

**Appendix J:**  
National Park Service  
Non-Impairment Determination

## NON-IMPAIRMENT DETERMINATION

By enacting the National Park Service (NPS) Organic Act of 1916 (Organic Act), Congress directed the US Department of Interior and the NPS to manage units *“to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such a manner and by such a means as will leave them unimpaired for the enjoyment of future generations”* (54 USC 100101). Congress reiterated this mandate in the Redwood National Park Expansion Act of 1978 by stating that the NPS must conduct its actions in a manner that will ensure no *“derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress”* (54 USC 100101).

The NPS has discretion to allow impacts on Park resources and values when necessary and appropriate to fulfill the purposes of a Park (NPS 2006 sec. 1.4.3). However, the NPS cannot allow an adverse impact that would constitute impairment of the affected resources and values (NPS 2006 sec 1.4.3). An action constitutes an impairment when its impacts *“harm the integrity of Park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values”* (NPS 2006 sec 1.4.5). To determine impairment, the NPS must evaluate *“the particular resources and values that would be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts”* (NPS 2006 sec 1.4.5).

This determination on impairment has been prepared for the selected alternative described in Record of Decision, which states NPS’s intent, after an appropriate legal mechanism is identified, to allow the permanent use of certain Park property for the project as described therein. An impairment determination is made for those NPS resources being impacted and analyzed for the selected alternative. An impairment determination is not made for visitor use and experience because impairment findings relate back to park resources and values, and these impact areas are not generally considered to be park resources or values according to the Organic Act and cannot be impaired in the same way that an action can impair park resources and values.

**Land Use and Property:** As part of this decision, the NPS expects that the United States will, through a mechanism to be identified after the conclusion of the NEPA process, transfer or dispose of lands, or interests therein, in the George Washington Memorial Parkway (approximately 1.1 acres), East Potomac Park (approximately 0.5 acres), and West Potomac Park (approximately 1.7 acres) for construction of the new railroad bridge over the Potomac River and associated infrastructure, and for construction of the bike-pedestrian crossing. While the loss of these NPS lands would be permanent, it would not constitute as an impairment to park resources. The areas being lost are a small percentage of the total areas of each respective park. In addition, these locations are within an area with existing significant transportation infrastructure, which does not contain any significant park resources or values, and the only recreational opportunities occur on the roads and trails that pass underneath the existing bridges. The use of these roads and trails would not be impacted by this project.

**Cultural Resources:** The introduction of a new railroad bridge and bike-pedestrian crossing structures will temporarily and permanently alter views from the four historic districts within the area of potential effect (George Washington Memorial Parkway, Mount Vernon Memorial Highway, East and West Potomac Parks, and National Mall Historic Districts). It adds new physical elements and will result in the removal or alteration of mature trees that were part of the original planting plan for the George Washington Memorial Parkway and the removal of Japanese cherry trees in East and West Potomac Parks. Construction of the new railroad bridges and the bike-pedestrian crossing would result in less space available to replant trees and vegetation. Lastly, FRA also identified three terrestrial areas of high potential for archaeological resources and one submerged area of moderate potential within the Project’s limits of disturbance.

FRA determined, in accordance with Section 106 of the National Historic Preservation Act of 1966 (Section 106), and with DC SHPO and VDHR concurrence, that the Project will result in adverse effects

on the George Washington Memorial Parkway, Mount Vernon Memorial Highway, East and West Potomac Parks, and National Mall Historic Districts. The adverse effects result from permanent change in ownership, construction of new railroad infrastructure within the boundaries of the historic properties, temporary construction access and staging, temporary and permanent visual effects, and/or temporary and permanent vegetation and plantings.

As such, a Section 106 Programmatic Agreement (PA) was prepared and fully executed between FRA, DC SHPO, VDHR, NPS, NCPC, and DRPT (the Signatories) containing conditions and stipulations regarding means by which these adverse effects will be avoided, minimized, and mitigated and how the Section 106 will continue throughout the life of the Project. Also, pursuant to the terms of the PA, the need for further archeological investigations will be determined later using a phased identification approach and in consultation with the appropriate SHPO and Consulting Parties. Required investigations and evaluations will be conducted during Final Design once precise locations for ground disturbing activities have been identified. The executed Section 106 PA between the Signatories containing conditions and stipulations regarding the Project is provided in Appendix B of the combined FEIS/ROD.

While there will be adverse impacts (adverse effect under Section 106) to all four historic districts, none of these impacts will constitute an impairment to either the associated Parks or their resources. The design of the bridges will be done in accordance with the PA and will avoid and minimize impacts to the extent possible and mitigate unavoidable impacts when necessary. The new railroad bridge and infrastructure will be located between the current CSX Long Bridge and the I-395 eastbound bridge, so while it will add to impacts in this area, it will not expand the area already impacted by these large transportation corridors. Locating the new railroad bridge between these existing bridges also minimizes the overall long-range visual impacts on these historic districts.

Lastly, the recreational and interpretive opportunities that currently take place within these existing transportation corridors are minimal, mostly consisting of roads/trails passing underneath the existing bridges. Adding the additional railroad bridge in this corridor would not prohibit the use of these roads and trails and adding an additional new bike-pedestrian crossing connecting the Mount Vernon Trail to the National Mall and Memorial Parks will be beneficial. These impacts will not diminish the overall integrity of the resources and values provide for by the George Washington Memorial Parkway, Mount Vernon Memorial Highway, East and West Potomac Parks, and the National Mall and Memorial Parks, and will not diminish the opportunities to enjoy those resources or values.

## **CONCLUSION**

While the impact analyses summarized above demonstrate that the Selected Alternative will result in impacts on the resources of the George Washington Memorial Parkway, Mount Vernon Memorial Highway, East and West Potomac Parks, and the National Mall and Memorial Parks, those impacts are occurring within an existing heavily used transportation corridor, and will not substantially affect recreational and interpretive opportunities in that area (apart from the benefits of the new bike-pedestrian crossing). Implementation of the Selected Action will not result in adverse impacts that would threaten resources or values whose conservation is (1) necessary to fulfill specific purposes identified in the establishing legislation of the park; (2) key to the natural or cultural integrity of the park or opportunities for enjoyment of the park; or (3) identified as a goal in the park's general management plan or other NPS planning documents. There will be no impairment to park resources or values from implementing the Selected Action.