



National Trust *for*
Historic Preservation®

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Amanda Murphy,
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Office of Federal Railroad Policy & Development
USDOT Federal Railroad Administration (MS-20)
1200 New Jersey Ave. SE
Washington, DC 20590

Via email to: info@wusstationexpansion.com
amanda.murphy2@dot.gov

Re: Comments on Supplemental Draft EIS and Draft Programmatic Agreement for
Washington Union Station Expansion Project

Dear Ms. Murphy,

The National Trust for Historic Preservation appreciates the opportunity to submit these comments on the current draft of the Programmatic Agreement (PA) for the Washington Union Station Expansion Project, as well as the Supplemental Draft Environmental Impact Statement (SDEIS) for the project. As you know, the National Trust has been participating from the beginning as a consulting party under Section 106 of the National Historic Preservation Act (NHPA) in the ongoing multi-year federal review process for this project led by the Federal Railroad Administration (FRA).

First of all, we would like to commend the FRA for the revisions that have been made to the plans for the proposed project since 2020, especially the modifications to the plans for parking and traffic circulation. The FRA has made significant changes to the plans that are directly responsive to the comments from the public and the other agencies involved in the review process.

However, there are some unresolved issues that still need to be addressed, and we hope that the FRA will continue to be responsive to the ongoing public comments.

Comments on the Supplemental Draft EIS

- ***Traffic Impacts on the Capitol Hill Historic District***

The SDEIS acknowledges that “Increased traffic volumes in the Preferred Alternative would result in a minor adverse direct operational impact on the Capitol Hill Historic District” (SDEIS at p. 5-96). But the SDEIS goes on to state that the traffic impact on the historic district will be negligible, for two primary reasons. One is the argument that the historic district is primarily significant for its architecture, and traffic doesn’t adversely impact the architecture. Second is the argument that traffic is already terrible within the Capitol Hill

Historic District. *Id.* at p. 5-97. We disagree with this rationale and these conclusions by the FRA.

Future traffic impacts are by their nature difficult to predict. In our view, the appropriate response would be to develop a detailed monitoring protocol, and if construction traffic (or other traffic) reaches certain levels, then restrictions would be imposed that would help to reduce traffic through the historic district. In our view, the Section 106 PA would provide the ideal mechanism to develop and implement a binding monitoring commitment of this type. We urge the FRA to follow up and work with the consulting parties, including the Capitol Hill Restoration Society, to develop this as a binding mitigation measure (rather than merely a Whereas Clause), as discussed below.

- ***Importance of a Unified Plan for Air Rights Development***

We share the concerns raised by David Tuchmann on behalf of Akridge during the consultation meeting on June 29, regarding the potential segmentation of the air rights development. The air rights development has a number of important benefits that are crucial to the economic and architectural success of the redevelopment project, but it also has the potential for adverse effects if not carefully planned and designed in a cohesive and unified manner that is compatible with the historic character of the surrounding area. Segmentation of the air rights development would increase the likelihood of adverse effects on historic properties, and would exponentially increase the risk that the benefits would not be achieved in the first place.

- ***Avoid Simultaneous Record of Decision and Final EIS***

The SDEIS states that the FRA intends to issue the Final EIS and the Record of Decision (ROD) simultaneously, rather than offering the public the opportunity to comment on the Final EIS, citing the FAST Act¹ as the basis for this proposed exclusion of public comment. (SDEIS, at xxi n.5.)² Given the magnitude and complexity of the redevelopment project, and the high level of interest by the public, we strongly recommend that the FRA defer the ROD by 45 days in order to receive and respond to public comments on the Final EIS. It has now been more than seven and a half years since the FRA first issued its Notice of Intent (NOI) to prepare an EIS for this project. 80 Fed. Reg. 68,380 (Nov. 4, 2015). The FAST Act had not even been enacted into law at the time of the NOI for this project. During the years that followed, public comments have helped to substantially shape and modify the plans for this project, in ways that have advanced its transportation goals while reducing its adverse effects. In the context of this timeline, an additional 30-45 days is minimal, and the FRA's attempt to foreclose any further public comment after July 6, 2023 is unreasonable.

¹ Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94 (Dec. 4, 2015); see 49 U.S.C. § 304a.

² According to the federal permitting dashboard, the currently projected date for issuance of the ROD is January 22, 2024: <https://www.permits.performance.gov/permitting-project/dot-projects/washington-union-station-expansion-project>.

Not only was the FAST Act not an existing law at the time of the NOI in this case, but in our view, the circumstances under which the FAST Act calls for a “single document” combining the Final EIS and the ROD are not applicable here. The FAST Act states:

To the maximum extent practicable, the lead agency shall expeditiously develop a single document that consists of a final environmental impact statement and a record of decision, unless—(1) the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or (2) there is a significant new circumstance or information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action.

49 U.S.C. § 304a(b). The ultimate resolution of *many* issues relevant to the impacts of the project is being postponed until after the Final EIS has been issued. These postponed issues regarding environmental concerns include, for example, the design of the project, the design and development plans for the air rights, the impacts of construction noise and vibration, and the monitoring and potential mitigation of traffic impacts, to name just a few. The comments submitted by the Committee of 100 on the Federal City also identify a number of additional unresolved issues ranging from outdated and unreliable projections of ridership to emissions and air quality impacts. In our view, all of these postponed and unresolved issues constitute “significant new . . . information relevant to environmental concerns that bears on the proposed action or the impacts of the proposed action.” *Id.* Accordingly, even the FAST Act does not mandate a combined FEIS and ROD under these circumstances.

Comments on the Draft Programmatic Agreement

As discussed by the consulting parties during the Section 106 consultation meeting on June 29, the Draft PA still needs work. The FRA acknowledged that it had not yet completed the process of incorporating earlier comments that had been submitted by the SHPO and other agencies prior to sharing a draft of the PA with the full list of consulting parties. The Draft PA necessarily defers the resolution of many of the adverse effects from the project, but needs to incorporate much more specific procedures for assessing, minimizing, and mitigating the adverse effects – and needs to include the consulting parties in that process. We also agree with the Committee of 100 that the currently proposed mitigation package is too “mundane.”

- ***Inadequate Resolution of Traffic Impacts*** (Whereas Clause, p.3, Lines 90-99)

The National Trust and the Capitol Hill Restoration Society both raised formal disagreements with the FRA’s finding of “no adverse effect” on the Capitol Hill Historic District as a result of traffic impacts. In response, the FRA included a Whereas Clause in the Draft PA offering that the Project Sponsor (USRC) would implement a number of measures that would contribute to avoiding and minimizing these potential adverse effects. These include regular monitoring activities, implementation of restrictions, and development of a Construction Transportation Management Plan. This approach of monitoring the actual traffic impacts and then using those results to trigger certain restrictions if specific thresholds are met, was supported by

the ACHP. However, it needs to be incorporated into the body of the PA as a binding commitment, rather than merely a Whereas Clause. And all consulting parties need to be involved in the process of developing the traffic monitoring plan, not just the Signatories.

- ***Inadequate Review Procedures*** (Stipulation II, pp. 3-4)

Stipulation II describes the general procedure for reviewing and commenting on all documents and plans as the PA is implemented, including all of those in Stipulation VI (Treatment Measures). However, Stipulation II is limited exclusively to input by the Signatories, and makes no provision whatsoever for comments by any other consulting parties. (*See, e.g.*, Lines 128, 131-134, 136, 138-139, 142, 145, 149-151.) This is absolutely unacceptable, and we urge the ACHP and SHPO to insist that this be revised. The consulting parties in this case bring substantial expertise to the table, and they represent parties and historic places directly affected by the project. Their comments have already been highly influential in persuading the FRA to make modifications to the project, and they should not be excluded from all subsequent review and comment opportunities, as the Draft PA proposes. More detailed revisions are also needed to Stipulation VI, in order to ensure this input from the consulting parties, as described below.

- ***Inadequate Stipulation for Historic Preservation Covenant***
(Stipulation VI.A.1., p.6)

The Draft PA merely provides that the FRA will “*seek to* include a historic preservation covenant” in the transfer of any real estate out of federal ownership (Line 222, emphasis added), but does not constitute a firm commitment to doing so. Nor does this draft stipulation include any standards about what would be included in the covenant. Would the covenant meet the standard of “adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance,” within the meaning of 36 C.F.R. § 800.5(a)(2)(vii)? Who would hold the authority to enforce compliance with the covenant? Only the Signatories would have any input on these issues (Lines 225 & 227); all other consulting parties would be excluded from the process. In addition, the fourth Whereas Clause (Lines 22-23) states that the privately-owned air rights being acquired for the project are already subject to a historic preservation deed covenant. How would the terms of that existing covenant compare with and relate to the language of the newly negotiated covenant? D.C. has a notoriously poor track record regarding failed preservation covenants, as the National Trust has emphasized in a prior letter to the ACHP regarding the development of specific guidance for the use of preservation covenants in the Section 106 process. (See attached.) Accordingly, it will be especially important to strengthen the language of this stipulation, and to include all consulting parties in the process of drafting the preservation covenant.

- ***Inadequate Consultation for Design Review*** (Stipulation VI.A.2., pp.6-7)

The Draft PA would limit the development and implementation of the Design Review process to the Signatories (Lines 231 & 233), and would exclude all other consulting parties from the Design Review. This is unacceptable. In addition, the Draft PA should be more specific about the appropriate timing and sequence of submissions to the NCPC and CFA

(Lines 241-243), and how they would be coordinated with the design review process developed under the PA. The DC Historic Preservation Review Board (HPRB) needs to be added as well.

- ***Inadequate Stipulation for Design Guidelines & Air Rights Development*** (Stipulation VI.A.3., p.7)

As discussed above, and at the June 29 consultation meeting, this draft stipulation is far too narrow. First, the design guidelines need to be developed for all of the areas subject to development under the project, not just the federal air rights. While the guidelines themselves may vary somewhat for the different components of the development, they need to be coordinated to ensure that adverse effects will be minimized and that the design of the new development will be harmonious and compatible. Second, the development of these design guidelines should not be limited to the Signatories (Lines 258 & 260), but should include all consulting parties. The substantial expertise of the consulting parties will be essential to the development of meaningful design guidelines.

We also agree with the concerns raised by the SHPO that the Draft PA fails to include any stipulations regarding the proposed central plaza, even though the plaza is one of the most critical components of the Preferred Alternative. An additional stipulation needs to be added to the Draft PA in order to ensure that the plaza will be developed and that the remaining development will be consistent with the Preferred Alternative.

- ***Inadequate Consultation for Interpretation Plan*** (Stipulation VI.A.6., p.9)

The Draft PA would limit the development and implementation of the Interpretation Plan to the Signatories (Lines 340 & 347), and would exclude all other consulting parties from the process. This is especially problematic since many of the consulting parties have direct experience with historical interpretation, and their expertise would substantially improve the resulting Interpretation Plan.

- ***Inadequate Consultation for Historic Properties Construction Protection and Signage Plan*** (Stipulation VI.A.8., pp.9-10)

The Draft PA would limit the development and implementation of the Historic Properties Construction Protection and Signage Plan to the Signatories (Lines 376 & 387), and would exclude all other consulting parties from the process. This should be revised to include all consulting parties.

- ***Inadequate Consultation for Construction Noise and Vibration Control Plan*** (Stipulation VI.A.9., p.10)

The Draft PA would limit the development and implementation of the Construction Noise and Vibration Control Plan (CNVCP) to the Signatories (Lines 395 & 422), and would exclude all other consulting parties from the process. The consulting parties in this case bring substantial expertise to the table, and they represent parties and historic places

directly affected by the project. The preparation and implementation of this plan would not only be delegated to the USRC, but would be *re*-delegated to the construction contractor, including the determination of the “appropriate vibration thresholds” and “measures to be taken to minimize the risk of damage.” (Lines 398-399). In our experience, it is much better to include the specific vibration thresholds in the PA itself, and to include the minimization measures in the plan, rather than leaving these determinations in the hands of the construction contractor. For example, enclosed is an excerpt from the MOA governing the construction of the new Coast Guard headquarters building at the St. Elizabeths campus, which serves as a useful model regarding vibration control, and we would encourage the Signatories to copy much of this language, including the provision that states “Vibrations shall be monitored to ensure that vibration levels . . . do not exceed 0.2 inches/second.”

- ***Monitoring and Reporting*** (Stipulation X., p.14)

In addition to the draft language in Stipulation X requiring the USRC to prepare and distribute an annual report, we strongly recommend that the USRC also be required to convene an annual meeting, inviting all consulting parties. In our experience, these kinds of annual meetings are much more valuable than merely distributing a document, and they help to reduce the risk of misunderstandings and conflicts in the future. Annual meetings are especially important for projects with an unusually long duration such as this one.

Conclusion

Thank you in advance for considering the comments of the National Trust for Historic Preservation. We appreciate the opportunity to continue to participate in the consultation process to refine and improve the Section 106 Programmatic Agreement for the Washington Union Station Expansion Project.

Sincerely,



Elizabeth S. Merritt
Deputy General Counsel

Enclosures:

- Excerpt from MOA for new Coast Guard HQ at St. E's (Dec. 16, 2009)
- National Trust comments to ACHP re Guidance on the Use of Real Property Restrictions or Conditions in the Section 106 Process to Avoid Adverse Effects (June 29, 2015)

cc: Rachel Mangum and Jaime Loichinger, Advisory Council on Historic Preservation
Andrew Lewis and David Maloney, DC State Historic Preservation Office
Lee Webb, Federal Preservation Officer, National Capital Planning Comm'n
Tom Luebke, Federal Preservation Officer, Commission of Fine Arts

Rebecca Miller, DC Preservation League
Erik Hein, Committee of 100 on the Federal City
Drury Tallant, Capitol Hill Restoration Society
David Tuchmann, Akridge Development
Katie Hummelt and Jennie Gwin, Beyer Blinder Belle
Rob Nieweg, National Trust for Historic Preservation