the OPC. *See Protect Our Parks, Inc. v. Chi. Park Dist.*, 385 F. Supp. 3d 662, 672 (N.D. Ill. 2019), *aff'd in part, vacated in part*, *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722 (7th Cir. 2020).

II. CHICAGO'S DECISION TO APPROVE THE SITING OF THE OPC IN JACKSON PARK RESULTED IN THE NEED FOR CERTAIN FEDERAL ACTIONS AND RELATED REVIEWS.

Although no federal agency had any authority over the City's decision to authorize the Barack Obama Foundation (Foundation) to construct the OPC in Jackson Park, the City's decision did lead the City to request several federal actions that are the subject of this litigation.

A. Chicago's Decision to Approve the Siting of the OPC in Jackson Park Resulted in a Need for Action by the NPS under the UPARR Act.

In the 1980s, the City accepted two federal grants under the Urban Park and Recreation Recovery Act (UPARR) to improve recreational opportunities in Jackson Park. *See* Ex. 10,² City of Chicago Analysis of UPARR Proposal (City UPARR Analysis), at 2. Those grants

² Exhibit numbers refer to Federal Defendants Index of Administrative Record Documents.

require the City to maintain Jackson Park³ for recreational uses, unless the NPS approves a “conversion.” *See* 36 C.F.R. § 72.72(a).

After review of a proposal from the City, the NPS determined that construction of the OPC would require a conversion of 4.6 acres to non-recreation uses acres within the Section 1010 boundary for the OPC buildings and 5.2 acres of land for the proposed transportation improvements. Ex. 17, August 2020 Environmental Assessment (EA), at 11.⁴ The City proposed to offset those recreation losses by including within the Section 1010 boundary the east end of the Midway Plaisance, with new recreation opportunities, as well as acreage from closed roadways, for a net *gain* of approximately 6.5 acres. Ex. 10, City UPARR Analysis at 31.

The UPARR Act directs that the Secretary “*shall* approve such a conversion” if the proposal is (1) in accord with the then-current local park program and (2) contains terms the Secretary determines will “ensure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness.” 54 U.S.C. § 200507 (emphasis added). Those statutory conditions are implemented through criteria in 36 C.F.R. § 72.72(b).

The City submitted a report analyzing its proposed partial conversion to the NPS, which, *inter alia*, discussed in detail how it satisfied the applicable 36 C.F.R. § 72.72(b) criteria. *See* Ex. 10, City UPARR Analysis at 33-42. The NPS evaluated the environmental impacts of the proposed conversion, including impacts on recreation, in an Environmental Assessment (EA)

³ The area protected by the UPARR Act is known as the Section 1010 boundary, which for Jackson Park is effectively the entire park save for the Museum of Science and Industry, La Rabida Hospital, and certain roads. *See* Ex. 10, City UPARR Analysis at 3 (Figure 1).

⁴ In this memorandum, EA refers to the EA prepared by the NPS and FHWA with participation from the USACE. *See* Ex. 17, EA. The USACE also prepared a separate EA (“Section 408 EA”) in support of its decision on the Park District’s application for Section 408 permission under the Rivers and Harbors Act. *See* Ex. 25, Section 408 EA.

prepared jointly with the FHWA and with the USACE as a cooperating agency, and an accompanying Recreation Technical Memorandum. Ex. 17, EA at 34-40; *id.* at Appendix G. The federal agencies selected Alternative C, which “allow[ed] for the evaluation and approval of the partial UPARR conversion at the OPC site and along roadways in Jackson Park.” Ex. 24, Finding of No Significant Impact (FONSI) at 9. The NPS then evaluated the information before it and concluded that the City’s proposed partial conversions met the UPARR Act requirements. *See* Ex. 28, NPS Review of UPARR Compliance.

B. Chicago’s Request for Federal Funds for Transportation Improvements Resulted in a Need for Action by the FHWA under Section 4(f).

The City’s decision to close portions of three roadways within the Park in conjunction with the OPC, led the Chicago Department of Transportation (CDOT) to propose use of Federal-Aid Highway funding for roadway construction and bicycle and pedestrian improvements within Jackson Park. *See* Ex. 17, EA at 12. CDOT’s proposal in turn required the FHWA to ensure that that the transportation project met all federal requirements, including Section 4(f) of the United States Department of Transportation Act of 1966. The proposal implicated Section 4(f) because the proposed transportation improvements would use small portions of four properties protected by Section 4(f): Jackson Park, Midway Plaisance, Jackson Park Historic Landscape District and Midway Plaisance, and the Chicago Park Boulevard System Historic District.

Like the NPS’s statutory authority, the FHWA’s authority creates a prescribed federal role. Section 4(f) required the FHWA to determine whether there is a feasible and prudent alternative to use of Section 4(f) properties and, if not, whether the project includes all possible planning to minimize the harm to Section 4(f) properties. *See* 23 U.S.C. § 138; 49 U.S.C. § 303. The FHWA’s Section 4(f) Evaluation found no feasible and prudent alternative to the use of Section 4(f) properties because the City’s decision to close the roads in the Park created

unacceptable safety and operational outcomes which could not be alleviated through congestion management strategies that would avoid the use of Park lands. Ex. 21, 4(f) Eval. at 45, 49.

The agency then considered how the use of Section 4(f) properties could be minimized by evaluating nine alternatives that incrementally added elements to improve transportation operations. *Id.* at 50. The FHWA found that only one of those alternatives, Alternative 9, avoided failing levels of service at all 26 intersections within the Park. *See id.* at 57. To ensure that the impact of that alternative would be minimized, the FHWA used further design studies to generate sub-alternatives representing different means of implementing Alternative 9. Two of those sub-alternatives, 9A and 9B, were then subject to a least harms analysis. *Id.* at 59.

The agency found that Alternative 9B, which called for a combination of improvements along Lake Shore Drive, Hayes Drive and Stony Island Avenue, caused the least overall harm to Section 4(f) properties. *Id.* at 72-74; Ex. 17, EA at 27. Under Alternative 9B, approximately 5.2 acres of Section 4(f) land within Jackson Park will be used for transportation purposes.

C. Chicago's Decisions Resulted in a Need for Action by the USACE.

The City's decision to construct the OPC in Jackson Park implicated two statutes administered by the USACE: the Rivers and Harbors Appropriation Act of 1899 (RHA), 33 U.S.C. § 401 *et seq.* and the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.* The Chicago Park District applied for a permit under Section 14 of the RHA, 33 U.S.C. § 408 (Section 408) because the construction of the OPC will result in small temporary and permanent impacts to the USACE's Great Lakes Fishery and Ecosystem Restoration (GLFER) project, which is intended to create or enhance approximately 150 acres of native habitat within Jackson Park and along the Lake Michigan shoreline. Ex. 17, EA at 64. Roadway improvements and a water lift station would cause a total of 1.70 acres of temporary impacts and 1.32 acres of permanent impacts to

the GLFER project. Ex. 25, Section 408 EA, App. A at 2. Those areas will be restored or replaced with new plantings roughly 300 yards to the west, with the GLFER gaining a net of 1.11 acres. *Id.*; *see also* App. B (map of existing GLFER) and App. C (map of new plantings).

After reviewing the Park District's proposal and preparing an Environmental Assessment, the USACE determined that the Park District's proposal qualified for a Section 408 permit because it would "not adversely impact the usefulness of the USACE project. To the contrary, the design of the proposed alteration will improve usefulness of the GLFER project by increasing the restored natural areas acreage. . . ." Ex. 26, USACE Findings at 3; *see also* Ex. 24, Section 408 EA at 3.d; Ex. 17, EA at 66 & Appendix J (GLFER Technical Memorandum). Consequently, the USACE determined that the proposed action met the requirements for a Section 408 permit and the EA supported a Finding of No Significant Impact. Ex. 26, USACE Findings at 6.

The City's proposed transportation improvements implicated Section 404 of the CWA because the need to provide construction access at two existing bridges will require temporarily dewatering a total of 0.24 acre of waters of the United States and expansion of the 59th Street Inlet Bridge will require .04 acre of new fill in waters of the United States. Ex. 23, Jan. 19, 2021 Letter to CDOT; Ex. 17, EA App. F at 9-10. The USACE determined that the proposed activity qualified for Regional Permit 3 (RP 3), which applies to transportation projects that do not impact more than one acre of waters of the United States. Ex. 22, USACE Memorandum for Record (MFR); *see also* Ex. 3, USACE RP3 at 1 and Ex. 4, USACE RPP Master Document at 32. Accordingly, the USACE verified the City's use of the RP 3. Ex. 22, USACE MFR at 13.

D. The Federal Agencies' Proposed Actions Required NEPA Review.

Because the City's decision to place the OPC in Jackson Park and close roadways spawned federal actions, the federal agencies prepared Environmental Assessments pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et. seq.*, to evaluate the environmental impacts of the proposed federal actions.⁵ Ex. 17, EA at 1; *see also id.* at 9 (describing the purpose and need for the EA). The EA examined in detail three alternatives: Alternative A, the no-action alternative, where NPS does not approve the UPARR conversion, the OPC is not built and no roads are closed; Alternative B, where NPS approves the UPARR conversion, the OPC is built, roads are closed but the FHWA does not approve funding for the transportation improvements; and Alternative C, where the NPS approves the UPARR conversion and the FHWA approves funding of the transportation improvements identified in Alternative 9B of the FHWA's Section 4(f) Evaluation. Ex. 17, EA at 15-16.

The agencies selected Alternative C because it best met the purposes and needs of both NPS and FHWA. Ex. 24, FONSI at 9. For the NPS, Alternative C provided the opportunity to review and approve the City's proposed UPARR conversions. *See id.* The FHWA concluded that Alternative C "best balanced impacts to the environment with providing acceptable performance of the transportation system" because the Alternative minimized the use of Section 4(f) lands. *Id.* The NPS and FHWA finally concluded that the analysis in the EA demonstrated that the selected action would not have a significant impact on the environment. *See id.*

⁵ In addition to participating in the EA prepared by the NPS and the FHWA, as noted above, the USACE also prepared NEPA documentation to support its decisions on the requested permits. *See supra* Section II.C. and Ex. 24, Section 408 EA and Ex. 4, USACE RPP Master Document at 32.

E. The Federal Agencies' Proposed Actions Required NHPA Review.

Section 106 of the NHPA requires federal agencies to “take into account the effect of the[ir] undertaking[s] on any historic property.” 54 U.S.C. § 306018. Pursuant to Section 106, the FHWA served as the lead agency in preparing an Assessment of Effects to Historic Properties (AOE) from the “undertaking,” in this case the construction of the OPC and the related federal actions by the NPS, FHWA and USACE. Ex. 11, AOE at 1. The AOE evaluated whether those actions would have an adverse effect on the two historic districts located, in part, within the Park: the Jackson Park Historic Landscape District and Midway Plaisance and the Chicago Park Boulevard System Historic District. The agencies determined the actions would have an adverse effect. *Id.* at 81.

Because the undertaking will have an adverse effect on historic properties, the FHWA followed the consultation process required under Section 106 by notifying the Illinois State Historic Preservation Officer (SHPO) and numerous other entities (collectively, “consulting parties”). Four meetings followed in which the consulting parties discussed how the proposal would be implemented in light of its impact on historic properties. On December 17, 2020, the FHWA, the Illinois SHPO, the Advisory Council on Historic Preservation (ACHP) and a number of consulting parties (including USACE) entered into a Memorandum of Agreement (MOA), which contained a series of stipulations that served to “take into account the effect of the undertaking on historic properties.”⁶ Ex. 20, Section 106 MOA at 3. The MOA “evidences the agency official's compliance with section 106.” 36 C.F.R. § 800.6.

⁶ The consulting parties signing the MOA include the Chicago Historical Society, the Chicago Urban League, the Jackson Park Advisory Council, Landmarks Illinois, the South Shore Historical Society and the Washington Park Advisory Council.

III. PLAINTIFFS' PRIOR LITIGATION

Shortly after the City decided to construct the OPC in Jackson Park, Plaintiffs sued the City and the Chicago Park District, seeking to prevent construction of the OPC within Jackson Park. In a comprehensive decision, this Court rejected Plaintiffs' claims. *Protect Our Parks*, 385 F. Supp. 3d 662. On appeal, the Seventh Circuit also refused to overturn the City's decision. *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 738 (7th Cir. 2020).

Having failed to force the relocation of the OPC through its earlier lawsuit, Plaintiffs now bring suit against federal agencies, even though the federal agencies lack any authority to dictate the location of the OPC.

Standard of Review

I. STANDARD FOR PRELIMINARY INJUNCTIVE RELIEF.

Plaintiffs' description of the standard of review ignores a fundamental legal principle: a preliminary injunction is an “*extraordinary remedy* that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008) (emphasis added). To obtain a preliminary injunction, a plaintiff must make a clear showing (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm without the injunction, (3) that the harm it would suffer is greater than the harm a preliminary injunction would inflict on defendants, and (4) that the injunction is in the public interest. *Judge v. Quinn*, 612 F.3d 537, 546 (7th Cir. 2010) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)).

In the Seventh Circuit, a showing of a likelihood of success on the merits is a threshold requirement for obtaining a preliminary injunction. *See, e.g., Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 549 F.3d 1079, 1086 (7th Cir. 2008). Below Federal Defendants demonstrate that Plaintiffs have failed to show a likelihood of success on the merits. *Id.*; *Abbott*

Lab'ys v. Mead Johnson & Co., 971 F.2d 6, 11 (7th Cir. 1992). Federal Defendants will leave the harm factors to be addressed by the other defendants, but will briefly touch on the public interest because that factor has unique importance to the federal government.

II. JUDICIAL REVIEW UNDER THE ADMINISTRATIVE PROCEDURE ACT.

The Administrative Procedure Act, 5 U.S.C. §§ 701–706 (APA), directs the Court to uphold an agency's decision unless it is deemed to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Although the inquiry must be thorough, the standard of review is narrow and highly deferential. An agency's decisions are entitled to a “presumption of regularity,” and the Court cannot substitute its judgment for that of the agency decision maker. *U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001). Instead, the Court's role is only to determine “whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378 (1989) (quoting *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)). Further, because each of the federal statutes at issue here requires an exercise of judgment involving substantial technical expertise, the agencies' decisions are entitled to deference. *See, e.g., Marsh*, 490 U.S. at 377 (1989).

Argument

I. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR NEPA CLAIMS.

NEPA is a procedural statute that ensures federal agencies disclose and consider the environmental impacts of their proposed actions. 40 C.F.R. § 1500.1(a). “NEPA itself does not mandate particular results, but simply prescribes the necessary process.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Importantly here, that process is required for major federal actions that “are potentially subject to Federal control and responsibility.” 40

C.F.R. § 1508.18. The siting of the OPC in Jackson Park is not such an action. Rather, it is solely a matter of state and local decision-making. *See Protect Our Parks, Inc.*, 385 F. Supp. 3d at 671-73.

That is not to say that NEPA is inapplicable or that the agencies did not consider the environmental impacts of the OPC. The federal actions at issue—the NPS’s approval of the conversion of a small amount of parkland in Jackson Park to non-recreational uses, the FHWA’s authorization of federal funds for transportation improvements within the Park, and the USACE’s approval of permits—all implicated NEPA. And the agencies fully considered the impacts of the OPC in their NEPA analysis.

But the scope of the agencies’ NEPA analysis is constrained by the fact that the agencies lack authority to preclude the OPC from being constructed in Jackson Park. *See DOT v. Pub. Citizen*, 541 U.S. 752, 770 (2004); *Int’l Bhd of Teamsters v. U.S. DOT*, 724 F.3d 206, 217 (D.C. Cir. 2013). Plaintiffs suggest the “key question” in this case is whether the agencies were obligated to consider an alternative that sited the OPC outside of Jackson Park. *Cf.* Plaintiffs’ Brief in Support of Their Preliminary Injunction Motion (ECF 31) at 12. The answer to that question can only be “no” because the agencies lack authority to require the OPC to be built outside of Jackson Park. Put simply, NEPA’s purposes (and those of every other statute at issue here) would not be served by evaluating an alternative that the federal agencies have no authority to implement. *See Pub. Citizen*, 541 U.S. at 767-68.

Not only is Plaintiffs’ “key” assertion incompatible with NEPA, but Plaintiffs have failed to show a likelihood of success of the merits of their NEPA claims because the agencies fully disclosed the direct, indirect, and cumulative impacts of their proposed actions, including those of the OPC, and took a hard look at those impacts before concluding that the environmental

impacts were not significant. That conclusion is both entitled to deference and well supported by the record.

A. The Agencies Properly Determined That An EIS Was Not Required.

Under NEPA when “an agency considers the proper factors and makes a factual determination on whether the environmental impacts are significant or not, that decision implicates substantial agency expertise and is entitled to deference.” *Sauk Prairie Conservation All. v. United States Dep’t of the Interior*, 944 F.3d 664, 678 (7th Cir. 2019) (quoting *Highway J Citizens Grp. v. Mineta*, 349 F.3d 938, 953 (7th Cir. 2003)). The Court’s “only role is to ensure that the agency has taken a hard look at environmental consequences,” *Env’t Law & Policy Ctr. v. U.S. NRC*, 470 F.3d 676, 682 (7th Cir. 2006), not to “flyspeak an agency’s environmental analysis, looking for any deficiency no matter how minor.” *WildEarth Guardians v. Jewell*, 738 F.3d 298, 308 (D.C. Cir. 2013).

Plaintiffs argue that the agencies should have prepared an EIS to analyze their limited actions because (1) the impact on trees is a significant environmental impact and (2) four of the “regulatory significance factors [under 40 C.F.R. § 1508.27] are present here.” ECF 31 at 20-21. These arguments lack merit. First, the agencies thoroughly analyzed the impacts of their actions on trees and the record supports their determination that impacts would not be significant. Second, the mere presence of a significance factor does not require an agency to find that the proposed action is significant. Here the agencies properly considered the factors and determined that the impacts would not be significant.

1. The federal agencies properly analyzed and disclosed the impacts to trees from their proposed actions and determined the impacts were not significant.

Plaintiffs rely on the declaration of Dr. W.J.T. Mitchell, a Plaintiff and University of Chicago professor, to argue an EIS was required because the agencies wrongly concluded that the impact on trees will not be significant. ECF 31 at 20-21, 30. As an initial matter, Plaintiffs' reliance on Dr. Mitchell's declaration is wholly improper because it is post-decisional and was not available to the agencies during the administrative process. *See, e.g., Newton Cnty. Wildlife Ass'n v. Rogers*, 141 F.3d 803, 808 (8th Cir. 1998); *N.M. Env't Improvement Div. v. Thomas*, 789 F.2d 825, 835-36 (10th Cir. 1986). In any event, the declaration fails to cast doubt on the agencies' compliance with NEPA's procedural requirements because the NPS and FHWA have discretion to rely on their own technical expertise, even when conflicting views are legitimately part of the record. *Mineta*, 349 F.3d at 956 (citing *Marsh v. Or. Nat'l Res. Council*, 490 U.S. 360, 378 (1989)). Further, the agencies fully disclosed and considered the impact of the removal of trees, applied their expertise to make a reasoned decision and the record supports their conclusion that the impact was not significant.

a. The agencies fully disclosed impacts to trees.

The EA includes as Appendix D a Tree Technical Memorandum (Tree Technical Memo) devoted solely to addressing anticipated tree impacts from the project. *See* Ex. 17, EA, App. D. The analysis started with tree surveys which showed that the proposed changes, including construction of the OPC, have the potential to impact an area which contains 4,672 trees. *Id.* at 2-3. Over time, Jackson Park "has seen extensive changes in its [tree] canopy," in part because of plagues like Dutch Elm Disease and the Emerald Ash Borer, but also because it has always been a managed, landscaped area. *See id.* at 4. The result is a present savanna and open

woodland community that includes a mix of native and non-native species. *Id.* The community also includes a mix of health; approximately 40 percent of the trees within the OPC site are in declining condition. Ex 24, FONSI at B-14.

The Tree Technical Memo also explains in detail how the tree community will be impacted. The agencies selected Alternative C, which provides for both FHWA's funding of transportation improvements and NPS's UPARR conversion, and would result in the removal of 789 trees. Ex 17, EA, App. D at 20. The Tree Technical Memo details the trees to be removed in terms of the number, species distribution, size and condition for the OPC site (326 trees, 57 of which are invasive species), the track and field relocation (39 trees, only 2 of which are invasive), and the transportation improvements (417 trees, of which 39 are invasive and 14 dead). *Id.* at App. D, 6-15; *see also* Ex. 24, FONSI at B-14.

The agencies then evaluated how changes in the tree landscape would affect species of special concern, migratory birds and other wildlife. Ex. 17, EA at 28-31. Impacts to migratory birds will not be significant because the changes will not affect the areas of the Park most used by migratory birds, and while some habitat will be temporarily impacted by tree clearing, "ample habitat" will remain. *Id.* at EA, 30; *id.* at App. C, 9. Similarly, sufficient habitat will remain for resident wildlife and species of special concern. *Id.* at EA, 29-30. Migratory and resident birds, including species of special concern will also benefit from a prohibition on removing trees during breeding season.⁷ *Id.* at 29.

⁷ Despite the agencies analysis of effects on migratory birds, Plaintiffs claim the agencies turned a "blind eye" to the project's impact on migratory birds, and go on to make the same claim about air quality, and noise. ECF 31 at 21. Plaintiffs' claims regarding air quality and noise are just as unfounded as their claims regarding migratory birds. *See* Ex. 17, EA at 30 and App. E (air quality standards met under all alternatives); Ex. 24, FONSI at B-20-21 (explaining that Noise Analysis Report shows noise differences between the alternatives will be "barely perceptible"). Further, while Plaintiffs rely on Dr. Mitchell's improper Declaration to support their claim that the impact to migratory birds and air quality

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Finally, in addition to looking at the biological impacts from the removal of trees, the agencies also considered the impacts to the designed topography and views within Jackson Park. *Id.* at 51. Although impacts will alter the “feeling and aesthetic of Jackson Park,” and affect notable landscape features, including Olmsted’s design, impacts will be small in scale and “consistent with land use patterns and [the Park’s] development history.” *Id.* at 52; *see also* AOE at 54 (explaining impacts to Olmsted-designed historic vegetation patterns and how new plantings will be designed to fulfill important functions of Olmsted’s landscape design). Jackson Park has never been a fixed landscape—it has been continually altered over time to accommodate the public’s contemporary needs—with the result that trees have been removed many times in the past. *See id.* at 51-52

b. The agencies were not arbitrary and capricious in concluding the impacts to trees will not be significant.

While assessing impacts on trees, the agencies considered how those impacts could be minimized and mitigated. Minimization efforts include, for example, optimizing design of new roads and trails “to reduce park and tree impacts while providing a safe facility” and prioritizing the preservation of “large native species trees, and in particular oak species.” *Id.* at App. D, 16. Mitigation involves tree replacement at a minimum 1:1 ratio and with species selection and tree placement guided by historic references. *Id.* at 17. Replacement trees will be a mix of 2.5 and 4 inch caliper trees, but the preference is to utilize 2.5 inch caliper as much as possible, as this size—based on the City’s experience with tree planting in parks across Chicago—has shown to transplant from nurseries better, and establish faster, compared to transplanting larger trees. *Id.*

was significant, ECF 31 at 20, he does not even discuss those subjects. *See* Plts. Ex. 2, Mitchell Declaration at ¶¶ 8-9.

at 17. In more heavily-trafficked areas, 4-inch caliper trees will be used, providing “more of an instant-landscape effect upon installation.” *Id.* at 18. Further, where large existing shade trees are removed, replacement shade trees will be installed with the intent of providing a comparable functional replacement. *Id.* at 17.

The mitigation will also be informed by historic considerations.⁸ Tree species will be selected to complement the historic landscape and will be placed to effectuate the functional aspects of the Park’s historic design. *Id.* at 17; *id.* at EA, 50; Ex. 11, AOE at 54. The trees will be clustered together in natural groupings, with the goal of creating layers of planting, “which is a trait of Olmsted’s picturesque style of design and an original feature of Jackson Park.” Ex. 17, EA at App. D, 17.

After evaluating these mitigation and minimization measures, the agencies determined that despite short-term negative impacts, the cumulative effects from Alternative C “result in long-term beneficial impacts to the overall tree population, tree species diversity, and anticipated tree canopy when the replanted trees reach maturity.” *Id.* at 16; *see also* Ex. 24, FONSI at B-14-15 (responding to comments regarding tree impacts). Even though new trees will take some time to mature, “the temporal impact is small given the size of the park and remaining mature trees, the availability of other habitat, and the acclimation of wildlife to human activity.” *Id.* at B-14. When the trees reach maturity there will be a net gain of 4.4 acres of tree canopy. *Id.* at B-15. The proposed tree cover for the OPC site will be more diverse, and the plantings will include vegetation of different scales to “advance[] efforts to provide varied habitat for vital ecosystem function.” *Id.* In short, the agencies’ determination that impacts on trees will not be significant

⁸ The agencies’ conclusions regarding the impacts on historic resources are discussed more fully *infra* at 19-21, 30.

is well-grounded in the record, entitled to deference, and should be affirmed. *Sauk Prairie*, 944 F.3d at 678.

2. The agencies properly considered the intensity factors and determined the impacts from their actions were not significant.

Plaintiffs argue that an EIS must be prepared if the intensity factors listed in 40 C.F.R. § 1508.27(b) “are *present*, even if the agency believes that on balance the proposed action will be beneficial.” ECF 31 at 20 (emphasis added). Plaintiffs are wrong. Indeed, the plain language of the regulation contradicts Plaintiffs’ argument by explaining that the factors need only be “*considered* in evaluating intensity.”⁹ 40 C.F.R. § 1508.27(b) (emphasis added). Not surprisingly then, numerous courts, including the Seventh Circuit, have held that the mere presence of a factor—or multiple factors—does not require an EIS. *See, e.g., Mineta*, 349 F.3d at 953, 957; *Hillsdale Env’t Loss Prevention, Inc. v. U.S. Army Corps of Eng’rs*, 702 F.3d 1156, 1180 (10th Cir. 2012) (“Regardless of which § 1508.27(b) factor is implicated, a project’s potential to affect one of these factors does not require an agency to prepare an EIS. The relevant analysis is the degree to which the proposed action affects this interest, not the fact it is affected.”) (citation omitted).

Not only are Plaintiffs wrong in asserting the mere presence of a factor is sufficient to require an EIS, Plaintiffs are wrong in suggesting that consideration of the four factors they identify should have required an EIS. To the contrary, the record demonstrates that the federal agencies properly evaluated each of those factors.

⁹ The factors themselves also make that point. For instance, one is “cumulative effects,” a factor that is present in almost every project. 40 C.F.R. § 1508.27(b)(7). Further, the cases cited by Plaintiffs are not to the contrary. At most, they stand for the proposition that a single factor “*may* be sufficient to deem the action significant.” *Nat’l Wildlife Fed’n v. Norton*, 332 F. Supp. 2d 170, 181 (D.D.C. 2004) (emphasis added).

- a. **40 C.F.R. § 1508.27(b)(3): Unique characteristics including historic properties or cultural resources, and park lands & 40 C.F.R. § 1508.27(b)(8): The degree of adverse effect on historical resources.**¹⁰

Plaintiffs rely in part on the improper Mitchell Declaration to argue that the project will have a significant environmental impact simply because it “will adversely affect three National Register historic resources.”¹¹ ECF 31 at 23. Plaintiffs’ argument has no merit.

i. **NEPA and NHPA have different legal standards.**

Plaintiffs are simply wrong to equate a finding of adverse effect with a significant impact for NEPA purposes. As the NHPA regulations expressly state: “a finding of adverse impacts on a historic property [under Section 106] does not necessarily require an EIS under NEPA.” 36 C.F.R. § 800.8(a)(1); *see also* Ex. 24, FONSI at B-28. Whether there has been an adverse effect under the NHPA and whether there has been a significant impact under NEPA are two distinct inquiries with two distinct standards. An adverse effect under the NHPA exists when there is any alteration to a characteristic of a historic property that may “diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.” 36 C.F.R. § 800.5(a)(2). As courts have recognized, “diminish” is a low bar and this very broad criteria encompasses everything from demolishing a historic building to a “change in the visual surroundings of the historic property.” *See Advocs. For Transp. Alt., Inc. v. U.S. Army Corps of Eng’rs*, 453 F. Supp. 2d 289, 307 (D. Mass. 2006). Further, while an adverse effect may be found based on the diminishment of a particular aspect of a historic property, whether that

¹⁰ Federal Defendants address both factors together because Plaintiffs’ arguments under both factors are focused on the effects on historic properties. *See* ECF 31 at 21-23.

¹¹ Plaintiffs incorrectly count the Jackson Park Historic Landscape District and Midway Plaisance as two separate National Register Historic Resources. *See* Ex. 11, AOE at 40.

diminishment is significant for NEPA purposes turns on the context and intensity of the effect. *WildEarth Guardians v. Provencio*, 923 F.3d 655, 669 (9th Cir. 2019) (citing 40 C.F.R. § 1508.27(a)–(b)).

ii. Impacts to historic properties were not significant under NEPA.

The record supports the agencies conclusion that the impact on historic resources will not be significant. The EA’s discussion of impacts to historic resources built upon the extensive analysis produced in the Historic Properties Inventory (HPI) and the AOE during the agencies review pursuant to Section 106 of the NHPA.¹² Ex. 17, EA at 49-50. The agencies’ analysis acknowledged that the actions will affect historic resources and thoroughly assessed and disclosed those impacts. *See, e.g. id.* at 49-55; Ex.11, AOE at Section 3.0. The agencies found that there will be direct impacts on the Jackson Park Historic Landscape District and Midway Plaisance, as well as the Chicago Park Boulevard System Historic District (CPBSHD), but after placing those impacts in context, determined that the impacts will not be significant. Ex. 24, FONSI at 7, B-28-29; *see also* 40 C.F.R. § 1508.27(a) (significance must be assessed in context).

The agencies’ assessment of the context of the impacts was informed by several factors. One was scale; “the area of change would be small in scale given the overall size of the historic resources.” Ex. 24, FONSI at 7. The selected alternative would impact less than 3 percent of the 683-acre Jackson Park Historic Landscape District and Midway Plaisance, and less than 2 percent of the 1,700-acre CPBSHD. *Id.* Further, the OPC’s Museum Building, the largest building in the complex, “will be distinctive but not dominant” because it is “located at the

¹² The AOE in particular presents a comprehensive assessment of the effects of the federal actions and the construction of the OPC on historic properties in the area. *See generally* Ex. 11.

park's western edge where it meets the urban architecture of the surrounding community, away from the central visual axis extending south from the Museum of Science and Industry.” *Id.* at B-28.

Another important aspect of the context is how “Jackson Park has offered a variety of cultural activities and institutions over its history and has been altered to suit the public’s changing needs.” *Id.* at 7. The Park’s significant changes over time are the basis for the Park’s broad period of significance, which spans from 1875 to 1968, yet these changes are completely ignored by Dr. Mitchell. Chicago has a “distinctive tradition of including large civic buildings” in its parks and during its period of significance, Jackson Park became home to large permanent buildings including the Museum of Science and Industry and La Rabida Children’s Hospital. *Id.* at B-28. During that period, the Park also served as host to major temporary installations ranging from the World’s Fair of 1893 to a Nike Missile Site.¹³ *See id.* As the agencies explained, “the breadth and dynamic range of uses over time are an important aspect of Jackson Park and distinguish it from other historic properties whose importance is confined to a particular event” or a narrow period of time. *Id.* at B-28. Despite the many different uses, a constant theme throughout the history of Jackson Park is use of the park for outdoor recreation, civic-educational programming and athletics. The changes to the Park in conjunction with the OPC will enhance the Park’s ability to support these uses. *Id.* at B-29. The OPC will also add historic significance to the Park by memorializing “a nationally historic and locally relevant presidency.” *Id.* at B-29.

¹³ Nor were changes to the Park confined to the Park’s period of historic significance. Since then, changes have included several road projects, removal of trees, and construction of a golf driving range. Ex 17, EA at 52. The myriad changes to Jackson Park over its long history are discussed at length in the HPI, Ex. 5, at 3-53.

A final piece of context is that after implementation of the selected alternative, the properties at issue will retain enough historic integrity to remain eligible for and listed on the National Register of Historic Places. *Id.* at 7, B-28.

In sum, the agencies properly considered this intensity factor by placing the impacts to historic properties in context, and relying on their expertise to determine that the impacts to historic properties were not significant. Plaintiffs may disagree with the agencies' conclusion, but because the agencies' determination is well supported by the record it is not arbitrary and capricious under the APA's deferential review standard. *Mineta*, 349 F.3d at 953.

b. 40 C.F.R. § 1508.27(b)(4): The degree to which the effects on the environment are likely to be highly controversial.

Plaintiffs argue that the impacts of the agencies' actions were "highly controversial," and by extension, significant under NEPA, because there was a "fierce and loud dispute over the wisdom of locating the OPC in an Olmsted Park. . . ." ECF 31 at 21. Plaintiffs' argument fails because Plaintiffs have not shown that there is "a substantial dispute [about] the size, nature, or effect of the major Federal action *rather than the existence of opposition to a use.*" *Ind. Forest All., Inc. v. U.S. Forest Serv.*, 325 F.3d 851, 857 (7th Cir. 2003) (citation omitted, emphasis added).

Plaintiffs claim there is a "dispute" over the "disruption of traffic patterns, the destruction of trees, the mammoth size of the main OPC building and its awkward placement [and] the destruction of key features of Jackson Park," ECF 31 at 21, but those are Plaintiffs' complaints about the project, not substantive critiques of the agencies' methodology. *See Hillsdale*, 702 F.3d at 1180. In any event, the EA candidly acknowledges that traffic patterns will change (Ex. 17, EA at 12, 21, 23-25), trees will be removed (*id.* at 29-30 and App. D), the size of the OPC building (*id.* at EA, 6-8), and that there will be adverse effects to historic properties (*id.* at 49-
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55). In short, neither local opposition—no matter how fierce—nor Plaintiffs’ litany of complaints about the project demonstrate a substantial dispute that makes this project “highly controversial.”

c. 40 C.F.R. § 1508.27(b)(7): Cumulative impacts

Based on the facts found in the record, the agencies determined that the selected alternative would have “a beneficial impact to recreation, negligible impacts on traffic congestion, a minor adverse impact on cultural resources (historic properties), and impact on social and economic issues would not differ overall for the region; there also would be minimal impact on GLFER restoration areas.” Ex. 24, FONSI at 8. They found that “overall cumulative impacts would be negligible, minor, or otherwise relatively small; therefore, the selected action would not result in a significant cumulative impact on any resources. . . .” *Id.* That conclusion is not only supported by the record, as is shown below, but it is also entitled to deference because it “is a task assigned to the special competency of the appropriate agencies.” *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976); *accord Habitat Educ. Ctr., Inc. v. U.S. Forest Serv.*, 673 F.3d 518, 528 (7th Cir. 2012).

Plaintiffs argue that the agencies’ NEPA analysis was inadequate because it allegedly did not consider the cumulative effects of the OPC, the GLFER Project and a proposed rehabilitation of the Jackson Park golf course. ECF 31 at 23-24. Plaintiffs’ arguments regarding the OPC and the GLFER project demonstrate that they do not understand that the cumulative impact “is 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.” 40 C.F.R. § 1508.7.

Thus, while Plaintiffs criticize the agencies for engaging in “unprecedented segmentation” and not evaluating the “cumulative effects” of the “OPC Project,” ECF 31 at 24,

the agencies fully evaluated “related non-federal actions such as the development of the OPC, roadway closures and relocation of the track and field” because those are indirect effects of the agencies’ proposed actions. Ex. 17, EA at 32; *see also* Ex. 24, FONSI at B-7. In other words, instead of “segmenting” the OPC out of the analysis, the impacts from the OPC were addressed, at length, in the EA’s evaluation of environmental consequences. Ex. 17, EA at 35-64.

The same misunderstanding pervades Plaintiffs’ complaint about the “cumulative” impacts to the GLFER project—impacts to the GLFER project were assessed as direct and indirect effects of the project. *Id.* at 64-67. Indeed, the EA has a Technical Memorandum devoted to the GLFER project (Appendix J) and the USACE did its own EA addressing impacts to the GLFER project.¹⁴ Ex. 25, Section 408 EA.

The agencies’ cumulative effects analysis addressed seven reasonably foreseeable projects that have advanced to a point that their impacts can be meaningfully assessed. Ex. 17, EA at 32-34. Plaintiffs complain that the analysis omits discussion of a proposal to improve the Jackson Park golf course. ECF 31 at 24. But as the agencies explained, there are no firm plans for the golf course rehabilitation and therefore that proposal is “not sufficiently developed to allow for the kind of reasoned analysis that meaningfully informs federal decision-making.” Ex. 24, FONSI at B-7; Ex. 17, EA at 33. Thus, the agencies properly omitted it from the cumulative effects analysis.¹⁵ *Habitat Educ. Ctr. Inc.*, 673 F.3d at 527.

¹⁴ Plaintiffs’ complaints about the assessment of the impacts on the GLFER project are the same arguments Plaintiffs raise in challenging the USACE’s issuance of a permit allowing a small modification to the GLFER project. Those arguments are rebutted below. *See infra* at Section V.

¹⁵ Plaintiffs also make the wholly unsubstantiated allegation that the agencies failed to consider the “dramatic cumulative effects” of “various” adverse impacts on trees, traffic, noise, birds, water, gardens and other resources...” ECF 31 at 25. Because Plaintiffs do not identify any of those “various adverse impacts,” they have waived this argument. *United States v. Cusimano*, 148 F.3d 824, 828 n.2 (7th Cir. 1998) (“Perfunctory and undeveloped arguments are waived.”). In any event, Section 5.2 of the EA (Ex. 17) presented a comprehensive assessment of the environmental consequences of the project, including

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B. FHWA and NPS Were Not Required to Examine an Alternative That Located the OPC Outside of Jackson Park.

Plaintiffs argue that the agencies failed to examine alternatives that would “avoid the construction and destruction within Jackson Park,” ECF 31 at 27, such as siting the OPC west of Washington Park. *Id.* at 28. This argument fails. An alternative placing the OPC outside of Jackson Park was not reasonable because the agencies lack authority to reverse the City’s decision and require the OPC to be constructed outside of Jackson Park.

Although the alternatives analysis required for an EA is less rigorous than that for an EIS, *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1323 (D.C. Cir. 2015), an EA must include a discussion of alternatives to the proposed agency action. The discussion must include a no-action alternative but otherwise it is up to the agency to define the alternatives. 40 C.F.R. § 1508.9(b); 49 C.F.R. § 1502.14(c). A court’s review of those alternatives is subject to the “rule of reason,” which governs “both *which* alternatives the agency must discuss, and the *extent* to which it must discuss them.” *Mineta*, 349 F.3d 938, 960 (7th Cir. 2003) (citing *e.g.*, *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991)).

As the Supreme Court explained in its seminal *Public Citizen* decision, “no rule of reason worthy of that title” would require an agency to prepare environmental analysis that “would serve ‘no purpose.’” *DOT*, 541 U.S. at 767-68. Here, it would have been a pointless exercise for the agencies to examine an alternative that placed the OPC outside of Jackson Park when they have no authority to dictate the location of the OPC. Consequently, Plaintiffs’ criticism of the agencies for not doing so is wholly without merit.¹⁶ *E.g.*, *Int’l Bhd. of Teamsters v. DOT*, 724

impacts to those resources, and an explanation of why the reasonably foreseeable future projects would not create a significant cumulative impact.

¹⁶ As is Plaintiffs’ suggestion that the agencies were somehow empowered to consider an alternative placing the OPC outside of Jackson Park because they defined the “undertaking” for purposes of Section Federal Defendants’ Response to Plaintiffs’ Motion for Preliminary Injunction – Page 24

F.3d 206, 217 (D.C. Cir. 2013) (“the short and dispositive answer to the Teamsters’ [alternatives] argument is that the agency lacks authority to impose the alternatives proposed by the Teamsters”); *Ctr. for Food Safety v. Vilsack*, 718 F.3d 829, 842 (9th Cir. 2013); *see also Sauk Prairie*, 944 F.3d at 679-680 (relying on *Public Citizen* to hold the NPS was not required to analyze helicopter flights it had no authority over).

Plaintiffs’ argument that the agencies erred “by using an improper baseline for purposes of its comparison of alternatives” is equally flawed. *Cf.* ECF 31 at 27. Plaintiffs suggest Alternative B “is misleadingly called the “No-build Alternative” and imply it is an improper no-action alternative. *Id.* Alternative B is actually titled “NPS Action (FHWA No Build),” because that is exactly what it is: the alternative where the NPS’s proposed conversion is approved (and the OPC built and roads closed), but the FHWA does not fund the transportation improvements. Ex. 17, EA at 17. That is the proper baseline for the FHWA because its proposed action is only needed if the OPC is constructed and roads are closed. As the EA makes clear, the actual “no-action” alternative is Alternative A, where neither the OPC nor the proposed transportation improvements are constructed. *Id.* at 15; Ex. 24, FONSI at B-12. Thus, contrary to Plaintiffs’ allegations, the agencies “hard look” did start with “the current state of affairs in Jackson Park,” *cf.* ECF 31 at 29, and compared the effects of the action alternatives—including the incremental impacts from both the federal actions and construction of the OPC—to that “state of affairs.” *See* Ex. 17, EA at Section 5 (Affected Environment and Environmental Consequences).

106 to include the OPC. ECF 31 at 26. In any event, Plaintiffs are simply wrong in suggesting the AOE was somehow different from the EA in how it treated the OPC. Both fully considered the impacts of the OPC along with the impacts of the federal agencies actions. *See* Ex. 17, EA at Section 5.2; Ex. 11, AOE at Section 3.0.

Finally, *Openlands v. U.S. DOT*, 124 F. Supp. 3d 796 (N.D. Ill. 2015) does not show that the agencies' analysis of alternatives was flawed. *Cf.* ECF 31 at 28-29. In *Openlands* the record showed that the population forecast for the "no-build" alternative assumed that the FHWA's proposed action (the Illiana Tollway) had been built. *Id.* at 807. That "flawed 'no build' forecast" permeated, and thus "doomed," multiple aspects of the agency's analysis. *Id.* at 807-08. Here, the "no action" alternative (Alternative A) does not include either of the proposed federal actions or construction of the OPC, and the "FHWA no-build" analysis (Alternative B) properly looks at impacts without action by FHWA.

II. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS UNDER SECTION 4(f) OF THE DEPARTMENT OF TRANSPORTATION ACT.

Section 4(f) of the Department of Transportation Act of 1966, now codified at 23 U.S.C. § 138 and 49 U.S.C. § 303, does not prohibit constructing transportation projects within parks and historic sites. *Eagle Found., Inc. v. Dole*, 813 F.2d 798, 804 (7th Cir. 1987). Instead, the statute requires that before approving "a transportation program or project" requiring use of lands protected by the statute, the FHWA must determine that: (1) "there is no prudent and feasible alternative to using that land;" and (2) the transportation project includes "all possible planning to minimize harm to the park." 49 U.S.C. § 303(c); *Old Town Neighborhood Ass'n Inc. v. Kauffman*, 333 F.3d 732, 735–36 (7th Cir. 2003). Here, Section 4(f) applies to FHWA's action (transportation funding), discussed *supra* at Section II(B), but not the City's decision to place the OPC in Jackson Park.

Plaintiffs contend the FHWA acted arbitrarily and capriciously by "avoid[ing] consideration of any alternatives to the OPC's proposed placement" in Jackson Park, therefore "fail[ing] to meet the statutory obligation that all possible planning to minimize harm to the park

be performed.”¹⁷ ECF 31 at 32-33. Plaintiffs’ arguments under Section 4(f) fail as a matter of law because the FHWA properly treated the placement of the OPC as part of the baseline in its Section 4(f) evaluation.

The FHWA explained that it considered the construction of the OPC as part of its baseline because it lacked jurisdiction over the City’s decisions to locate the OPC in Jackson Park and close existing roads within the Park since those actions: (1) did not require approval from the FHWA; (2) are not transportation projects; and (3) do not have a transportation purpose. Ex. 21, Section 4(f) Eval. at 2. The FHWA’s reasoning is supported by the plain text of Section 4(f), which only applies to transportation projects that require federal approval. *See* 49 U.S.C § 303(c); *see also* 23 C.F.R. § 774.3. Based on that language, numerous courts, including the Seventh Circuit, have held that Section 4(f) does not apply to projects that do not require federal funding or approval. *See, e.g., Old Town Neighborhood Ass’n*, 333 F.3d at 735-36 (“these federal laws [including Section 4(f)] do not apply to local projects funded by local tax revenues”); *Vill. of Los Ranchos de Albuquerque v. Barnhart*, 906 F.2d 1477, 1484-85 (10th Cir. 1990). Moreover, even assuming, *arguendo*, that the City’s authorization of the placement of the OPC in Jackson Park somehow required federal approval, Section 4(f) still would not apply because construction of the OPC and the road closures necessitated by that construction are not transportation projects and do not serve a transportation purpose of moving goods or persons

¹⁷ Plaintiffs do not articulate how they believe the Section 4(f) evaluation failed to “include all possible planning to minimize harm to such park,” other than by not considering alternatives outside of Jackson Park. *See* ECF No. 31 at 33. Consequently, Plaintiffs have waived any argument that the substance of FHWA’s minimization planning was insufficient. *See, e.g. Cusimano*, 148 F.3d at 828 n. 2 (“Perfunctory and undeveloped arguments are waived.”). In any event, the FHWA fully considered ways to minimize the use of Section 4(f) resources while achieving the project’s purposes. *See* Ex. 21, 4(f) Eval. at 59-70.

from one place to another.¹⁸ *Nat'l Tr. for Historic Pres. in U.S. v. Dole*, 828 F.2d 776, 778-79 (D.C. Cir. 1987); *accord Miccosukee Tribe of Indians of Fla. v. United States*, 571 F. Supp. 2d 1280, 1285 (S.D. Fla. 2008).

III. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS UNDER SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT.

The National Historic Preservation Act (NHPA), 54 U.S.C. § 306101 *et seq.*, does not mandate historic preservation. Rather, as Plaintiffs acknowledge, Section 106 of the NHPA is a procedural statute that “establishe[s] a process by which federal agencies must ‘take into account’ the impact of their undertakings on any site listed on or eligible for listing in the National Register [of Historic Places].” ECF 31 at 33 (quoting 54 U.S.C. § 306108). Where, as here, an agency determines an undertaking will have an adverse effect on a historic property, the agency must consult with the State Historic Preservation Officer and other parties “to *discuss* ways to avoid minimize or mitigate such effects.” *Id.* at 34 (citing 36 C.F.R. §§ 800.4-800.6) (emphasis added). Although the statute and regulations are intended to encourage minimization of impacts to historic properties, neither require it.¹⁹ *See* 36 C.F.R. § 60.2(a) (after fulfilling the consultation requirement “the Federal agency may adopt any course of action it believes is

¹⁸ The road closures are also not subject to Section 4(f) because the closed roadway footprints will be converted into “proposed trails and open green space.” Ex. 21, 4(f) Eval. at 63. As such, the road closures do not “permanently incorporate[] [the land] into a transportation facility.” 23 C.F.R. § 774.17 (defining Sec. 4(f) “use”).

¹⁹ Nonetheless, the City and Foundation engaged in “an iterative process with frequent public input” with the result that “the design of the [OPC] reflects extensive minimization efforts to address the historic resources and character of the historic property, including specifically Olmsted’s designs for Jackson Park.” Ex. 11, AOE at 77-78. Those minimization efforts include a landscape design for the OPC campus that “employs traditional Olmsted typologies [found] within the park in order to provide a greater degree of compatibility with the park as a whole,” and a compact footprint on the perimeter of the park that concentrates the primary physical change in a small area. *Id.* at 78.

appropriate”); *Waterford Citizens' Ass'n v. Reilly*, 970 F.2d 1287, 1290–91 (4th Cir. 1992) (Section 106 does not obligate “federal agencies to affirmatively protect preservation interests”); *see also* 36 C.F.R. § 800.7 (explaining that consultation can terminate without resolution on how to address the adverse effects of a project).

Plaintiffs contend Federal Defendants “ignored” required “review of measures of avoidance, minimization and mitigation” by engaging in what Plaintiffs label “segmentation” (*i.e.*, “not includ[ing] the OPC Project itself” in the Section 106 review) and by allegedly focusing the review on “mitigation . . . not avoidance or minimization.” ECF 31 at 34. These arguments are without merit.

A. The Agencies Did Consider the Effects of the OPC on Historic Properties.

As even the most cursory glance at the AOE demonstrates, the agencies’ review *did* include the impacts of “the OPC Project itself.” *See e.g.*, Ex. 11, AOE at 1 (defining the undertaking being evaluated as “the Obama Presidential Center (OPC) project and certain related Federal actions in and near Jackson Park”). In fact, an entire section of the AOE was devoted to explaining the effects the City’s decision to place the OPC in Jackson Park and close roads within the Park will have on historic properties. *Id.* at 49-54.

What Plaintiffs appear to be arguing through their “segmentation” claim is that the Federal Defendants improperly considered the City’s decision to approve construction of the OPC in Jackson Park as “a local land use decision . . . not subject to the Federal approval process.” *Id.* at 3. That argument is yet another assertion that a federal law somehow required the agencies to consider locating the OPC somewhere other than Jackson Park. The argument fails under NEPA, fails under Section 4(f), and is no more successful when applied to the NHPA. *See, e.g., Old Town Neighborhood Ass’n*, 333 F.3d at 735 (city funded road project is not subject

to Section 106); *Menominee Indian Tribe of Wis. v. EPA*, 947 F.3d 1065, 1074 (7th Cir. 2020), *reh'g denied* (May 8, 2020) (privately funded mine is not subject to the NHPA).

B. The Agencies Had No Obligation to Consult on Locations for the OPC Outside of Jackson Park.

While the NHPA's implementing regulations do require federal agencies to consult with the SHPO and others "to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties," that regulation does not somehow expand the agencies' authority. *Cf.* 36 C.F.R. § 800.6. As the FHWA explained in response to a comment, "federal agencies are only obligated to consider actions within their existing authority that would avoid, minimize, or mitigate adverse effects." Ex. 13 Attachment, FHWA Response to Objection Letters at 8; *see also* Ex. 12, Feb. 18, 2020 ACHP Letter to FHWA (agreeing that the FHWA has "no jurisdiction over the placement and design of the [OPC]").

The FHWA's conclusion has ample support in the law. Former Judge Moran of this District held that the regulation's references to alternatives are "more sensibly interpreted as applying only to changes in the *existing* proposal that could make it more compatible with its surrounding environment." *Wicker Park Historic Dist. Pres. Fund v. Pierce*, 565 F. Supp. 1066, 1076 (N.D. Ill. 1982). As he observed, were agencies required to consider construction outside the historic district, "then any proposal for construction within a historic district would always have to be rejected since the alternatives would always create less of an impact on the district." *Id.*; *accord Nw. Bypass Grp. v. U.S. Army Corps of Eng'rs*, 552 F. Supp. 2d 97, 131–32 (D. N.H. 2008). Plaintiffs' construction of the NHPA would effectively bar the use of any historic property and simply cannot be squared with the procedural nature of the NHPA.

IV. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS UNDER THE URBAN PARK AND RECREATION RECOVERY ACT.

The sole focus of the UPARR Act is providing recreational opportunities in economically distressed urban communities. *See* 54 U.S.C. § 200501 *et seq.* The UPARR Act does so through grants for the rehabilitation of recreation areas and facilities, with the requirement that areas benefiting from a grant will be maintained for public recreation use. *See* 36 C.F.R. § 72.72(a). The Act authorizes the NPS to consider requests to convert property assisted under the Act to non-recreation purposes, but vests the agency with a very limited role in doing so. The Secretary “shall approve such a conversion” if two conditions are met: (1) the conversion is in accord with current local park program and (2) the proposal contains terms *the Secretary determines* will “ensure the provision of adequate recreation properties and opportunities of reasonably equivalent location and usefulness.” 54 U.S.C. § 200507 (emphasis added); *see also* 36 C.F.R. § 72.72(b) (regulations implementing statutory criteria).

Plaintiffs argue that the NPS’s approval of the City’s proposed UPARR conversion was arbitrary and capricious because the NPS did not “demand[] that the applicant demonstrate that ‘all practical alternatives to the proposed conversion have been evaluated.’” ECF 31 at 35 (quoting 36 C.F.R. § 72.72(b)(1)) (emphasis supplied by Plaintiffs). Plaintiffs contend that the eastern end of the Midway Plaisance was the “sole focus of the City” and that no specific Section 106 review was itself performed for the incorporation of that land into the Section 1010 boundary.²⁰ ECF 31 at 36. Neither contention has merit.

²⁰ Because Plaintiffs do not make substantive argument challenging the consideration of alternatives to the conversion, Plaintiffs have waived any challenge. *See, e.g., Cusimano*, 148 F.3d at 828 n.2. Nonetheless, below Federal Defendants briefly explain that the City properly determined that no practical alternatives to conversion exist.

A. The City Was Not Required to Consider Alternative Sources of Replacement Recreation, But Did So Anyway.

First, Plaintiffs' challenge to the selection of Midway Plaisance fails as a matter of law because the regulations only require that the applicant demonstrate that "[a]ll practical alternatives *to the proposed conversion* have been evaluated," it does not require consideration of alternative sources of replacement property. 36 C.F.R. § 72.72(b)(1) (emphasis added). Second, the claim fails because the City considered *seven* potential replacement sites, including the eastern end of the Midway Plaisance, Harold Washington Park and five vacant sites located between 57th and 71st Streets.²¹ Ex. 10, City UPARR Analysis at 36.

B. The Agencies Evaluated the Impact of the Proposed Conversion on the Midway Plaisance.

Plaintiffs' argument that a Section 106 review was required in connection with the inclusion of the east end of the Midway Plaisance within the UPPAR boundary is no more meritorious. The agencies did evaluate the impact of the proposed UPARR conversion on the east end of the Midway Plaisance and concluded it "would *preserve* the historic character of this section of the Midway." Ex. 11, AOE at 44 (emphasis added). The AOE explained that the city proposed to both "rehabilitate lost features of the historic landscape" and "enhance[e] the site for recreation use" and discussed at length how it was possible to do both.²² *Id.*

²¹ After evaluating factors that compared potential sites to "attributes of the recreation to be converted in Jackson Park," such as accessibility and historic context, as well as pragmatic concerns such as the cost, feasibility and complexity involved in using the alternative sites, the City concluded that the Midway Plaisance's "proximity, availability to the same community, and likeness in relevant characteristics to the proposed conversion area" best met the need to provide reasonably equivalent use and location for recreation opportunities. Ex. 10, City UPARR Analysis, at 36-38.

²² As examples, the City will rehabilitate lost historic features by reestablishing pre-1960s spatial planting patterns, installing a missing historic path, and will improve recreation on the Midway Plaisance lawn in a manner compatible with historic design by creating a drainage system that will remove water impeding recreation, while retaining the historic sunken aspect of the lawn. Ex. 11, AOE at 44.

C. The NPS Properly Found that the City Evaluated all Practical Alternatives to Locating the OPC in Jackson Park.

Even assuming that Plaintiffs' argument can be construed as challenging the alternatives to the conversion, the argument has no merit. After review of the City's discussion of practical alternatives, the NPS "conclude[d] the City's decision making process meets the regulatory requirement to consider and evaluate all practical alternatives." Ex. 28, May 12, 2021 Review of UPARR Compliance at [unnumbered] 2. The record amply supports that conclusion because the City presented extensive analysis explaining its conclusion "that there is no practical alternative to locating the OPC in Jackson Park that would meet the City's objectives."²³ Ex. 10, City UPARR Analysis at 33; *id.* at 33-36; *see also, e.g., Friends of Santa Clara River v. U.S. Army Corps of Eng'rs*, 887 F.3d 906, 912 (9th Cir. 2018) (agency properly considered project proponent's objectives).

V. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CHALLENGES TO THE CORPS OF ENGINEERS PERMITS.

A. The Corps of Engineers Properly Found that There Is a Need for Permits.

Although Plaintiffs briefly note that the USACE issued permits under both Section 404 of the CWA and Section 408 of the RHA, Plaintiffs' arguments do not directly challenge the 404 permit other than to claim there were "prudent and feasible alternatives that would eliminate the

²³ The City had two principal objectives: to build upon the City's history of placing museums in public parks and to put the OPC in a park on the South Side of Chicago so as to invest in the community where the former President lived and worked and enhance its recreational and cultural resources. Ex. 10, City UPARR Analysis, at 33-35. Three parks potentially met those criteria: Jackson Park, Washington Park and the South Shore Cultural Center Park; smaller parks were "not large enough to host the OPC." *Id.* at 34. The City eliminated South Shore Cultural Center Park because it is much smaller in size and because of "the anticipated adverse impacts to the historic South Shore Cultural Center, which occupies a substantial portion of the park." *Id.* The City also explained that "Washington Park, like Jackson Park, is a UPARR-assisted and Olmsted-designed park" and thus "would not have avoided a conversion of UPARR-assisted parkland." *Id.*

need” for the 404 permit (and the 408 permit as well). ECF 31 at 37. Plaintiffs’ “alternatives” argument fails under the CWA (and the RHA) for the same reason it fails under all the other federal statutes relied upon by Plaintiffs: the USACE, like all the federal agencies here, has no jurisdiction over the City’s decision to place the OPC in Jackson Park. Ex. 25, 408 EA, App. D at 1; *see also* 40 C.F.R. § 230.10(a)(2) (to be practical an alternative must be available); *Int’l Bhd. of Teamsters v. U.S. Dep’t of Trans.*, 724 F.3d 206, 2017 (D. C. Cir. 2013) (agency need not evaluate alternative it lacks authority over).

B. The Corps of Engineers Properly Found that the Proposed Action Will Not be Injurious to the Public Interest and Will Not Impair the Usefulness of the GLFER Project.

Section 14 of the Rivers and Harbors Act of 1899, commonly known as Section 408, generally prohibits any person from injuring or impairing the usefulness of public works, like the GLFER project, built by the United States. 33 U.S.C. § 408. The Act authorizes the USACE to grant permission for the alteration of such works, when in its judgment the alteration will not be injurious to the public interest and will not impair the usefulness of such work. *Id.* The USACE summarized its reasoning for concluding the Park District’s request met the statutory criteria in a Summary of Findings, and that determination is entitled to deference. Plaintiffs fail to show that the USACE acted arbitrarily and capriciously in reaching that conclusion.

Plaintiffs do not directly address the statutory criteria. Instead, they contend that the GLFER is “an interconnected system which cannot be pulled apart and relocated” without

impairment to the “system as a whole” and therefore the USACE’s decision to issue the Section 408 permit is arbitrary and capricious.²⁴ See ECF 31 at 37, 39.

First, Plaintiffs’ argument proceeds from an incorrect premise. The FONSI for the GLFER project explains that it was intended to “convert[] *small expanses of land* into structurally diverse wetlands and buffering plant communities;” these “patches” of land would provide important refuge for migrant and resident bird species as well as a variety of aquatic organisms. Ex. 1, 2014 FONSI at 1 (emphasis added). The GLFER project was originally intended to be constructed in four distinct areas of the Park, but due to funding constraints, only one area, near the East and West Lagoons, has been constructed. Ex. 25, 408 EA, App. D at 2.

Second, the record provides ample support for the USACE’s conclusion that the usefulness of the GLFER project will not be impaired. USACE found that the “proposed impacts to the GLFER project are small and contained to distinct areas of the completed project” and will not undermine its function. *Id.* at 4. Only 1.32 acres of the approximately 38 acres of improved habitat will be permanently impacted, and they will be replaced with 2.43 acres of habitat for a net gain of 1.11 acres of habitat. *Id.* at 408 EA, 3.d and App. B (map). The impacted area is primarily “along Lake Shore Drive, where habitat conditions are poor due to salt spray and other negative roadway impacts.” *Id.* at Section 408 EA, 3.d. In contrast, the 2.43

²⁴ Plaintiffs make two apparent arguments unrelated to the effectiveness of the GLFER. First, they argue that modifications to the GLFER would disrupt its “historic fabric.” ECF No. 31 at 38. The GLFER is not historic; construction started in 2014. Nonetheless, the agencies considered the modifications to the GLFER and found it was not an adverse effect. See Ex. 11, AOE at 45-46, 48; see also Ex. 25, Section 408 EA at App. A (noting discussion in AOE). Second, Plaintiffs complain that removal of trees elsewhere in the Park will undermine the GLFER’s goal of promoting ecological health. ECF No. 31 at 38. The impact of tree removal for the OPC is discussed above. The GLFER project achieved its objectives by removing 1,300 trees “not typically found in a native ecosystem” and replacing them with compatible species. Ex. 17, EA, Ex. D at 5. The OPC project will similarly replace non-native trees with native trees. *Id.* at 18, 20.

acres of new habitat will “be along the shoreline of Jackson Park Inner Harbor where it is protected from roadway externalities and can provide benefits to both aquatic and terrestrial fauna.”²⁵ *Id.* Further, because the new habitat would be built in an area that was previously turf grass and overgrown weeds, it “would increase habitat interspersions,” *i.e.*, the geographical distribution of habitat. *Id.* at 3.e. Ultimately, USACE determined that “the design of the proposed alteration will improve usefulness of the GLFER project by increasing the restored natural areas acreage. . .” Ex. 26, USACE Findings at ¶ 10.

Finally, while Plaintiffs make a vague reference to “removal of berms,” ECF 31 at 38, the USACE found that the impacted berms “will be reshaped or relocated further to the west” and will “still fulfill the original purpose of providing habitat and creating a buffer between Lake Shore Drive traffic.” Ex. 25, 408 EA, App. D at 2. In short, there is no basis for this Court to second-guess the Corps’ experts’ conclusion that the usefulness of the GLFER project will not be impaired. *See Mineta*, 349 F.3d at 953.

VI. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS UNDER SECTION 110(k) OF THE NATIONAL HISTORIC PRESERVATION ACT.

Section 110(k) of the NHPA addresses what is commonly known as “anticipatory demolition.” Anticipatory demolition occurs when an applicant for a federal grant (1) acts with intent to avoid the requirements of Section 106 of the NHPA, and (2) intentionally and significantly adversely affect a historic property to which the grant relates. 54 U.S.C. § 306113. If those two criteria are met, the applicant is barred from receiving the grant unless the agency

²⁵ Because the new habitat is expected to be of better quality than the existing habitat, USACE found that the proposed action would bring minor long term benefits to terrestrial habitats, a likely beneficial effect on wetland quality and beneficial effects on habitat interspersions and wildlife species. Ex. 25, 408 EA at 2-4.

administering the grant, after consulting with the Advisory Council on Historic Preservation, determines that the grant can be provided despite the adverse effect(s). *Id.*

Plaintiffs contend that the City and Park District intentionally removed trees and demolished an athletic field to accommodate the OPC and thus committed an “anticipatory demolition in violation of Section 110(k) of the NHPA.” ECF 31 at 40-41. Plaintiffs further contend that this alleged “anticipatory demolition” now precludes the FHWA from providing federal funds, and the USACE from issuing a permit, because the agencies did not go through the consultation process required by 36 C.F.R. § 800.9(c)(2). *Id.* at 42-43. Plaintiffs’ claims have no merit because the record shows that no anticipatory demolition occurred and, even if it had, the FWHA, the agency overseeing the Section 106 process, complied with Section 110(k) by consulting with the ACHP and concluding that Section 110(k)’s prohibition on grants was inapplicable.

A. The Record Demonstrates No Anticipatory Demolition Occurred.

The possible application of Section 110(k) arose as a result of a letter the Advisory Council on Historic Preservation received in August 2018 from The Cultural Landscape Foundation (TCLF) which, *inter alia*, sought an explanation of why work by the City to remove trees and excavate portions of a baseball field in Jackson Park was “allowed to commence and whether it will continue.” Ex. 6, Aug. 08, 2018 TCLF Letter at 2. The ACHP then asked the FHWA to clarify whether the work was related to the undertaking being reviewed pursuant to Section 106 of the NHPA and advised the agency that because “Section 110(k) of the NHPA may apply if anticipatory demolition occurs,” the FHWA should address that provision with the consulting parties. Ex. 7, Aug. 21, 2018 Letter from ACHP to FHWA at 1.

The ACHP letter prompted the FHWA to discuss the issue with the City and the NPS. The City responded with a letter to the FHWA that explained it removed trees and graded an area in preparation for construction of a new track and field.²⁶ Ex. 8, Sept. 14, 2018 CDOT Letter at 1. The City explained that it had done so “in the sincere belief and understanding that the work was appropriate, prudent, and in conformance with federal law” and agreed to stop the work. *Id.*

The City believed it proceeded in conformance with federal law because the work (1) did not commit the City or federal government to any outcome with respect to the projects that are subject to federal approval; (2) did not receive federal funding; (3) was not a conversion or mitigation under UPARR; and (4) was not interdependent with the OPC because approval of construction and funding of the new track and field was not conditioned on the OPC project proceeding. *Id.* at 2. The City also explained that it had consulted with the NPS regarding the project and understood “that NPS agreed that the new track and field did not constitute a conversion [under UPARR] and therefore was not an action subject to federal review.” *Id.* Finally, the City acknowledged that “[i]n hindsight, [the City] should have contacted FHWA for concurrence as well” and explained that it “would not have initiated the work had [it] believed either agency would disagree.” *Id.* at 3.

B. The FHWA Consulted with the Advisory Council on Historic Preservation and Determined the Federal Grants Can Be Provided.

After hearing from the City, the FHWA then sent the ACHP a letter discussing the City’s actions. The FHWA explained that the construction of the new track and field was “an indirect effect of the proposed federal actions in and adjacent to Jackson Park” and that “all work to relocate the track and field facility has ceased until the Federal review process is completed.”

²⁶ Contrary to Plaintiffs’ allegations, the City did not demolish the existing track and field. *See id.*

Ex. 9, Sept. 24, 2018 FHWA Letter at 1. Turning to the City's work on the track facility, the FHWA explained that the City began the work "to provide an improved recreational facility and to avoid disruption in the use of the existing track and field." *Id.* at 2. It further explained that "the effects of relocating the track and field within Jackson Park will be taken into account as part of the Section 106 and NEPA processes." *Id.* at 3.

The FHWA concluded that Section 110(k) was not applicable under the circumstances. The agency accepted the City's explanations for its actions and concluded that the City did not act with the intent to avoid the requirements of Section 106.²⁷ *Id.* The agency did not act arbitrarily and capriciously in reaching that conclusion. *See Comm. to Save Cleveland's Hulets v. U.S. Army Corps of Eng'rs*, 163 F. Supp. 2d 776, 793 (N.D. Ohio 2001) (Section 110(k) does not require an agency "to second-guess an applicant's stated intentions."). Indeed, the ACHP endorsed the FHWA's conclusion that Section 110(k) did not apply by proceeding with the Section 106 review. *See e.g.*, Ex. 12, 02.18.20 ACHP Letter to FHWA (addressing next steps in Section 106 consultation process).

VII. THE PUBLIC INTEREST WILL BE FURTHERED BY DENYING PLAINTIFFS' REQUEST FOR A PRELIMINARY INJUNCTION.

Federal Defendants briefly discuss the public interest because when the federal government is a party, the equities and public interest inquiries tend to merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). If injunctive relief would harm the public interest, the Court may withhold the relief, even if doing so would cause irreparable injury to the movant. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-13 (1982); *Yakus v. United States*, 321 U.S.

²⁷ In addition, it was unclear whether the tree clearing would constitute an adverse effect to a historic property. *Id.* The FHWA later evaluated the relocation of the track and field and determined that it will not have an adverse effect. Ex. 11, AOE at 54.

414, 440 (1944). Here, there is a strong public interest in the expeditious construction of the OPC.

For more than half a century the United States has honored past Presidents through the construction of Presidential libraries and other facilities. *See* Presidential Libraries Act of 1955, 44 U.S.C. §§ 2112(a)-(g). Presidential libraries, museums and centers promote the understanding of the presidency and the American experience. They provide access to historical materials, support research, and create interactive programs and exhibits that educate and inspire the public. The OPC will further those purposes by “tell[ing] the stories of the first African American President and First Lady of the United States, their connection to Chicago, and the individuals, communities, and social currents that shaped their local and national journey.” *Protect Our Parks, Inc.*, 385 F. Supp. 3d at 669. Those stories should be told as soon as possible.

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