

July 1, 2019

Ms. Stacey Hemby  
Community Outreach  
Tina Boyd & Associates  
stacey@tbaconnects.com

Re: Arboretum Bridge and Trail Project

Dear Ms. Hemby,

The Audubon Society of the District of Columbia (a.k.a. DC Audubon Society / DCAS); American Bird Conservancy; City Wildlife; DC Environmental Network, Global Green USA; Maryland Ornithological Society; and Prince George's Audubon Society (hereafter "Commenters") appreciate the opportunity to provide comments on the Arboretum Bridge and Trail Project plan (hereafter "Bridge Plan"). Kenilworth Park and the Arboretum are favored locations for DCAS bird walks, and the annual woodcock walk at Kenilworth Park is particularly popular with DCAS members.

As described in detail below, we find that critically important elements of the District Department of Transportation's (DDOT) and National Park Service's (NPS) supporting documentation for the Bridge Plan are outdated or otherwise inadequate, including assessment of impacts to wildlife, cumulative impacts analysis, and evaluation of alternatives. Because of this, we find that it is not possible to accurately evaluate the project and its impacts, which we believe to be of great importance. We therefore request that DDOT and NPS update the Bridge Plan's environmental assessment either through a new environmental assessment or supplemental environmental assessment. We ask that this be completed as quickly as possible, as we know that many stakeholders are interested in the outcome.

### **Why This Matters**

The Kenilworth-Kingman-Arboretum complex is one of the largest areas of habitat remaining in the District. This block encompasses two Conservation Opportunity Areas (DC Wildlife Action Plan 2015), the bulk of the District's wetland and grassland habitats, and the most robust riparian buffer [riparian referring to vegetation adjacent to rivers and streams]. Portions of the Kingman and Heritage Islands have been designated as State Conservation and Critical Wildlife Areas, the only such in the District. The stretch of the Anacostia River through this area can be navigated without the view being obstructed by major human infrastructure, making it significant aesthetically and for water-based recreation.

According to Cornell Lab of Ornithology's eBird database, which compiles bird observations submitted by citizen scientists, 234 bird species have been observed at Kenilworth Park & Aquatic Gardens in the past 10 years, the second-highest total at birding "hotspots" in the District. This is derived from almost

5,000 checklists over the same time span, making Kenilworth the most frequently visited birding hotspot in the District in the last decade. Similarly, the Kingman Island and Arboretum hotspots are among the top 10 largest species lists in the District. Species documented in this collective area include 57 of 58 birds listed as Species of Greatest Conservation Need in the 2015 DC Wildlife Action Plan (54 of these have been documented in Kenilworth Park alone). Kenilworth Park is the only known breeding location in the District of one such species, the American woodcock. DCAS's annual outing to observe the courtship display of this species in the spring is invariably one of our most popular.

The proposed bridge would fall roughly in the center of the Kenilworth-Kingman-Arboretum complex and bisect this stretch of the Anacostia River. This is of great significance to many stakeholders, as well as wildlife, making it imperative that this project and its impacts are evaluated thoroughly and accurately, based on current circumstances and best available science.

### **The Environmental Analysis for the Bridge is Deficient and Must Be Supplemented or Reconducted**

In December 2011, NPS conducted an environmental assessment (2011 EA) for the Bridge Plan under the heading of "Anacostia Riverwalk Trail Section 3 Realignment."<sup>1</sup> On the basis of this EA, NPS issued a Finding of No Significant Impact (FONSI) for the project in June 2012. Based on the documents provided to Commenters and as of the date of this letter, there is no more recent environmental assessment or other NEPA analysis for the Bridge Plan than the 2011 EA.

As explained in detail below, the 2011 EA is deficient on a number of grounds and not an adequate environmental analysis of the Bridge Plan. Specifically, the 2011 EA is outdated and stale; includes a deficient cumulative impacts analysis that does not consider a number of more recently proposed projects on the Anacostia River; and does not include a proper analysis of alternatives to the Bridge, such as other locations and designs. For these reasons, DDOT and NPS must either conduct a new environmental assessment or at the very least conduct a supplemental environmental assessment to the 2011 EA.

#### ***Concern #1: The 2011 EA is Stale and Outdated***

As a preliminary matter, the 2011 EA is nearly eight years old and is therefore outdated and not an adequate environmental assessment, both as a matter of law and based on the current facts. As a general rule, environmental assessments and environmental impact statements risk becoming stale when they are five or more years old. The number of years that have passed between NPS's completion of the 2011 EA and the present are therefore enough on their own to demand that NPS and DDOT conduct a new environmental assessment or supplement the 2011 EA. Additionally, as provided below with respect to the 2011 EA's cumulative impacts analysis, there are also tangible consequences to outdated environmental assessments, in that other relevant impacts that should have been considered have arisen in the nearly eight years since the cumulative impacts analysis.

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<sup>1</sup> See NPS, *Environmental Assessment: Anacostia Riverwalk Trail Section 3 Realignment, Anacostia Park* (Dec. 2011).

NPS's *NEPA Handbook* addresses the scenario of old and outdated analyses, recommending that the agency complete a memo to file "when an NPS NEPA review was previously completed for a specific proposal, but its implementation was delayed because of unavailability of funds or other reasons." This memo to file is meant to "document the adequacy of the existing NEPA review" by considering a number of questions, including "Are the direct, indirect, and cumulative impacts associated with the action as currently proposed the same or essentially the same as those described in the existing NEPA document and associated decision document?" If the agency is "unable to answer 'yes' to all of these questions, you will likely need to complete an additional NEPA review."<sup>2</sup>

Based on the age of the 2011 EA alone and its failure to address the current cumulative impacts as described below, Commenters urge NPS and DDOT to conduct a new or supplemental environmental assessment.

***Concern #2: The 2011 EA's Cumulative Impacts Analysis is Deficient***

The 2011 EA's cumulative impacts analysis is deficient because it fails to provide a full or accurate analysis of the cumulative impacts of the variety of projects currently proposed adjacent to and in the Anacostia River. Namely, the 2011 EA fails to consider the number of bridges and other impacts proposed by Events DC in its redevelopment of the RFK Campus; the new and more detailed planning for redevelopment of Kenilworth Park; and other potential in-river projects such as the Anacostia River Pool. In conjunction with any one of these projects, the Bridge Plan could have greater cumulative impacts on soils, vegetation, wildlife and habitat, and wetlands that the 2011 EA fails to consider.

The 2011 EA's cumulative impacts analysis purported to set a temporal boundary of three years into the past and "reasonably foreseeable actions" five years in the future, or roughly from December 2008 to December 2016. For obvious reasons, this temporal boundary failed to consider any projects proposed since 2016. Looking at the individual actions the 2011 EA considered, the only other bridge projects listed are DDOT's 11th Street bridges project and the reconstruction of Kenilworth Avenue NE (I-295) at Foote Street.

Several notable recent proposals are absent from the analysis:

- Events DC's proposals for redevelopment of the RFK Campus, including three new pedestrian bridges to Kingman and Heritage Islands. NPS should be well aware of the potential NEPA implications of these projects, given its decision in August 2018 to cover certain aspects of the project under a categorical exclusion.<sup>3</sup>
- Plans for Kenilworth Park, including NPS's new arrangement to hand over administration of Kenilworth Park North to the District. Current proposals for the District's administration of

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<sup>2</sup> See NPS, *National Park Service NEPA Handbook* 23-24 (2005), available at [https://www.nps.gov/subjects/nepa/upload/NPS\\_NEPAHandbook\\_Final\\_508.pdf](https://www.nps.gov/subjects/nepa/upload/NPS_NEPAHandbook_Final_508.pdf).

<sup>3</sup> See NPS, Categorical Exclusion Form: Convert RFK Parking Lots to three new artificial turf fields, PEPC Project No. 82782 (Aug. 15, 2018).

Kenilworth Park North may include new recreation fields, a solar farm, and agriculture.<sup>4</sup> The 2011 EA only purported to consider CERCLA cleanup plans for the Kenilworth Landfill.<sup>5</sup>

- The Anacostia Waterfront Trust’s 2018 feasibility study for an in-river pool in the Anacostia River. The feasibility study covered nine potential sites from as far north as Kenilworth north of Watts Branch to as far south as Diamond Teague Park.<sup>6</sup>

Because of its outdated cumulative impacts analysis that excluded these recent proposals, the 2011 EA largely concluded with respect to wildlife impacts that:

*Construction of Section 3 of the ARW Trail under alternative B would result in short-term minor adverse impacts on wildlife during the construction period and long-term minor adverse impacts during the operation of the trail due to increased visitor accessibility. Following construction activities, it is expected that any displaced species would likely return to the area. Construction of the proposed trail through areas that are currently undisturbed natural wildlife habitat would result in the loss of those habitats; however, impacts would be minor because of the relatively small area being affected when compared to Anacostia Park as a whole.<sup>7</sup>*

The 2011 EA reached similar conclusions with respect to the cumulative impacts on soils, vegetation, and wetlands.<sup>8</sup> It is far from clear that NPS would have reached these same conclusion—particularly “the relatively small area being affected when compared to Anacostia Park as a whole”—if the cumulative impacts analysis actually included all the recent proposals for actions in and around the Anacostia River. Just to take one example, the impacts of one bridge may be temporary and short term, with displaced species likely returning to the area, but the same cannot be said for the successive construction of multiple bridges and facilities over several years in a row.

For these reasons, DDOT and NPS must conduct a new or supplemental environmental assessment that includes an up-to-date cumulative impacts analysis and must not proceed with the project under the current deficient analysis.

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<sup>4</sup> See *Anacostia Park & Community Collaborative*, Kenilworth Park North: From a history of waste, destruction and loss to a future of hope, health and wealth?, <http://www.anacostiaparkcommunity.org/blog/2018/12/7/kenilworth-park-north-from-a-history-of-waste-destruction-and-loss-to-a-future-of-hope-health-and-wealth> (last visited July 1, 2019).

<sup>5</sup> See 2011 EA, *supra*, at 51.

<sup>6</sup> See Anacostia Waterfront Trust, Anacostia River Pool, <https://www.anacostiariverpool.com/study/> (last visited June 30, 2019).

<sup>7</sup> 2011 EA, *supra*, at 60.

<sup>8</sup> *Id.* at 54, 57, 62.

**Concern #3: The 2011 EA's Alternatives Analysis is Improperly Limited and Insufficient**

Finally, the 2011 EA's alternatives analysis is deficient because it includes only two alternatives: DDOT's and NPS's preferred action (i.e., the Bridge Plan) and no action.<sup>9</sup> The alternatives analysis does not include any other locations or any alternative designs for the bridge, even though there are or may be multiple alternatives with fewer impacts than the preferred alternative.

As NPS is aware, it must consider a "reasonable range of alternatives." Courts and agency regulations over the years have attempted to describe exactly what constitutes a "reasonable" range, but it is clear that an analysis consisting only of one alternative granting the project in full and one "no action" alternative does not meet this obligation. While NPS need not include every possible alternative in its environmental assessment, it must include a reasonable range of alternatives that will meet the purpose and need for the proposed action.<sup>10</sup>

The purpose and need in this case is a broad one: to "realign Section 3 of the ARW Trail to provide a safe and convenient means for park visitors and bicycle commuters to access the Anacostia River waterfront and enjoy Anacostia Park."<sup>11</sup> It is clear that a wide range of alternative bridge locations and designs could meet this purpose and need and that there is no inherent limitation requiring the preferred location and design.

For these reasons, DDOT and NPS must conduct a new alternatives analysis with a reasonable range of alternatives. In conducting this new analysis, Commenters urge DDOT and NPS to consider additional design alternatives and at least the following location alternatives:

- Retrofitting the existing New York Avenue and Benning Road bridges;
- Traversing from the PEPCO station to the north end Kingman Island, and then through the golf course to the Arboretum; and
- Moving the Arboretum terminus of the bridge to a location that will not be affected by the closure of the Arboretum's gates after hours.

Given that the alternatives analysis is the "heart" of an environmental analysis under NEPA and that this analysis must not be predetermined or artificially limited, it is vital that DDOT and NPS take this opportunity to conduct a full and sufficient alternatives analysis in a new or supplemental environmental assessment.

**Concern #4: The Assessment of Impacts to Wildlife is Inadequate**

Human presence and recreation have many impacts on wildlife. Recreation in protected areas can have positive effects on some species, but on balance this kind of activity [tends to be a detriment](#). Of note, non-motorized recreation, of the type that is likely to increase with installation of the proposed bridge, has been found to have a greater negative impact than motorized. The 2015 DC Wildlife Action Plan notes that "development of recreational infrastructure and ongoing recreational activities in wildlife

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<sup>9</sup> *Id.* at 14.

<sup>10</sup> See *National Park Service NEPA Handbook, supra*, at 52-53.

<sup>11</sup> 2011 EA, *supra*, at 1.

habitats are... top threats to terrestrial vegetative habitats systems.” As such, the increase in human presence and associated recreational activity in the Kenilworth-Kingman-Arboretum complex may well be the most significant impact of the proposed project to wildlife, but it is not adequately addressed in the 2011 EA.

The 2011 EA does a better job of addressing impacts to the riparian buffer, though Commenters wish to highlight the local importance of this habitat element. For example, the 2010 Anacostia Watershed Restoration Plan identifies “riparian reforestation” among its eight restoration strategies, and the 2003 Anacostia Waterfront Framework Plan lists “restore riparian function” among its goals. The latter proposes a 300-foot-wide riparian buffer along the river segment in the proposed project site. Installing a bridge in this location would fragment this otherwise relatively unbroken riparian strip, recognizing that the footprint is relatively small. This should be fully addressed in the plan and supporting documentation.

Artificial lighting has many [negative impacts on wildlife](#). Artificial lighting is currently minimal in the Kenilworth-Kingman-Arboretum complex and should remain that way. We request that new lighting for any aspect of the Bridge Plan and associated infrastructure be strictly avoided. If any is proposed, we request that this be carefully detailed in planning documentation and impacts thoroughly evaluated based on best available science. In general, it is our contention that artificial lighting in the District should follow International Dark-Sky Association guidelines and be left off to every possible extent during songbird migration.

We request that the assessment of impacts of the project to wildlife be updated and based on best available science. This should include an assessment of the impacts of fragmenting the wooded riparian buffer and increased human presence and recreation on both sides of the Anacostia River, and should explicitly address artificial lighting.

### **Conclusion**

Thank you for your consideration of our comments and allowing us this opportunity to speak on behalf of our members. We offer to be a partner in this process and are happy to work with you to discuss planning details moving forward.

Sincerely,

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