



United States Department of the Interior

NATIONAL PARK SERVICE
National Capital Region
1100 Ohio Drive, S.W.
Washington, D.C. 20242

IN REPLY REFER TO

1.A.1 (NCRO)

JAN 18 2018

Mr. Steve Davis
Director of Advanced Projects
The Boring Company
1030 15th Street, NW, Suite 220 E
Washington, D.C. 20005

Dear Mr. Davis:

This letter follows up on recent discussions with the National Park Service (NPS) and Department of the Interior staff concerning the portion of The Boring Company's proposed Transit Tunnel Project that lies within the Baltimore-Washington Parkway (Parkway) and crosses certain other NPS-administered lands in the District of Columbia. As we have discussed, we have concluded that NPS can consider your proposal under one of its land exchange authorities – either under its general exchange authority, 54 U.S.C. 102901(b), or under its boundary adjustment authority, 54 U.S.C. 100506(c). This letter serves to describe, generally, the process by which NPS can move forward to consider an exchange, including requirements under the exchange authorities themselves and other applicable laws.

A proposed land exchange with the NPS will constitute a federal action that will require compliance with the National Environmental Policy Act of 1969 (NEPA), regulations of the Council on Environmental Quality (40 CFR 1500-1508), NPS Director's Order #12: Conservation Planning, Environmental Impact Analysis, and Decision-Making, and the NPS NEPA Handbook (NPS 2015). Because the Parkway is listed on the National Register of Historic Places, compliance with section 106 of the National Historic Preservation Act will also be necessary. A decision regarding a proposed exchange cannot occur until after those processes are complete. For this reason, rather than investing resources in the appraisal process required for an exchange at this point, our initial focus will be on moving forward with the NEPA process by beginning development of an Environmental Assessment (EA). The Boring Company will be responsible for all costs for this process, including funding an outside consultant to prepare the required analysis and possibly reimbursement for NPS staff time. Using information we have received to date, the NPS can provide a draft scope of work for use in hiring the consultant. My staff will follow up with you directly to request additional information that may be needed for the scope of work. We can also provide a list of consultants you may want to consider who are familiar with conducting NEPA processes for the NPS.

Please be advised that some level of preliminary design for the tunnel project, which shows all proposed uses of NPS-managed property, will be critical to both the NEPA process as well as the exchange process generally discussed below. This would include the proposed route of the main tunnels as well as any side shafts or tunnels needed for emergency access or ventilation. The NEPA process can begin without the preliminary design in hand, although it will be necessary to develop the design to a certain level concurrent with the NEPA process. Without this information, it will be difficult for NPS to properly assess your proposal and for the Department to properly evaluate the desired property interest.

Depending on which exchange authority is used, separate exchanges may be required for the portion of NPS-managed land located in Maryland and for the portion located in the District of Columbia. Under the general exchange authority, The Boring Company would have to acquire non-Federally owned property located within the boundary of an NPS unit in Maryland, which would be offered for its side of the Maryland exchange. It would also acquire a similar parcel within the District of Columbia, for that exchange. The second exchange authority, the boundary adjustment authority, would allow The Boring Company to acquire lands or interests in land adjacent to the Parkway and offer those in the exchange. In both cases, the property to be acquired by The Boring Company to convey to the NPS must be property that the NPS wishes to acquire and which can be acquired given the NPS's legal and policy constraints, including those pertaining to sufficiency of title and environmental conditions. The NPS would then need to find that the easements or other appropriate property interests sufficient for The Boring Company's needs are "suitable for exchange." If the values of the properties being exchanged are not approximately equal, we will need to evaluate how to resolve that difference. The boundary adjustment authority also requires written notice to Congressional committees, consultation with local government, and actions to advance public awareness. Finally, The Boring Company will be responsible for related transactional costs, such as surveys, title work, environmental site assessments, etc.

If the NPS and The Boring Company are to enter into an exchange, the Department of the Interior's Office of Valuation Services (OVS) must appraise the value of the easements or other appropriate property interests that the NPS will convey to The Boring Company, as well as the interests that the NPS will acquire in exchange in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). Typically, NPS would not initiate the appraisal process until a decision has been made to proceed with the proposal based on the NEPA review and preliminary assessment of potential exchange parcels. However, once the NEPA process is underway NPS is willing to begin the appraisal process in the interest of moving expeditiously towards a decision with the understanding that the Department has made no decision as to whether The Boring Company's proposal will be approved. To that end, the following information is needed to eventually begin the appraisal process; some of this information will also be needed for the NEPA and related reviews:

1. First, the Department requires a legal description and accompanying mapping concerning The Boring Company's project that, together, are sufficient for the OVS to determine what parts of the Parkway may be impacted by the project. The Boring Company has

provided a preliminary legal description and accompanying mapping, but they were not based on surveys and do not align with the NPS mapping and survey monumentation based on Bureau of Land Management surveys. The maps should show adjacent parcels and ownership of those parcels in order for the easement to be valued in context.

The Boring Company has noted that 24 access points will be necessary, but has not yet updated its legal description and accompanying mapping to indicate whether those access points will be on NPS land, or on private lands adjacent to the Parkway. Insofar as these access points affect the easement, identifying their location and any potential for impact on the surface is germane to the appraisal. The Boring Company also has not yet updated its legal description and accompanying mapping to indicate the depth and configuration of the proposed tunnels.

In addition to these broader issues, we have identified a number of more specific concerns with The Boring Company's preliminary legal description and accompanying mapping, which we will be happy to discuss with you at your convenience.

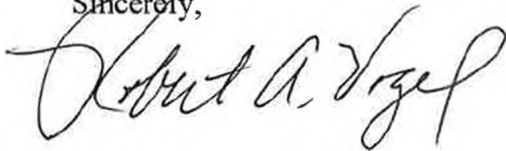
2. Second, the Department requires a draft easement document that clearly and specifically sets forth the rights and obligations that will be conveyed through the NPS's grant of easements or other appropriate property interests to The Boring Company. The NPS and The Boring Company should prepare this document in a collaborative manner. The NPS is in receipt of The Boring Company's first draft of the easement document and will provide comments on the draft as expeditiously as possible.
3. Third, the Department requires a comprehensive title report indicating any encumbrances upon the property. The OVS needs this information to determine the economic impact of pre-existing easements, if any, on the easements or other appropriate property interests to be granted by the NPS. The OVS also needs it to determine the economic impact of the easements or other appropriate property interests to be granted by the NPS upon pre-existing easements, if any. This title report should also include an inventory of existing and/or permitted uses, such as uses by utility companies, that may be impacted by the easements or other appropriate property interests to be granted by the NPS, or that may impact those easements or other appropriate property interests.
4. Fourth, the Department requires an analysis of geologic or hydrologic features which may impact the proposed tunnels, or which may be impacted by the proposed tunnels. The OVS anticipates that information from the preliminary report that The Boring Company has already provided, together with any indication of minerals ownership from the title report described in the preceding paragraph, will provide an analysis of geologic and hydrologic features that will be sufficient for appraisal initiation purposes. My understanding is that the State of Maryland has expressed a desire to ensure that an aquifer under the state-owned portion of the Parkway be protected.

This is the minimum information that the OVS must have so that it can develop its statement of work for the appraisal. Once the OVS begins its appraisal, it will likely require further information from The Boring Company. Any future changes to The Boring Company's proposal that impact the easements or other appropriate property interests that it requests from the NPS may require the OVS to update its appraisal, or to perform a new appraisal.

In conclusion, while the Department can begin the appraisal process once the NEPA process is underway, we believe that undertaking a thorough planning process as required by NEPA is the essential to guide to the decision-making for The Boring Company's proposal. As mentioned above, the planning effort will include development of a preliminary design and will describe all proposed uses of NPS-managed property. Incomplete planning would pose challenges both for NEPA decision-making and the appraisal process in which the OVS would typically appraise all properties proposed to be exchanged. Appraising only one side of the transaction would necessitate a duplication of effort and cost as the easements that the NPS would convey to The Boring Company would have to be re-appraised when planning is complete, and the lands or interests in land that The Boring Company will convey to the NPS have been identified.

The NPS looks forward to working with you on your proposal. If you have any questions, or would like to discuss the above further, please contact me or Peter May, Associate Regional Director for Lands and Planning, at (202) 619-7025.

Sincerely,

A handwritten signature in cursive script that reads "Robert A. Vogel". The signature is written in dark ink and is positioned below the word "Sincerely,".

Robert A. Vogel
Regional Director