

Federal Highway Administration (FHWA) and National Capital Planning Commission (NCPC) Meeting  
Location: NCPC Headquarters  
November 1, 2019

Attendees: Michael Weil, Diane Sullivan, Ann Schuyler, Jitesh Parikh, Megan Cogburn, James Gavin, Jeanette Mar, On phone: Sharon Vaughn-Fair, Keilyn Perez

The Federal Highway Administration requested this meeting to get a better understanding of the NCPC's process, their regulatory/statutory authority as it pertains to the National Environmental Policy Act process and their potential action related to the use of parkland acquired under the Capper Cramton Act.

The following agenda/topic areas of discussion were provided to attendees prior to the meeting to facilitate the discussion:

- Understanding of NCPC's process and timing for seeking Commission's action
- NCPC response to FHWA/MDOT SHA following November 7<sup>th</sup> Commission Meeting
- Is NCPC's action/concurrence dependent upon M-NCPPC's concurrence? Why? Legal basis?
- Discussion/understanding of elevation process, if needed
- Any additional questions for FHWA from NCPC
- Next steps

The discussion at the meeting cross cut all the above areas not in the order of the agenda and therefore a summary of meeting notes is listed below instead of each agenda items.

- NCPC explained that the commission does not take an action until there is a real project. For the NCPC to have a project, an application must be submitted by the applicant. For the MLS project the applicant is M-NCPPC.
- Depending on the timing of the application, NCPC may take the project to the Commission at concept (scoping/P&N), preliminary (DEIS) and final stage(s) (NEPA is finalized). It seems that the MLS project will not be ready for Commission action for a while. Typically, Preliminary Review occurs after tentative design decisions have been made but well before detailed design work begins (e.g., 25-35 percent design development). Final Review occurs when the applicant has made all design decisions have been made (including building and landscaping materials), typically, during 50-70 percent design development.
- The NCPC may co-sign the FEIS/ROD if the application is made before the FEIS/ROD or, the NCPC may issue its own ROD related to Capper Cramton (CC) lands. Most likely the NCPC will issue its own ROD. In either case, it will require commission's action. There are two actions taken by the Commission which may occur simultaneously: one is on the ROD and a second one on the actual project application.
- NCPC staff is keeping the Commission in the loop at key milestones so their input is incorporated into the NEPA process and concurrence can be solicited when they have a project.
- The NCPC expressed concerns about dropping Alternative 5 from further consideration. They were appreciative of MDOT SHA and FHWA studying MD 200 Diversion Alternative and understand that the Diversion Alternative will not be considered further as it is performing

worse than Alternative 5 for most screening criteria. They stated that as a result all alternatives under consideration have 2 managed lanes. Although for NCPC's "study-specific" Purpose & Need (relating to the Capper-Cramton parks), narrowing the ARDs to one Build alternative (from a park impact perspective), will make it more difficult for the Commission to use to satisfy its NEPA responsibility. However, NCPC staff is hopeful that the Section 4(f) analysis, other technical EIS studies (i.e. MD 200 Alternative analysis), FEIS, and ROD will all provide enough information to enable future NCPC Capper-Cramton park development reviews.

- The FHWA explained that the alternative 5 does not meet study's purpose and need and does not meet financial viability goal. The NEPA (CEQ Section 1502.14) requires an EIS to examine all reasonable alternatives. Reasonable alternatives include those that are practical or feasible from technical and economic standpoint based on the purpose and need. If Alternative 5 is carried forward to EIS, it may give a false sense to public that it is under consideration and may be selected. As the Alternative 5 was found to be not practical and feasible from a technical and economic standpoint based on the purpose and need, the FHWA and MDOT SHA decided to drop it from further consideration. The MD200 diversion alternative is dropped for the same reasons. FHWA acknowledges that the timing of dropping alternative 5 may not be optimal but we wanted to be upfront with the public and agencies.
- NCPC wants to see information provided in DEIS, draft Section 4(f) evaluation and on mitigation. *(post meeting notes – the DEIS may only have information on conceptual mitigation as information will continue to evolve. The FEIS will outline agreed upon mitigation.)*
- As the NCPC does not have enough information to make their decision at the current stage of the project, they will inform MDOT SHA that they are unable to concur with the updated alternatives retained for detailed study (ARDS) at this time.
- NCPC would like to know the difference in increased mitigation and ROW costs between impacts associated with alternative 5 and the most impactful alternative. Would this make it more financially viable? What are the tradeoffs? NCPC also had the same questions about the costs associated with mitigation / property acquisition for the MD 200 Alternative, and how those cost savings would off-set the State's \$310 million subsidy. Presumably, NOT paying for Capper-Cramton park mitigation would save the State money (compared to the other build alternatives) and thereby, off-set the \$310 million amount.
- There was a discussion on reduction in impacts to CC lands in Rock Creek Park, Northwest Branch Stream Valley Park and Sligo Creek Stream Valley Park (SVP). *(post meeting note - currently impacts to CC lands include 3.7, 3.2 and 3.2 acres in Rock Creek Park, Sligo Creek SVP and Northwest Branch SVP, respectively. Of the 3.2 acres in both SVPs, 2.3 and 2.9 acres are temporary impacts in Sligo Creek SVP and Northwest Branch SVP, respectively.)* The NCPC appreciated minimization efforts and asked for information on how impacts were reduced. They would like to know where these impacts are located and how other alternatives are affected by the reduction on CC land.
- Part of impact assessment/mitigation development within the Capper-Cramton parks will depend on the quality of the information provided through the EIS and other documents related to visual and user experience impacts. Ideally, NCPC would like to see renderings/photo simulations of each park after Beltway expansion – with and without potential mitigation. Also, we would like to understand FHWA's formal process for assessing visual/park user impact analysis as part of NEPA, and we hope there is a detailed discussion in the EIS document.

- NCPC informed FHWA that NPS reached out to them to let them know about the 1941 agreement on George Washington (GW) Parkway which stipulates NCPC's role. **NCPC agreed to send FHWA a copy of the agreement.**
- NCPC would like to see a discussion on how transit would benefit CC park use, how the project would facilitate increased commuter buses and access to transit facilities. The FHWA informed NCPC about the Transit Working Group (TWG) formed by the MDOT Secretary of Transportation. The outcome of the TWG will be discussed in FEIS.
- There was a discussion on de-federalizing CC lands. NCPC was not sure if that is allowed but were concerned with optics and risks associated with it even if it allowed. NCPC talked about 1963 perpetual easement agreement between the State and M-NCPPC due to the widening and construction of the Capital Beltway. The agreement may have allowed a mitigation package that included acquisition of land and compensation. **NCPC will send a copy of the agreement to FHWA.**
- FHWA discussed that the MLS project is under President's EO 13807. NCPC is not a signatory to the MOU implementing the EO among federal agencies. For this reason, FHWA discussed elevation/dispute resolution process in case if there is a need. FHWA described the dispute resolution process in 23 U.S.C. 139 and informed NCPC that this process would be used if needed.
- FHWA provided a summary of actions (**highlighted in purple**). Staff from NCPC will summarize Commission deliberation from the meeting and send a letter to us the following week after the Commission's meeting.