

A RESOLUTION

25-299

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 3, 2023

To declare the existence of an emergency with respect to the need to exempt the project to build an elevated park on the piers or foundation of the former 11th Street Bridge from the requirements of 21 DCMR § 2605.7(a).

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “11th Street Bridge Project DOEE Permit Emergency Declaration Resolution of 2023”.

Sec. 2. (a) The 11th Street Bridge Park Project (“Project”) will construct a unique elevated park on the piers of the old 11th Street Bridge, spanning the Anacostia River and linking the neighborhoods of Anacostia and Navy Yard. The park will be a venue for healthy recreation, environmental education, and the arts for residents in Wards 6 and 8 and across the District. The park has the potential to positively impact the Anacostia River, bringing new life to the waterfront and exposing residents to the beauty of this critical natural resource.

(b) The Council has, working with the Mayor, fully funded the public-sector costs for the Project. This has meant adding and accelerating funds within the District’s Capital Improvement Plan, for a total public investment of over \$40 million, including \$5 million in Fiscal Year 2023.

(c) The project is nearing completion of its final design and is now seeking final permit approvals from the Department of Energy and the Environment (“DOEE”).

(d) DOEE is responsible for issuing permits regarding the project’s impact on the quality of the District’s waterways. DOEE issues water quality certifications pursuant to section 401 of the Clean Water Act and the District’s Critical Area regulations. Obtaining a water quality certification from DOEE is necessary for the project to proceed.

(e) Under 21 DCMR § 2605.1, DOEE may issue such a permit or certification for a project only if it is water-dependent, or is not water-dependent and has no practicable alternative. In determining whether the proposed regulated activity has a practicable alternative, under 21 DCMR § 2605.7(a), DOEE may consider whether the basic purpose of the project can be reasonably accomplished using one or more other sites in the same general area as the proposed project that would avoid or reduce impacts on wetlands, streams, and other District waters.

(f) The Council understands that the project may not strictly comply with 21 DCMR § 2605.7(a), because some of the amenities planned for the project could technically be located on

a land-based alternative site. This fact, though, is a feature of the project rather than a failing. Indeed, the project is designed to activate the Anacostia River, connecting the neighborhoods on either side of the river with a broad array of community activities and engagement. As such, the Council views this project as a unique opportunity that necessitates regulatory flexibility to proceed and meet its stated goals. The Council does not intend to set a precedent for non-water-focused construction over the Anacostia River; nor, though, should this requirement derail such a significant project inuring to the benefit of all District residents, particularly those in areas lacking in such greenspace.

(g) Last year, the Council approved the 11th Street Bridge Project Temporary Act of 2022, effective February 23, 2023 (D. C. Law 24-279; 70 DCR 205) (“2022 temporary act”), to allow DOEE to issue permits for the project, but the Committee on Transportation and the Environment has learned that DOEE has not yet issued the necessary permits, and the 2022 temporary act will expire on October 6, 2023.

(h) This second round of emergency and temporary legislation is necessary so that DOEE can finally issue the necessary permits.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the 11th Street Bridge Project DOEE Permit Emergency Act of 2023 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.