

**TRANSFER OF JURISDICTION OF APPROXIMATELY 15 ACRES OF
FORT DUPONT PARK (U.S. RESERVATION 405) TO THE
DISTRICT OF COLUMBIA GOVERNMENT FOR
EXPANSION OF THE FORT DUPONT ICE ARENA AND
CONSTRUCTION OF A YOUTH BASEBALL ACADEMY**

Fort Dupont Park
Southeast Washington, D.C.

Finding of No Significant Impact

MAY 27 2010

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, the Council on Environmental Quality Regulations (40 CFR, Parts 1500-1508), and the National Capital Planning Commission's Environmental and Historic Preservation Policies and Procedures (NCPC Environmental Policies), I have evaluated the proposed transfer of jurisdiction of an approximately 15-acre parcel of National Park Service (NPS) property within Fort Dupont Park to the District of Columbia government for recreational purposes as shown on NCPC Map File No. 81.00(63.00)43073; the Environmental Assessment (EA) prepared by the NPS and dated October 2008; the NPS December 15, 2008 Finding of No Significant Impact (FONSI); and the May 26, 2010 Transfer of Jurisdiction and Declaration of Covenants agreement between the NPS and District of Columbia government relative to the proposal.

Based on my evaluation, I have determined that NCPC approval of the transfer of jurisdiction of the parcel from the NPS to the District of Columbia government for the purposes of expanding the existing ice rink and constructing ball fields and support facilities as shown in Alternative 2 (the Preferred Alternative) of the EA will not significantly affect the quality of the human environment because the Declaration of Covenants agreement between the NPS and the District of Columbia government incorporates the necessary mitigation measures required by both NPS and NCPC.

Proposed Action

The National Park Service proposes to transfer jurisdiction of approximately 15 acres of NPS administered property in Fort Dupont Park to the District of Columbia (District) for the purposes of expanding the existing ice rink and constructing ball fields and support facilities in Southeast Washington, D.C. The area proposed for jurisdictional transfer is situated in the northern portion of Fort Dupont Park, bounded by Ely Place SE to the north, Minnesota Avenue SE to the west, and Ridge Road SE to the east (the project area). The remaining acreage within Fort Dupont Park that is not part of this transfer of jurisdiction will remain under the administration of the NPS.

NPS prepared an Environmental Assessment for the transfer in October 2008 and made the EA available for a 30-day public comment period ending on November 17, 2008. This environmental document addresses short-term construction-related impacts and long-term changes to existing environmental conditions for the alternatives considered, and is consistent with requirements of the National Environmental Policy Act (NEPA) of 1969, as amended, the Council on Environmental Quality (CEQ) regulations implementing NEPA [40 Code of Federal Regulations (CFR) 1500-1508], the National Historic Preservation Act (NHPA) of 1966, as amended, and NCPC's Environmental and Historic Preservation Policies and Procedures (adopted April 1, 2004)(NCPC Environmental Policies).

On December 15, 2008, the NPS executed a Finding of No Significant Impact with mitigation measures wherein the environmentally preferred alternative of transferring a portion of Fort Dupont Park to the District for the expansion and improvement of recreational opportunities on public park land in the District was selected and was further determined not to constitute a major federal action significantly affecting the quality of the human environment as defined by NEPA so long as the mitigation measures are carried out. These mitigation measures are described below and include, in summary: installing a construction fence to protect adjacent NPS park resources; regular monitoring by an NPS biologist of the adjacent park resources during construction; compliance by the District with all applicable District regulations and requirements to protect soil, water, and cultural resources; the development by the District of a stormwater management plan for all development on the project site; and the use of proper methods for applying fertilizers and pesticides on the project site so that areas outside the project site are not impacted.

On January 2, 2009, NCPC issued a FONSI for the transfer of jurisdiction containing the following mitigation measures: the project site will be used for the current recreational purposes and for the specific recreational purposes of either or both of those specific uses identified as Alternative 2 in the EA (to improve the Fort Dupont Ice Arena and to construct a Youth Baseball Academy); the project site and all its existing and future recreational facilities and programs located on the project site are to remain available to the public; public access will be maintained through the project site to the adjacent NPS property; existing parking and any additional parking to be developed on the project site will be available to the public; and new facilities developed in conjunction with the proposed Youth Baseball Academy and the expanded ice rink will comply with the provisions of the D.C. Green Building Act.

At its January 8, 2009 meeting, because the NPS and the District had not yet reached agreement on the terms of the transfer, the Commission postponed its review of the proposed transfer of jurisdiction until such time as agreement between the NPS and the District could be reached and the agreement was finalized and available for evaluation by the Commission.

On April 23, 2009, a complaint was filed against the NPS in the U.S. District Court for the District of Columbia by the Maryland Native Plant Society, Inc., the Virginia Native Plant Society, Inc., and David Culp (a private citizen). The complaint alleges that the NPS failed to consider and disclose adverse effects of the proposed transfer upon the adjacent forest and seeks a judgment that the NPS violated NEPA in its preparation of the EA and execution of its FONSI. The complaint also seeks to enjoin the transfer of jurisdiction until the NPS complies with its

alleged legal duty to consider the effect that the transfer will have on the forest bordering the proposed development.

On May 26, 2010, NPS and the District executed a Declaration of Covenants for the Transfer of Jurisdiction that incorporates the mitigation measures described in both the NPS and NCPC FONSI.

Alternatives considered in the Environmental Assessment

The Environmental Assessment examined in detail two alternatives: Alternative 1—the no action alternative; and Alternative 2—the proposed action to transfer jurisdiction of the project area to the District. The EA found that Alternative 1 would result in no changes to the existing open space parcel and would not satisfy the purpose and need to improve and expand the existing sports-related recreational facilities currently located within Fort Dupont Park. The NPS has selected Alternative 2 as the Preferred Alternative. Alternative 2 included several options for laying out the site, all of which limited new development to the existing developed area of the Park that is currently used for recreational purposes.

Alternative 2 – the Preferred Alternative

The subject of Alternative 2 within the EA is the transfer of jurisdiction of the project area from the NPS to the District and the related proposal to expand and improve the sports-related recreational facilities in the project area (an area already developed with recreational facilities and a parking lot). The EA presents conceptual site plan options developed for Alternative 2. These conceptual site plan options did not represent any final decisions on the facilities layout within the project area, however, they were used as a means of determining the feasibility of the program on the project site (i.e., requirements of the Youth Baseball Academy and Fort Dupont Ice Arena (FDIA) expansion, the size of the athletic fields, administrative building, and parking), the physical constraints of the site (i.e., the Natural Resource Zone immediately south of the project area as identified in the 2004 *Fort Circle Parks Final Management Plan*, NPS maintenance buildings, Kimball Elementary School fields, and the existing tennis/basketball courts), and the proposal's potential impacts. Detailed design drawings of the new facilities will be developed by the District after the transfer. The impact analysis in the EA does, however, take into account a reasonable range of options that would accommodate the program elements of the Youth Baseball Academy and FDIA expansion.

The EA presented three conceptual site plan options being considered by the District to establish the Youth Baseball Academy within the center of the project area, immediately west of the existing ice rink parking lot. Two of the options presented in the EA would require the U.S. Park Police horse lunge area to be relocated approximately 100 feet from its current location to the south. Parking for each of these options ranged from 76 to 160 spaces. One of the options retains a multi-purpose sports field within the project area.

The EA presented four conceptual site plan options being considered by the District to expand the FDIA to approximately twice its current size. All these options would retain the expanded facility within the footprint of the existing facility and parking lot. Parking for each of these options ranged from 123 to 168 spaces.

As noted in the EA, one FDIA site plan option considered during scoping for the EA did expand the ice arena in an end-to-end configuration, which would necessitate the removal of approximately one acre of the adjacent forested area that is designated as a Natural Resource Zone in the 2004 *Fort Circle Parks Final Management Plan*. According to the EA, the area proposed for the expansion of the ice arena in this option is part of one of the largest remnants of intact coastal plain forest in the District of Columbia, and the ancient deposition of gravel terraces and the resulting soil conditions in this area have given rise to a unique forest ecosystem referred to as the "Terrace Gravel Forest Plan Community". Because this option would result in unacceptable impacts, it was dismissed from further consideration by the NPS in the EA and this portion of land is not being transferred.

In addition to the establishment of a Youth Baseball Academy and the expansion of the FDIA, the project area would include the existing basketball and tennis courts. In accordance with the EA, no physical changes will occur to the current configuration of these facilities.

Analysis of Potential Impacts

The Transfer of Jurisdiction and Declaration of Covenants will be effective on the date it is recorded in the lands records of the District following the recommendation and approval by NCPC. After the transfer of jurisdiction, the property transferred will become the responsibility of the District and will no longer be managed by NPS as a part of Fort Dupont Park. District environmental standards will then apply and it will then be the District's responsibility to comply with the mitigation measures included in the Transfer of Jurisdiction and Declaration of Covenants, and to design the project such that it does not result in any additional impacts that require mitigation. The Transfer of Jurisdiction and Declaration of Covenants incorporates mitigation measures that include: 1) retaining the transfer property for recreational purposes; 2) retaining public accessibility of the project site; 3) retaining public access through the project site; 4) retaining public access to parking on the project site; and 5) ensuring the protection of the scenic, historic and natural characteristics of Fort Dupont Park. These conditions, and the bases for them, are described below.

1) Retention of the transfer property for recreational purposes

The Parks and Open Space Element of the *Comprehensive Plan for the National Capital: Federal Elements* observes that the federal government has placed a high value on the environmental benefits, recreational use, and scenic beauty provided by the monumental, natural and cultural landscapes of the National Capital Region and that the federal government has, over the years, amassed a significant inventory of natural and historic parks to complement the more formal open space settings for the national capital's monuments and memorials. The Element includes the policy: "The federal government should preserve the important scenic, historic, and natural elements of the Fort Circle Parks." Further, the Element provides the following: "Development and enhancement of the Fort Circle Parks should protect their cultural resources and be compatible with their important natural landscape features, which are visible from the monumental core. Community-oriented recreational opportunities, interpretation of fort sites, and a well-delineated connecting trail in a park-like setting - utilizing the McMillan Plan connections - should be provided throughout the system."

In addition, NCPC has partnered with the NPS and the District on the CapitalSpace initiative, which is a current collaborative effort to promote, protect, enhance, and grow the District's parks and open space system. Some of the broad objectives of Capitalspace include addressing the shortage of outdoor regulation-sized playing fields accessible to District residents and attracting scarce resources to maintain and operate facilities at a high standard. A CapitalSpace analysis of access to parks and open space within the District finds that: Fort Dupont Park is extremely important in providing park services to Ward 7 within the city; that this area of the city has one of the greatest concentrations of children; and that many areas in this neighborhood have comparatively less access to park and active recreational resources than the rest of the city.

Since it remains in the federal government's interest to preserve park space for community recreation, the project area should be used only for the expansion and improvement of the sports related recreational facilities identified in this transfer of jurisdiction proposal and in accordance with Alternative 2 of the EA.

Mitigation

The NPS and the District have agreed within the Declaration of Covenants as part of the Transfer of Jurisdiction agreement that the District will use the project site for the current recreational purposes, and within five years the District shall have made reasonable progress towards the development of either or both of those specific uses identified in Alternative 2 in the EA. The uses in Alternative 2 are to improve the Fort Dupont Ice Arena and to construct a Youth Baseball Academy. The Declaration of Covenants includes a reversion of the transfer if the Secretary of the Interior determines that the project site is not being used for the current recreational purposes and within five years for the specific recreational purposes of either or both of those specific uses identified as Alternative 2 in the EA.

2) Retention of public accessibility of the project site

The EA notes that there will be long-term beneficial impacts to those who will utilize the Youth Baseball Academy and expanded ice rink facilities, and that implementation of Alternative 2 will also result in long-term beneficial impacts to the local community and economy as recreational facilities within the project area are improved and expanded. However, the proposal for these facilities within the EA is for a third party, not the District, to develop and manage the Youth Baseball Academy and expanded ice rink facilities after entering into a lease with the District.

Since Fort Dupont Park is extremely important in providing park services to the District's Ward 7, which is an area that has one of the greatest concentrations of children and comparatively less access to parks and active recreational resources than the rest of the city, it remains in the federal government's interest to assure public accessibility to the recreational opportunities on the project area.

Mitigation

The NPS and the District have agreed within the Declaration of Covenants in the Transfer of Jurisdiction agreement that provisions shall be made for public access to the project area and all existing and future facilities located on the project area as well as recreational

programs conducted in or associated with the existing or future facilities, subject to private uses of the facilities for recreational purposes consistent with current uses or those specific uses identified as Alternative 2 in the EA. The Transfer of Jurisdiction and Declaration of Covenants includes a condition that if, in the opinion of the NPS, facts or circumstances arise which appear to be a material violation of this measure, the NPS shall promptly notify the District in writing. The NPS and the District shall then use diligent, good-faith efforts to reach agreement regarding what, if any, corrective actions are necessary and a schedule for completing such corrective actions, and the District shall initiate corrective action within one-hundred and twenty (120) days of the notice of violation.

3) Retention of public access through the project site

As noted above, the Parks and Open Space Element of the Federal Elements of the Comprehensive Plan provides that community-oriented recreational opportunities should be provided throughout the Fort Circle Parks system. Currently, the northern border of Fort Dupont Park has limited restrictions on access to the park for the residents north of the project area. To ensure continued community access to Fort Dupont Park's many recreational opportunities, it is in the federal government's interest to assure that public access through the project site, connecting Fort Dupont Park and the adjoining neighborhoods, is maintained.

Mitigation

The NPS and the District have agreed within the Declaration of Covenants in the Transfer of Jurisdiction agreement that public access will be maintained through the project area to the adjacent park land and the District will consult with the NPS in advance of any addition, modification or removal of walking and biking trails within the project area. The Transfer of Jurisdiction and Declaration of Covenants includes a condition that if, in the opinion of the NPS, facts or circumstances arise which appear to be a material violation of this measure, the NPS shall promptly notify the District in writing. The NPS and the District shall then use diligent, good-faith efforts to reach agreement regarding what, if any, corrective actions are necessary and a schedule for completing such corrective actions, and the District shall initiate corrective action within one-hundred and twenty (120) days of the notice of violation.

4) Retention of public access to parking on the project site

Currently there are approximately 188 parking spaces available to the public at the project site (adjacent to the FDIA). Within Alternative 2, the EA identifies four options (conceptual site plans) to configure the expansion of the ice rink and reconfigure the existing parking area. In addition, within Alternative 2, the EA identifies three options (conceptual site plans) to configure the Youth Baseball Academy, all of which include additional parking areas. The amount of parking proposed within all options varies; however, the EA notes that parking capacity throughout the entire project site would increase from the current number by 50-120 cars.

Since Fort Dupont Park is a national park that attracts both local and national visitors, and the current available parking spaces on the project site are used by visitors to the park, it remains in the federal government's interest to ensure public accessibility to available parking spaces within the project site following the transfer of jurisdiction.

Mitigation

The NPS and the District have agreed within the Declaration of Covenants within the Transfer of Jurisdiction documents that existing parking and any additional parking to be developed on the project area will be made generally available to individual adjacent park users on a first come first served basis. The Transfer of Jurisdiction and Declaration of Covenants includes a condition that if, in the opinion of the NPS, facts or circumstances arise which appear to be a material violation of this measure, the NPS shall promptly notify the District in writing. The NPS and the District shall then use diligent, good-faith efforts to reach agreement regarding what, if any, corrective actions are necessary and a schedule for completing such corrective actions, and the District shall initiate corrective action within one-hundred and twenty (120) days of the notice of violation.

5) Ensure the protection of the scenic, historic and natural characteristics of Fort Dupont Park

As noted in the EA, after the transfer of jurisdiction takes place, implementation of any of the options proposed by the District under Alternative 2 will result in short-term and long-term negligible to minor adverse impacts to soils from both construction and recreational activities on the project area. Long-term negligible to minor adverse impacts to topography will also occur near the southern end of the project area as grading will be necessary to provide level ball fields. No impacts to geology will result from implementation of this alternative.

Mitigation

The NPS and the District have agreed within the Declaration of Covenants within the Transfer of Jurisdiction documents that the District will:

- Install a construction fence along the border of the Natural Resource Zone and project area to protect park resources, such as the forested areas, that delineates the limits of construction and ensures construction vehicles do not encroach on NPS property.
- Regularly monitor the Natural Resource Zone within the park using an NPS biologist during construction to ensure construction activities are not impacting the trees and other park resources. If it is determined that any of these activities could cause adverse impacts to these resources, construction would be halted until mitigations are established to avoid or minimize to the greatest extent possible any adverse impacts.
- Ensure that all appropriate District regulations are complied with and that Covenant requirements are implemented and achieving their intended results. These include those for soil and water resources, and for cultural resources as described as mitigation in the EA on pages 26-27. The District necessarily must also abide by other requirements, such as those to protect what are defined as "Special Trees" in the District's Urban Forest Preservation Act of 2002, to the extent these types of trees are located within the transferred property. All trees removed during the construction of the new Youth Baseball Academy and expansion of the Fort Dupont Ice Arena would be replaced with native tree species.

- Provide prior to construction a stormwater management plan for the operation of the proposed facilities. This plan would address the increase in impervious surfaces and subsequent increases in overland runoff by incorporating stormwater control designs into the project to manage the rate at which runoff leaves the site. To ensure no additional runoff is introduced into the Natural Resource Zone, the stormwater control design would be directed to appropriate stormwater outfalls.
- If required, apply fertilizers and pesticides to the new ballfields according to manufacturer guidelines using proper methods and correct quantities and only when weather conditions are suitable. This would ensure that only the targeted area is treated, and areas outside of the project area would not be impacted.

The NPS and the District have agreed within the Declaration of Covenants in the Transfer of Jurisdiction agreement that the design and operation of new facilities developed in conjunction with the proposed baseball academy specified in Alternative 2 of the EA, including the ballfields and buildings, will comply with the provisions of the D.C. Green Building Act, as amended, regarding the new construction of District government facilities whether or not these are in fact District government facilities. In addition, the NPS and the District have agreed within the Declaration of Covenants that the development, construction and maintenance of any new and/or modified facilities erected on the project site should be done in such a manner as to minimize negative environmental impacts on adjoining NPS property. The Transfer of Jurisdiction and Declaration of Covenants includes a condition that if, in the opinion of the NPS, facts or circumstances arise which appear to be a material violation of this measure, the NPS shall promptly notify the District in writing. The NPS and the District shall then use diligent, good-faith efforts to reach agreement regarding what, if any, corrective actions are necessary and a schedule for completing such corrective actions, and the District shall initiate corrective action within one-hundred and twenty (120) days of the notice of violation.

The facilities developed in accordance with the transfer agreement to expand and improve the FDIA and Youth Baseball Academy on the project area will require further NCPC review pursuant to 40 U.S.C. § 8722.

As described in the EA, no properties listed in or eligible for listing in, the National Register of Historic Places (NRHP) occur within the project site. Many alterations have occurred to Fort Dupont Park in the last 50 years, and the historic appearance of the park from the 1930s and 1940s no longer survives. A 2004 Historic Resource Study (HRS) on Fort Dupont Park evaluated the historic context of the park and concluded that the cultural landscape did not possess the historical significance and integrity to qualify for listing in the NRHP under Criteria A, B, or C. These criteria generally pertain to significant events, persons, and architectural qualities of the property. The Fort Dupont Park HRS did not evaluate the park for NRHP eligibility under Criterion D, which generally is used for archeological resources. A 1968 HRS indicated that it is unlikely that any as yet undiscovered archeological resources exist in the project area. If during development of the project area archeological resources are discovered, all work in the vicinity of the discovery would be halted, the resources would be evaluated, and an appropriate mitigation would be developed as necessary, in consultation with the District of Columbia State

Historic Preservation Office (DCSHPO), following the procedures for post-review discoveries found in the Advisory Council on Historic Preservation's regulations (36 CFR 800.13).

The project area to be transferred is designated as a Recreation Zone in the *Fort Circle Parks Final Management Plan* and does not contain any historic structures or districts. It is approximately 0.30 miles northwest of the NRHP eligible Fort Davis Drive, and nearly one mile from the Fort Dupont earthworks. The distance between Fort Davis Drive and the Fort Dupont earthworks and the area to be transferred is too great for the proposed land transfer to cause any effects. Views between Fort Davis Drive and the Fort Dupont earthworks to the project area are obstructed by vegetation and the area's natural topography.

The distance from the project area to Fort Davis Drive or the Fort Dupont earthworks and the lack of a viewshed suggest there would be no impact from the undertaking upon these properties. The District's future use of the project area will be comparable to the site's existing recreational functions and will preserve the current setting. In addition, no archeological resources have been identified within the project area and impacts to undiscovered subsurface resources, if present, are not anticipated. No sites sacred to American Indians or other significant ethnographic resources are known to occur within Fort Dupont Park.

The DCSHPO, on November 7, 2008, stated that the transfer of jurisdiction will constitute "no adverse effect", however, the requirements of Section 106 of National Historic Preservation Act would remain applicable to the District's proposed improvement and expansion of the sports-related recreational facilities that are currently located on the parcel and to all future actions proposed for the site. The NPS would participate in any such compliance as the adjacent land manager with potentially affected resources.



Marcel C. Acosta
Executive Director

