



United States Department of the Interior

**OFFICE OF THE SECRETARY
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To: Paul Krueger **Date:** November 21, 2006
WA-DOT **Pages:** 9, including this cover sheet.
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From: ETHEL SMITH

Subject: SR-520 Bridge Replacement, King County, WA [ER 06/932]

Attached is the Department's response re subject project.



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Mr. Paul Krueger
Environmental Manager
SR 520 Project Office
Washington State Department of Transportation
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Seattle, WA 98101

Dear Mr. Krueger:

The U.S. Department of the Interior (Department) has reviewed the Draft Environmental Impact Statement (DEIS), Draft Section 4(f) Evaluation, and Addendum to Section 4(f) Evaluation, for the **SR-520 Bridge Replacement** and HOV Project, Seattle, King County, Washington, and offers the following comments.

The primary alternatives for this project are the 4-Lane Alternative and 6-Lane Alternative (including the Pacific Street Interchange and Second Montlake Bridge options. While Washington State Department of Transportation (WSDOT) explored the feasibility of an 8-Lane Alternative, it concluded that its implementation would lead to severe effects on I-5 and I-405, and should therefore not receive detailed study in the DEIS.

GENERAL COMMENTS

F-005-001

The Department's United States Fish and Wildlife Service (USFWS) has been involved with the SR 520 Bridge Replacement and HOV Project for several years through the Signatory Agency Committee (SAC), which is the implementing body for the National Environmental Policy Act and 404 merger process. The USFWS has provided extensive input on this project in the past, and will continue to work through the SAC process with the transportation agencies on fish and wildlife issues of concern related to this project.

There are many important parks in the project vicinity that have helped to contribute to the scenic, natural, cultural and recreational environment of Seattle and distinguish it as a city. The Department encourages WSDOT, Federal Highway Administration (FHWA), and Sound Transit to honor the spirit of Section 4(f) and to make a special effort to preserve the natural beauty of these public park and recreation lands.

We do not believe that all possible options have been thoroughly examined. Therefore, the Department cannot make a 4(f) determination at this time.

F-005-001

Comment Summary:

Section 4(f)

Response:

See Section 21 of the 2006 Draft EIS Comment Response Report.

F-005-002 We look forward to seeing what public comments come forward, and what other options the public might suggest. For example, we are aware of interest in a suggested alternative that shifts the SR 520 alignment further north, as it approaches the west side of Lake Washington. Notably, this would avoid a significant number of 4(f)-protected properties, including Bagley Viewpoint, McCurdy Park, East Montlake Park, and Washington Park Arboretum. Based on the DEIS, this option does not appear to have been considered by WSDOT and FHWA. Certainly, more study regarding possible effects for this option—or any other option proposed by the public—would be required. However, at least conceptually, this specific example presents itself as a possibly prudent and feasible alternative that either avoids the "use" of 4(f) resources entirely, or alternatively, results in a lesser 4(f) impact than is currently proposed.

SECTION 4(f) COMMENTS

F-005-003 **Specific Comments**

The Department offers the following specific comments regarding the DEIS. In sum, the Department disagrees with some of the conclusions that proximity impacts are not so severe as to substantially impair park use and enjoyment (i.e., that there is no "constructive use" of some of the 4(f) properties).

F-005-004 4-Lane Alternative
McCurdy and East Montlake Parks

Draft Section 4(f) Evaluation, page 36, McCurdy and East Montlake Parks, Direct Effects—The DEIS seems to indicate that, because a portion of McCurdy Park could be returned to park use after being initially acquired for the project, only 59 percent of the park would therefore be "used." However, in fact, 100 percent of the park would have to be acquired for the project up front. Therefore, it seems that, in order to satisfy the "all possible planning to minimize harm" prong of Section 4(f), more definitive plans are needed. In other words, a tentative suggestion that some of the land could be returned to park use is not enough, particularly if there is no contract or legal obligation to do so. Moreover, if legal ownership remains with WSDOT or other transportation agency while being "returned" to park use, there is no guarantee that this land will not later be conveyed or used for another transportation project (but in this scenario, Section 4(f) would likely not apply, because the project is now within state or local right-of-way). If the parks should instead be required to be conveyed to the City, the Arboretum Foundation, or other park agency, this would be a more appropriate mitigation measure.

Washington Park Arboretum

Draft Section 4(f) Evaluation, page 39, Washington Park Arboretum, Direct Effects—The Department has similar concerns, as those noted above, for the Washington Park Arboretum, where it is proposed that some acreage could be returned to the City of Seattle for park use. The Department supports full conveyance to the City, rather than leasing to the City for use as a park, and a formal agreement that WSDOT will do so.

F-005-002

Comment Summary:

Section 4(f)

Response:

See Section 21 of the 2006 Draft EIS Comment Response Report.

F-005-003

Comment Summary:

Section 4(f)

Response:

See Section 21 of the 2006 Draft EIS Comment Response Report.

F-005-004

Comment Summary:

Section 4(f)

Response:

See Section 21 of the 2006 Draft EIS Comment Response Report.

F-005-005 6-Lane Alternative
McCurdy and East Montlake Parks

Draft Section 4(f) Evaluation, page 38, McCurdy and East Montlake Parks, Proximity Effects—The DEIS concludes that, while removing the trees and the Museum of History and Industry (MOHAI) would degrade the southward view for park users of East Montlake Park, it would not substantially impair the continued use and enjoyment of the park. The Department disagrees with this statement. In fact, not only will the MOHAI building and trees be removed, but under both the 4-Lane or 6-Lane Alternatives, the expanded freeway will encroach further to the east, and be in closer proximity to park users. Yet, as the DEIS notes, “[c]urrently, SR 520 is virtually unseen from areas within East Montlake Park.” Such a drastic change in the landscape of the park combined with reduction of park size by nearly half due to a closer freeway seems to be a substantial impairment.

F-005-006 6-Lane Alternative with Pacific Interchange Option
Washington Park Arboretum

Addendum to Section 4(f) Evaluation, page 25, Washington Park Arboretum, Proximity Effects—WSDOT draws a no-substantial-impairment conclusion, even though the proposed Pacific Street Interchange Option would rise roughly 80 feet above Foster Island and be visible from several vantage points along Arboretum Waterfront Trail and elsewhere in the park, and even though the Union Bay Bridge, rising approximately 100 feet above, would become the dominant visual feature looking to the north from the islands. WSDOT recognizes that, even with reductions in noise because of sound walls, and new and contiguous areas for recreational use, the visual intrusion would still further degrade Foster and Marsh Islands for park and trail users. The Department recognizes WSDOT’s efforts to keep the freeway elevation under all alternatives below the tree line. However, the higher and wider freeway footprint, combined with the presence of the Union Bay Bridge, should be considered a substantial impairment.

University of Washington Waterfront Activities Center

Addendum to Section 4(f) Evaluation, page 26, University of Washington Waterfront Activities Center, Proximity Effects—WSDOT notes that the overall character of the WAC would change from one with pristine views, currently bearing little or no trace of disturbance on the water side, to one where broad views and an unobstructed sky overhead are now blocked and the facility and its activities are now permanently shaded. The Department encourages WSDOT’s plans to work with the University of Washington to enhance the recreational facilities and operations at the WAC.

F-005-005

Comment Summary:

Section 4(f)

Response:

See Section 21 of the 2006 Draft EIS Comment Response Report.

F-005-006

Comment Summary:

Pacific Street Interchange Option

Response:

See Section 1.2 of the 2006 Draft EIS Comment Response Report.

F-005-007**Comment Summary:**

Section 4(f)

Response:

See Section 21 of the 2006 Draft EIS Comment Response Report.

F-005-006 Burke-Gilman Trail

Addendum to Section 4(f) Evaluation, pages 28-30, Burke-Gilman Trail, Proximity Effects—WSDOT states that Montlake Boulevard would shift to the west, and come within 10 feet of the Burke-Gilman Trail, for a distance of approximately 2,600 feet. Currently, there is a 30-foot-wide buffer between the roadway and the trail with trees that give the trail a "much sought-after natural appearance." WSDOT concludes, however, that no substantial impairment will occur, even though "this natural and protected trail segment would be highly diminished."

WSDOT suggests that, because other segments of the trail outside of the project area "exhibit a more urban character with minimal buffering," adding a 2,600-foot-long stretch of the trail to this category is therefore justified. WSDOT does not indicate how much of the trail shows this more urban character. Regardless, exposing 2,600 feet of a currently "much sought-after natural appear[ing]" trail seems to be a substantial impairment, particularly in light of the additional noise.

Notably, WSDOT states that the Montlake Boulevard alignment could be shifted to the east at specific locations along the trail, to avoid impacts. It appears that, based on Exhibit 10, most of Montlake Boulevard could be shifted to the east, especially since a significant portion of land to the east consists of campus parking. This would seem preferable to acquiring trail right-of-way, shifting portions of the trail, or shifting only small portions of the Montlake Boulevard alignment to the east.

F-005-007 De Minimis and "Net Benefit" Application

Addendum to Section 4(f) Evaluation, page 45, "How will FHWA [Federal Highway Administration] determine effects on Section 4(f) properties?"—WSDOT notes that a *de minimis* impact finding may apply to certain properties, including Bagley Viewpoint, East Montlake Park, and the Burke-Gilman Trail. This finding would be made with the concurrence of the officials with jurisdiction. However, the Department fails to see, given the possible effects WSDOT has provided in the DEIS, how Bagley Viewpoint, East Montlake Park, and the Burke-Gilman Trail could qualify.

A *de minimis* determination can be made after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, shows no adverse effect on the activities, features, and attributes that qualify the resource for protection under Section 4(f) will occur. Avoidance alternatives are then not required.

Notably, language included in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Conference Report states as follows:

The purpose of the language is to clarify that the portions of the resource important to protect, such as playground equipment at a public park, should be distinguished from areas such as parking facilities. While a minor but adverse effect on the use of playground equipment should not be considered a *de*

F-005-007

de minimis impact under section 4(f), encroachment on the parking lot may be deemed *de minimis*, as long as the public's ability to access and use the site is not reduced. Conference Report of the Committee of Conference on H.R. 3, Report 109-203, page 1057.

Applying *de minimis* to Bagley Point does not seem to be appropriate when it will be reduced by approximately half its size under all alternatives (40% under the 4-Lane Alternative, 60% under the 6-Lane Alternative).

Regarding the Burke-Gilman Trail and the 6-Lane Alternative with Pacific Interchange Option, simply avoiding acquisition of a small portion of the trail right-of-way and replanting vegetation in the significantly-reduced buffer strip, would not seem to mitigate enough to result in no adverse effect and should therefore not result in a *de minimis* finding.

Finally, under the 4-Lane Alternative, 3.25 acres of the 7.1-acre East Montlake Park will initially be acquired. As mentioned above, while 2.19 acres could be returned to park use after the project is complete, it is unclear precisely what this means. The Department is specifically concerned that WSDOT (or other transportation agency) will retain ownership. If so, the Department does not consider this true mitigation, as WSDOT could use the area for another future transportation project or convey it to a third party. Additionally, the MOHAI, which helps to make the existing freeway virtually unseen, will be removed. Combined with the reduction in park size, without more mitigation measures, the Department does not believe that a *de minimis* finding is appropriate. The Department has similar concerns under the 6-Lane Alternative. While there will be slightly less net loss of the park, again, the MOHAI will be removed, and the overall secluded feel of the park will be lost.

F-005-008 **Section 6(f)(3) of the Land and Water Conservation Fund Act**

The 6(f)(3) boundary illustrated in Exhibit 5 of Appendix P is incorrect. Appendix P concludes that because Land and Water Conservation Fund (LWCF) funds were not used to acquire the adjacent park lands, they are not themselves protected by 6(f)(3). In fact, when a resource in a park is funded through LWCF, typically the entire park is protected under 6(f)(3). When this grant was signed, 153 acres were put under the protection of LWCF including portions of the Ship Canal Waterfront Trail, McCurdy Park, Washington Arboretum Park, East Montlake Park, Foster Island and Marsh Island. Some of these properties may no longer be protected by 6(f)(3) in keeping with the lease policies in effect at the time of the grant. The Department recommends coordinating closely with the Washington Interagency Committee for Outdoor Recreation to determine the correct 6(f)(3) boundary.

Properties under the protection of 6(f)(3) of the LWCF Act may not be converted to other than public outdoor recreation use. There is no *de minimis* impact. Proximity impacts may be considered a conversion under 6(f)(3) even if they are not considered a

F-005-008

Comment Summary:

Section 6(f)

Response:

See Section 22 of the 2006 Draft EIS Comment Response Report.

F-005-008 constructive use under 4(f). The Department disagrees with the conclusion that there will be no conversion as defined by section 6(f)(3) of the LWCF Act.

Appendix P states that some of the WSDOT land proposed for conversion replacement has been managed by the City of Seattle for recreation purposes. This property would not be eligible as 6(f)(3) conversion replacement. Any land that has previously been dedicated or managed for recreational purposes while in public ownership is ineligible as replacement for 6(f)(3) conversions. Land that was acquired with Federal assistance is also ineligible as replacement.

Coordination

The Department has a continuing interest in working with FHWA, WSDOT, Sound Transit, and other resource agencies and local jurisdictions. For continued consultation and coordination, please contact Kelly Powell, Environmental Compliance Specialist, National Park Service, Planning and Compliance, at 206-220-4106 or kelly_powell@nps.gov. For questions specifically related to Section 6(f), please contact Heather Ramsay, LWCF & UPARR Project Manager, National Park Service, Pacific West Region, Partnership Programs, at 206-220-4123 or heather_ramsay@nps.gov.

The Department appreciates the opportunity to provide these comments.

Sincerely,



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Director, Office of Environmental Policy and
Compliance

cc: (see attached list)

cc:

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