



Alex Houston  
Legal Fellow  
Earthrise Law Center at Lewis & Clark Law  
School  
10101 S. Terwilliger Blvd.  
Portland, OR 97219-7799  
*phone* 503-768-6825  
*fax* 503-768-6642  
ahouston@lclark.edu  
[earthriselaw.org](http://earthriselaw.org)

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Mr. Glenn Elliott  
Director of Environmental Program Office  
Department of Veterans Affairs, Office of Construction and Facilities Management (CFM)  
425 I St. N.W. Washington D.C. 20001

Mr. Patrick Read  
Environmental Officer/Engineer, CFM Eastern Region  
Department of Veterans Affairs  
425 I Street 6th Floor RM-6W.502B NW Washington, DC 20001

**Re: Portland VAMC Section 106 consultation with Friends of Terwilliger; submitted electronically to [patrick.read@va.gov](mailto:patrick.read@va.gov), [vacoenvironment@va.gov](mailto:vacoenvironment@va.gov); and via Certified U.S. Mail # 7014 0150 0000 6070 0557**

Earthrise Law Center submits the following letter on behalf of Friends of Terwilliger (“FoT”) regarding the Portland VAMC Section 106 request for consultation on the proposed seismic upgrades and improvements at the Portland VA Medical Center. Earthrise is submitting this letter on behalf of FoT via certified U.S. mail and electronically to [patrick.read@va.gov](mailto:patrick.read@va.gov) and [vacoenvironment@va.gov](mailto:vacoenvironment@va.gov). The certified mail copy will include digital copies of the supporting exhibits listed at the end of this letter.

On February 9, FoT received a letter dated February 3, 2022, from the U.S. Department of Veteran Affairs (“VA”) regarding the Veteran Affairs Medical Center Project (“Project”), which includes seismic upgrades and the construction of a significant number of new parking spaces (hereinafter referred to as the “Consult Letter”). The letter notified FoT of the VA’s initiation of its section 106 consultation duties under the National Historic Preservation Act’s (“NHPA”) due to Terwilliger Parkway’s listing on the National Register of Historic Places (“NRHP”). The letter

included the VA's finding of no adverse effect resulting from the Project, and requested FoT's concurrence. For the following reasons, FoT does not concur with VA's finding of no adverse effect to Terwilliger Parkway and respectfully requests that the VA continue consulting with FoT to develop strategies to avoid, minimize, or mitigate adverse effects on Terwilliger Parkway and its nationally recognized historic resources.

**I. Area of Potential Effects Incorrectly Identified:**

Under section 106, the agency official is to determine and document the area of potential effects ("APE"), review existing information on historic properties within the APE, seek information from consulting parties likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the project's potential effects on those properties. 36 C.F.R. §§ 800.4(a)(1)-(3). The APE is "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties" and "is influenced by the scale and nature of an undertaking." § 800.6(d). The official shall make a "reasonable and good faith effort" to identify potentially impacted historic properties, and "shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the [APE]". § 800.4(b)(1). The official should also consider applicable local laws, standards, and guidelines. *Id.*

Terwilliger Parkway is listed on the National Register of Historic Places ("NRHP"), and VA acknowledges that the roadway running through Terwilliger Parkway, SW Terwilliger Boulevard, is a historic property that exists within the APE. Consult Letter, 2-3. However, the consultation letter improperly identifies the APE to include only "a section of the historic

roadway, SW Terwilliger Boulevard.” *Id.* at 2. The historic resource for which FoT advocates is Terwilliger Parkway, of which Terwilliger Blvd. is *one part*. The parkway includes not only the road itself, **but also the public park land on either side of the boulevard**. The Terwilliger Parkway as an entire district has been listed on the National Register of Historic Places, not merely the roadway. Ex. A at 3–4. Because the APE was not identified to include the Parkway as a whole, see Consult Letter at 2 (only including a small portion of Terwilliger Blvd in the APE), it follows that “the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the [APE]” were not adequately considered or addressed in the VA’s analysis. § 800.4(b)(1). Therefore, while the official did correctly determine that the project may affect the historic property, the official’s failure to properly identify the APE resulted in an incomplete and faulty analysis of the Project’s impacts to Terwilliger Parkway. Because the APE was defined too narrowly, FoT requests that the VA reinstate consultation and reconduct its analysis of the potential impacts on the Parkway in its entirety as recognized under the NHRP.

## **II. Section 106 Criteria for Assessing Adverse Effects Not Properly Applied:**

To determine if a historic property will be adversely affected by an undertaking, the agency official is to apply the § 800.5(a)(1) criteria of adverse effects. According to the criteria, “An adverse effect is found when an undertaking may alter, *directly or indirectly, any* of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.” § 800.5(a)(1) (emphasis added). The official must consider “*all* qualifying characteristics” of a historic property. *Id.* (emphasis added). Adverse effects may include “reasonably foreseeable effects caused by the undertaking that may

occur later in time, be farther removed in distance or be cumulative.” *Id.* The regulations also provide examples of adverse effects. Those include a “change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance,” and the “introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features”. § 800.5(a)(2). Only when the project’s effects do not meet the criteria of § 800.5(a)(1), or when the undertaking is modified or conditions are imposed to avoid adverse effects, may the agency official propose a finding of no adverse effect. § 800.5(b).

When notifying consulting parties of its finding, the agency official is to provide them the documentation specified in § 800.11(e), which includes: (1) a description of the undertaking; (2) a description of the steps taken to identify historic properties; (3) a description of the affected historic properties, including information on the characteristics that qualify them for the National Register; (4) a description of the undertaking’s effects on historic properties; (5) an explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and (6) copies or summaries of any views provided by consulting parties and the public. § 800.5(c); § 800.11(e).

For several reasons the official’s analysis of the Project’s impacts is inadequate, thus FoT cannot concur with the agency’s finding of no adverse effect.

A. The consultation letter did not meet the requirements of § 800.5(c).

First, the letter FoT received did not meet the requirements of § 800.5(c). For instance, the letter did not include “a description of the affected historic properties, including information on the characteristics that qualify them for the National Register.” § 800.5(c); § 800.11(e). Fortunately, FoT possesses a copy of the form used to list Terwilliger Parkway on the NRHP.

Attached as Ex. A. But because the agency official did not include a description of the Parkway or its numerous historically significant characteristics at risk of potential adverse effects, FoT cannot be sure whether the VA took any of these characteristics into account when it conducted this analysis. For instance, Bldg. 110 will be visible from Terwilliger Parkway and its impact on the aesthetics of the historic property depend on the materials and colors used, and whether or not it is brightly lit or reflective, but none of that is discussed. Also, the 1,356 projected new daily car trips in the area, of which at least 746 will travel on Terwilliger Blvd, will certainly have negative air quality and noise pollution impacts on the parkway but this is also not discussed with respect to the impact on the historic values of the Parkway. Attached as Ex. B, Traffic Impact Study at 17.

B. The traffic study is likely inaccurate and a new study is requested.

Second, pointing to a single day-long traffic study conducted during the COVID-19 pandemic, the VA found that the Project could result in a 6.89% increase in average daily trips on Terwilliger Boulevard when compared to the increase in average daily trips under the “no-build” scenario. Consult Letter at 3-4. According to the VA, this increase in traffic would not have an adverse impact on the historic resource (which the agency improperly defined as solely the roadway). The traffic study the official relied on was conducted in December 2020 in the first year of the COVID-19 pandemic. Traffic Impact Study, 9. The study asserts that the numbers were adjusted to take into account the effects of the pandemic, *Id.* at 10, but to accurately determine both the traffic baseline and the project’s potential effects, a new study that reflects current conditions should be conducted. The Oregon Department of Travel traffic study handbook states that best practice is to “avoid collecting manual traffic counts during special events, holidays, construction periods, bad weather, *or any other times when conditions at the*

*site or in its vicinity may affect average traffic conditions.”* Oregon Department of Transportation Best Practices for Traffic Impact Studies Final Report, 23.<sup>1</sup> (emphasis added). Moreover, FoT believes comparable traffic studies (for OHSU, etc.) were conducted over a period of several days, then averaged. FoT does not believe the study the VA relied on in its analysis of the Project’s effects on traffic to be accurate, thus cannot concur with the agency’s finding that there will be no adverse effect on Terwilliger Parkway as a result of increased traffic. It is inconceivable to FoT that a 60% increase in staff parking spaces at the VAMC campus would lead to only a 7% increase in traffic.

C. The agency official did not adequately analyze whether a nearly 7% increase in traffic would have adverse effects on Terwilliger Parkway.

Third, even if the results of the traffic study relied upon by the VA were accurate, FoT cannot concur with the VA’s finding that this increase in traffic will have no adverse effect on the Parkway. The VA asserts that this increase in traffic will have only “minor” impacts solely because it would not be the “primary cause” of the projected growth and because the level of service in the area is already failing under certain metrics. Traffic Impact Study at 22. Nothing in Section 800.5(a)(1)’s definition of “adverse effect” excludes “minor” impacts or impacts for which an agency’s undertaking is not the “primary cause.” Indeed, the definition expressly includes “indirect” effects. Moreover, just because a project is not expected to be the primary cause of an effect does not mean that its impacts are not adverse or that those impacts should not be mitigated to the fullest extent possible. A nearly 7% increase in average daily trips in an area already plagued by traffic congestion could negatively impact the Parkway’s integrity and the fundamental nature for which it is recognized as a historic resource. Over time, upgrades to the

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<sup>1</sup> OREGON DEPT. OF TRANSPORTATION RESEARCH UNIT, BEST PRACTICES FOR TRAFFIC IMPACT STUDIES FINAL REPORT (June 2006), <https://www.oregon.gov/odot/programs/researchdocuments/bestpracticesfortraffic.pdf>. Attached as Ex. E.

parkway such as additional paving, curbs, and drainage have been necessary to preserve its design and integrity in the face of significantly increased vehicle and pedestrian traffic. The addition of even more traffic could impact the parkway's integrity and eligibility for listing, for it could make more modifications necessary. An increase in traffic could also impact the safety of pedestrians and bicyclists, which the VA did not analyze. The analysis' failure to consider the impacts of traffic on two substantial groups of users of the Parkway illustrates its shortcomings and why further study is necessary. Finally, the VA did not propose any actions to avoid, minimize, or mitigate adverse effects. Friends of Terwilliger believes that elimination of Bldg. 111 with its 650 new parking spaces from the proposed action would minimize the impact on traffic to an acceptable level.

D. The analysis failed to address several potential impacts to the Parkway.

Fourth, in part because of the VA's improper identification of the APE, the VA's analysis of effects fails entirely to address several potential impacts to the Parkway as required by § 800.5(a)(1), which mandates the official to consider direct or indirect effects "that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association." Terwilliger Parkway was constructed as part of the historically significant City Beautiful movement, which, prompted by the poor living conditions in all major cities, sought to promote civic pride and engagement.<sup>2</sup> Advocates of the movement's philosophy believed that beautification through intentional architecture could promote a peaceful society that increased the quality of life for its residents. The parkway is a rare example of this historically significant time period, for "many of [the movement's] aspirations went unfilled ... highlighting the value

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<sup>2</sup> Naomi Blumberg & Ida Yalzadeh, *City Beautiful movement*, ENCYCLOPEDIA BRITANNICA (Jan. 4, 2019), <https://www.britannica.com/topic/City-Beautiful-movement>. Attached as Ex. F.

of the few resource that remain from that time.”<sup>3</sup> Terwilliger Parkway is the only parkway constructed in Portland according to the designs of J.C. Olmsted, one of the era’s notable architects responsible for famous landscape design projects across the country at the turn of the 20<sup>th</sup> century. Olmsted’s vision was for the Parkway to provide Portland citizens a tranquil reprieve from its urban surroundings, and the VA failed to analyze several of the characteristics relevant to that purpose and to its listing on the NRHP.

For instance, the pedestrian pathway was a component of the Terwilliger Parkway from its inception, and to this day is very popular among Portland residents, yet the VA failed to analyze the Project’s potential impacts to the pedestrian’s experience. Relatedly, the VA failed to analyze the Project’s impacts on both air quality and noise pollution in the Parkway’s vicinity, despite examples of adverse effects including the “introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features”. § 800.5(a)(2). Because of the Parkway’s historical function as a wooded respite from the city, and its function as a natural outdoor space, these impacts must be analyzed. The VA also did not address potential impacts to the integrity and feeling that results from the curved, slow parkway, characteristics that are highly relevant to its listing on the NRHP. As explained on the Terwilliger Parkway’s NRHP nomination form, “The uniform and continuous character of the roadway ... [creates] a kinetic experience as one moves along it and they tie together the various experiences of expansion and contraction, of views, enclosing forest, open lawns, and screened development from one end to the other with little interruption from cross streets or stops.” Ex. A at 9. A further increase in traffic could very well affect these important characteristics, effects that the VA failed to analyze, making its analysis inadequate.

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<sup>3</sup> CITY OF PORTLAND BUREAU OF PLANNING, *The City Beautiful Movement and Civic Planning in Oregon, 1897-1921*, National Register Multiple Property Submission (2001), Section E-1. Attached as Ex. G.



E. The analysis failed to consider local regulations when measuring impacts on the Parkway.

When assessing the proposed action's impacts on the historic resource, the official should consider applicable local laws, standards, and guidelines. § 800.4(b)(1). Despite numerous local ordinances and regulations covering the APE, the VA's analysis makes no mention of them and seemingly gives no consideration to such requirements when making its findings. The regulations include the Terwilliger Parkway Corridor Plan ("TPCP") and the Marquam Hill Plan ("MHP"). *See* Bureau of Planning, City of Portland, Oregon, Marquam Hill Plan, Ordinance No. 177739 (Aug. 2003) (attached as Ex. C); *see also* Terwilliger Parkway Corridor Plan, Ordinance No. 155241 (Oct. 1983)(attached as Ex. D).

For example, the TPCP lists numerous goals with which projects in the Terwilliger Parkway Corridor are to be consistent. These goals include, but are not limited to: "preserve and enhance the scenic character and natural beauty of Terwilliger Parkway and Boulevard...guide the siting, scale, landscaping, traffic impacts and design of new development to enhance the aesthetic experience of Terwilliger...[and] to reinforce the primary transportation function of the parkway as a leisurely, scenic drive and a bicycle commuting path, rather than a heavily used route for through traffic. TPCP at 7. Had the VA considered the stated goals of the TPCP, the ways in which the increased traffic associated with the project are flatly inconsistent with the regulations would have been obvious. The agency's failure to consider the TPCP and other relevant local regulations further illustrates the inadequacies in the analysis and the need to assess the impacts on the Parkway as a whole under the context of local regulations as stated in the NHPA's own regulations.

**Conclusion:**

For the reasons set forth above, FoT does not concur with the agency official's finding of no adverse effect to the historical Terwilliger Parkway as a result of the VAMC project. FoT looks forward to the opportunity to continue to consult in good faith with the VA in order to identify strategies to avoid, minimize, or mitigate adverse effects to the Parkway.

Sincerely,



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Alex Houston  
Earthrise Law Center

*for Friends of Terwilliger*

## LIST OF REFERNCED AND ATTACHED EXHIBITS

The following exhibits are referenced in FoT's March 9<sup>th</sup> Letter and digital copies of each exhibit are included on a thumb drive submitted with the hard copy of this letter via certified mail:

**Exhibit A:** National Register of Historic Places Registration Form: Terwilliger Parkway, National Parks Service, (Aug. 10, 2020)

**Exhibit B:** Portland Veterans Affairs Medical Center Traffic Impact Study, U.S. Department of Veterans Affairs (January 2022)

**Exhibit C:** Marquam Hill Plan, Bureau of Planning, City of Portland, Oregon, Ordinance No. 177739 (Aug. 2003)

**Exhibit D:** Terwilliger Parkway Corridor Plan, Ordinance No. 155241 (Oct. 1983)

**Exhibit E:** OREGON DEPT. OF TRANSPORTATION RESEARCH UNIT, BEST PRACTICES FOR TRAFFIC IMPACT STUDIES FINAL REPORT (June 2006), <https://www.oregon.gov/odot/programs/researchdocuments/bestpracticesfortraffic.pdf>.

**Exhibit F:** Naomi Blumberg & Ida Yalzadeh, *City Beautiful movement*, ENCYCLOPEDIA BRITANNICA (Jan. 4, 2019), <https://www.britannica.com/topic/City-Beautiful-movement>.

**Exhibit G:** CITY OF PORTLAND BUREAU OF PLANNING, *The City Beautiful Movement and Civic Planning in Oregon, 1897-1921*, National Register Multiple Property Submission (2001)