
**RECORD OF DECISION
PROPOSED FEDERAL CORRECTIONAL INSTITUTION
AND FEDERAL PRISON CAMP
LEAVENWORTH, KANSAS**

I. INTRODUCTION

This document provides a Record of Decision (ROD) pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), which documents my decision regarding the proposal by the U.S. Department of Justice, Federal Bureau of Prisons (BOP) to construct and operate a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) near the City of Leavenworth in Leavenworth County, Kansas. The ROD describes the alternatives considered and the rationale for selecting the chosen alternative.

The mission of the BOP is to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. However, a growing challenge to that mission is the number of aging federal correctional facilities and supporting infrastructure, resulting in an on-going need for new facilities and infrastructure. Among the oldest institutions is the medium-security United States Penitentiary (USP) located in Leavenworth, Kansas.

Constructed in 1906, USP Leavenworth was one of three first-generation federal prisons and continues in operation today. It is not comparable to the contemporary prison designs that are more common today and as a result, USP Leavenworth is operationally inefficient. Its age and condition and the necessity for costly and difficult to implement security, life safety, mechanical, electrical and plumbing system replacements and/or upgrades requires development of a new FCI and FPC (FCI/FPC) to meet current standards and accommodate future inmate housing needs.

The BOP is proposing to develop a new FCI designed to house approximately 1,152 medium-security male inmates and a FPC designed to house approximately 256 minimum-security male inmates (total population of 1,408 inmates) with

approximately 338 staff for operation. Development of a new FCI/FPC is intended to address the need for modern correctional facilities and infrastructure and the specific need for a new FCI/FPC in Leavenworth to replace the existing, aged facilities. Developing the new FCI/FPC in Leavenworth is among the BOP's priority projects.

Once completed, inmates housed at the existing USP and FPC will be transferred to the new facilities along with the complement of correctional officers and other staff. The result would be little to no change in the number of inmates and BOP staff assigned to Leavenworth or to the security levels of the inmate populations housed at the new facilities. At that time the USP and existing FPC will cease housing inmates.

As part of the plan to develop the new FCI/FPC and to vacate the existing USP and FPC, the BOP intends to conduct a Transition Study to identify those measures and services to be maintained in order to avoid deterioration of the existing structures and infrastructure. Included in the study shall be options for possible future uses and/or missions for the existing facilities other than housing inmates. It is important to state that the BOP has no plans to alter or demolish the USP and intends to maintain the facility until other uses and missions can be determined.

In support of the proposed action, and in compliance with NEPA, the BOP published a Draft Environmental Impact Statement (DEIS) on November 18, 2011, and a Final EIS (FEIS) on April 10, 2015. However, a decision whether to proceed with the proposed action was delayed and, in the absence of appropriated funds for the project, no ROD was issued by the Director of the BOP at that time. Upon appropriation of funds for the proposed project, the BOP resumed the NEPA process in 2020 with preparation of a Draft Supplemental EIS (DSEIS) and Final Supplemental EIS (FSEIS). Both documents included updated information concerning the purpose and need for developing a new FCI/FPC in Leavenworth, Kansas, and an analysis of potential impacts associated with the project and measures to mitigate adverse impacts. Publication of the DSEIS and FSEIS provided elected officials, regulatory agencies, stakeholders, Native American tribes, and the public with additional opportunities to voice their interests and offer comments concerning the proposed action.

II. ALTERNATIVES CONSIDERED

In developing new federal correctional facilities, consideration is given to the use of BOP-owned lands at other institutions. By developing the FCI/FPC within the grounds of an existing BOP institution, the proposed action has the potential to reduce overall development costs by avoiding acquiring additional public or private lands while capitalizing on the available utility and roadway infrastructure which currently serves the property. Other BOP properties in the BOP's North Central Region were eliminated from consideration due to limitations on available land, infrastructure, and/or other resources needed to accommodate such development. However, with sufficient land and infrastructure at USP Leavenworth, attention was focused on evaluating the development potential and resulting environmental impacts of constructing and operating a new FCI/FPC at that location.

In the current climate of limited federal resources, if the property at USP Leavenworth or another location under the jurisdiction of the BOP is feasible for the proposed action, elimination of alternative locations not within the BOP's jurisdiction is believed to be reasonable and in the best interest of the BOP, the federal government, and the public at large. Alternative courses of action are described in the DEIS, FEIS, DSEIS, and the FSEIS and are summarized below.

A. NO ACTION ALTERNATIVE

The No Action Alternative is defined as a decision by the BOP not to proceed with the proposed action. This alternative would preclude the opportunity to develop and operate a new FCI/FPC to house a portion of the federal inmate population and would result in the continued operation of USP Leavenworth and maintenance of the status quo.

Adoption of the No Action Alternative would avoid the potential impacts and inconveniences (albeit temporary) associated with construction of the proposed FCI/FPC, such as increased noise, dust, soil erosion, energy consumption, traffic volumes, and air pollution emissions. Implementation of the No Action Alternative would also avoid the potential permanent impacts to land use, biological resources, visual and aesthetic resources, and

utility services associated with FCI/FPC operation. Based on experience developing new correctional institutions of a similar nature and scale throughout the country, the BOP expects that in moving forward with FCI/FPC development, potentially significant adverse impacts can and will be avoided and that none of the potential impacts associated with construction and operation, properly mitigated, would constitute significant adverse impacts as defined by NEPA.

While the No Action Alternative would avoid the potential impacts associated with FCI/FPC development, adopting this alternative would also result in the loss of many positive benefits. These include contributing to achieving the mandates of Congress; meeting the need for modern, secure, efficient and cost-effective institutions; the societal benefits associated with efficient operation of the federal criminal justice system; along with the potential economic and employment opportunities to the residents and businesses in eastern Kansas and western Missouri as a consequence of FCI/FPC construction and operation.

The No Action Alternative, by definition, does not meet the purpose and need for the proposed action and, therefore, does not address the on-going need for modern, efficient, and secure federal correctional facilities and infrastructure generally, as well as the need for a new FCI/FPC to accommodate the inmate population currently housed in Leavenworth.

B. ALTERNATIVE PROJECT LOCATIONS - NATIONWIDE

The term "alternative project locations" refers to locations in parts of the country other than that proposed. Locations of new federal prison facilities are determined by the demand for incarceration in various parts of the country and the resources available to meet that demand. This requires the BOP to continuously work to improve the prison system's infrastructure through modernization of existing facilities when possible and construction of new institutions when necessary.

Planning for new federal correctional institutions begins with identifying candidate sites according to a set of initial requirements involving minimum land area and configuration, roadway access, and proximity to population centers, among other considerations. Sites that meet such minimum requirements are then examined for factors which,

if present, would either preclude use for BOP purposes (e.g., steeply sloping terrain, inability to provide adequate water supply or wastewater treatment services at reasonable costs, flood hazards, etc.) or for a determination regarding the general categories of facilities for which a site may be appropriate. Candidate sites that successfully complete the screening process are then more rigorously evaluated against established criteria including optimal infrastructure and environmental requirements.

The criteria applied in this process have been established by the BOP and are supplemented as necessary during follow-up investigations to ensure that all issues or potential issues are addressed. Candidate sites that appear suitable on the basis of initial investigations are then subjected to further analysis and documented in the form of Environmental Assessments or EISs as appropriate. The analysis becomes progressively more detailed at each stage in the process, leading to in-depth, comprehensive documentation in compliance with NEPA and other environmental laws and regulations.

In planning a new federal correctional facility in the north-central United States, consideration has been given to use of BOP-owned lands and facilities at FPC Yankton, FCI Milan, FCI Oxford, and the U.S. Medical Center for Federal Prisoners Springfield. Use of any of these properties has been eliminated from further consideration due to limitations on available land, infrastructure, and/or other resources needed to accommodate a new FCI/FPC.

The BOP conducts similar investigations in areas of the country in which it has a need for new institutions as a part of a geographically-balanced program to manage its facilities and fulfill its mandate. Actions in other communities outside the BOP's North Central Region, however, are considered to be in addition to the proposed action rather than true alternatives in lieu of action at USP Leavenworth. Therefore, because all other BOP owned lands in the north-central United States were eliminated from consideration, failing to act at USP Leavenworth is considered to be the same as the No Action Alternative. Accordingly, the BOP decided that it should proceed with the evaluation of potential development sites at USP Leavenworth to determine the degree to which such sites satisfy established criteria and avoid significant adverse

environmental consequences. Additional searches for alternative sites in other communities, in the absence of in-depth analysis of potential development sites at USP Leavenworth, would be neither prudent nor in the best interest of the public.

C. USE OF EXISTING CORRECTIONAL FACILITIES

In addition to its own facilities, the BOP also utilizes contractor-owned/operated facilities to house a portion of the federal inmate population. Contractor-owned/operated facilities employed by the BOP house predominantly low-security inmate populations and would not be suitable for housing medium-security federal inmates. The option of using a contractor-owned/operated facility to house USP Leavenworth inmates is not considered a reasonable alternative that would meet the purpose and need to replace the structure at USP Leavenworth with a new facility. Therefore, evaluating use of contract-owned/operated facilities is not considered a reasonable alternative and has been eliminated from further consideration.

Other opportunities to use existing correctional facilities arise periodically and include unsolicited offers from public and private entities to acquire and adapt vacant correctional facilities. The BOP considers such offers when appropriate, but none have arisen that would meet the purpose and need to replace the structure at USP Leavenworth. Therefore, acquiring and adapting an existing correctional facility is not considered a reasonable alternative and has been eliminated from further consideration.

D. ALTERNATIVE PROJECT LOCATIONS WITHIN THE LEAVENWORTH AREA

The BOP's property holdings in the Leavenworth area consist of two separate tracts: a 754-acre parcel comprising USP Leavenworth located north of the City of Leavenworth, Kansas, as well as a 1,320-acre parcel located approximately five miles from the USP and bordering the east bank of the Missouri River within the State of Missouri. The 1,320-acre parcel is currently vacant and located within the Missouri River floodplain. Given its isolated location and propensity to be flooded, the parcel in Missouri was eliminated from further consideration.

In planning for the proposed project, consideration has been given to alternative locations within the USP Leavenworth property. The southern portion of the property, bordered by Metropolitan Avenue, has already been developed with the USP, FPC, warehouses, staff housing, internal roadways, parking areas, and other ancillary support facilities and as such, this area was eliminated from consideration. The area located directly north of the USP was also eliminated due to its limited land area and the inability to satisfy critical BOP requirements involving security zones and necessary setbacks from structures, property lines, etc.

Of the remainder of the property, locations east and west of the existing USP have been considered. The first location, east of the USP and known as the East Site, consists of approximately 227 acres of undeveloped land north of Metropolitan Avenue, west of Grant Avenue, and south of Corral Creek. The second location, west of the USP and known as the West Site, comprises approximately 144 acres of land. The West Site includes the existing FPC and is generally bounded by Metropolitan Avenue on the south, Santa Fe Trail on the west, and an abandoned railroad grade on the north.

The BOP has conducted detailed studies of both locations for FCI/FPC development. On the basis of the analysis, alternative conceptual development plans were prepared to establish facility configurations, spatial relationships, and the locations and orientations for placement of inmate housing, administration structures, utilities, recreational areas, warehouses, internal access roads and parking areas, and other ancillary development. This effort also served to ensure that sensitive environmental features were avoided where possible while also minimizing the potential costs and operational disruptions associated with the proposed development.

Each conceptual development plan was assessed to determine whether the plan met project objectives. If an alternative did not meet project objectives it was not advanced for further consideration. Each alternative was also assessed in terms of impacts to infrastructure and environmental resources including cultural resources, waste disposal areas, wetlands and waters of the United States, and overhead and underground utility systems, among others. Avoidance and minimization were considered as part of each

alternative to reduce environmental and infrastructure impacts to the extent practicable and feasible.

Each alternative plan was evaluated against design, security, operational, environmental, and infrastructure criteria until a preferred alternative was identified that best met project objectives. These criteria specified that the preferred alternative must meet project goals, demonstrate utility, and represent a reasonable and practicable alternative, taking into consideration institution security, available technology, logistics, and costs. Alternatives were also evaluated to determine the environmental consequences associated with implementation.

E. PREFERRED ALTERNATIVE

Two conceptual development plans, representing the best combination of BOP-preferred design, security, and operational features and the fewest environmental and other potential adverse impacts, were selected for detailed analysis in the DEIS, FEIS, DSEIS, and FSEIS. Each alternative development plan consists of similar concept designs that incorporate the necessary features of the FCI/FPC (e.g., inmate housing, administration buildings, recreation areas, support structures, etc.). The East Site plan was determined to best meet BOP operational and security requirements while minimizing potential environmental and other impacts and is considered the Preferred Alternative. The principal advantages of the Preferred Alternative development plan are:

- The East Site alternative meets all critical BOP security and operational requirements involving security zones and setbacks from structures, property lines, etc. necessary for successful development and operation of a FCI/FPC.
- The East Site alternative allows construction of the new FPC in close proximity to the new FCI, which relies upon FPC inmates to help carry out and support daily operation and maintenance activities.
- The East Site alternative avoids the need to demolish the existing FPC, providing opportunities to adapt and reuse the FPC for a future mission or purpose.

- No historic BOP staff housing units (contributing features to the National Register of Historic Places-eligible USP Leavenworth Historic District) would be affected and no National Register of Historic Places-eligible archaeological sites would be impacted. The development plan includes an earthen berm to provide a physical and visual barrier between the housing units and the new FPC.
- The BOP intends to conduct a Transition Study, in coordination with the Kansas Historical Society (KSHS), to identify those measures needed to avoid deterioration of the vacated USP and FPC structures and infrastructure. The KSHS was consulted on the project outlined in the FSEIS as required under Section 106 of the National Historic Preservation Act. The BOP determined that the construction and development of the new FCI/FPC will have no adverse effect on historic property as defined under Section 106. The KSHS concurred that all Section 106 requirements related to the development and construction of the new FCI/FPC have been met. The BOP will engage in consultation under Section 106 with the KSHS regarding any potential impacts on historic property related to the outcome of the Transition Study.
- Requirements for consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations are outlined in 36 CFR § 800.2(c)(2)(ii), which reads as follows: "Section 101(d)(6)(B) of the [National Historic Preservation] act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party." Pursuant to this regulation, BOP will continue to engage in consultation with Native American tribes and/or Native Hawaiian organizations as necessary throughout the construction of the new facilities and the creation of the Transition Study.

- With the number of archaeological sites in the project region, the significance of the area to the history of the Osage Nation, and the possibility of human remains within the project site, the Osage Nation requested a Secretary of the Interior (SOI) qualified archaeologist be retained by the BOP to monitor construction activities on its behalf. The BOP, which has been coordinating with the Osage Nation during the EIS process, will coordinate the preparation of a Cultural Resource Monitoring Plan to include procedures for an SOI-qualified archaeologist to be present during construction, conduct periodic construction monitoring, respond to the discovery of any artifacts or human remains during construction, and submit weekly monitoring reports to the Osage Nation. After completion of the Cultural Resource Monitoring Plan, the BOP will provide a copy of the Plan to the Osage Nation Historic Preservation Office for review.
- No jurisdictional wetlands, streams, or waterbodies would be adversely impacted under the East Site alternative.
- Two electric utilities have agreed to relocate their respective overhead lines to a new easement to avoid conflicts with FCI/FPC development. A previously planned electrical substation will be developed by a local power provider in the southeastern portion of the USP property, also avoiding conflicts with FCI/FPC development.
- The local natural gas pipeline company, which operates two high-pressure pipelines within the USP property, has agreed to relocate one pipeline to a new easement and to abandon and remove the second pipeline to avoid conflicts with FCI/FPC development.
- The plan includes selective removal of previously deposited wastes within the USP property during the construction phase in accordance with a work plan developed by the BOP and approved by the Kansas Department of Health and Environment and designed to minimize disturbance to known waste deposit locations on site and avoid conflicts with FCI/FPC development.

III. DECISION

The DEIS, FEIS, DSEIS, and FSEIS, the assessments they represent, and the procedures by which the environmental investigations are conducted and incorporated in decision-making are parts of a process established by NEPA to ensure that the environmental consequences of federal projects are adequately taken into account. The process is designed to ensure that public officials make decisions based on a full understanding of the environmental impacts of proposed actions and take all appropriate steps to protect, restore and enhance the environment. In accordance with regulations for implementing NEPA, the BOP:

- Published a *Notice of Intent to Prepare a DEIS* for development of a new FCI/FPC in Leavenworth, Kansas in the Federal Register on December 29, 2010 (Volume 75, Number 249) and invited federal, state, county, and local agencies, Native American tribes and Native Hawaiian organizations, elected and appointed officials, and the public to participate in the scoping and environmental impact study process.
- Held a Public Scoping Meeting at City Hall in Leavenworth, Kansas on January 20, 2011. BOP officials presided at the meeting and approximately 50 citizens, community leaders, and elected officials attended. Members of the media were also present and the meeting was reported in newspapers with local and regional circulations. The proposed project and the NEPA process were described and issues and concerns were identified by those in attendance.
- Conducted scoping and information/coordination meetings with representatives of local, state, and federal agencies in Kansas City, Kansas; Topeka, Kansas; and Leavenworth, Kansas. Information concerning the BOP and the proposed project was shared with meeting attendees and procedures and protocols required to ensure compliance with NEPA and the regulations and requirements of various federal and state agencies were discussed. Comments, guidance, and recommendations received at the meetings were incorporated within the project scoping and DEIS study process.

- Determined the scope and significance of issues to be included within the DEIS on the basis of all relevant environmental considerations and information obtained during the scoping process. The effort defined the scope and significance of the issues to be addressed in the DEIS and identified issues that could be eliminated from detailed study as irrelevant or insignificant.
- Identified additional data requirements on the basis of information obtained from the scoping process so that analyses and findings could be integrated into the DEIS.

Following publication of the Notice of Intent in the Federal Register, the subsequent Public Scoping Meeting, and throughout the months of DEIS preparation, BOP officials and staff reviewed incoming correspondence, newspaper articles, and other indications of interest or concern on the part of regulatory agencies, local and national organizations, elected officials, Native American tribes, and the public regarding the proposed project. During this time, meetings and discussions were also held with federal, state, county, and local officials and regulatory agency representatives to further refine DEIS tasks.

Publication of the DEIS occurred on November 18, 2011, initiating a public comment period lasting no less than 45 days during which the BOP hosted a public hearing in the City of Leavenworth on December 11, 2011. Federal, state, regional and local officials, agencies, organizations, Native American tribes, and the public were invited to provide their comments on the proposed project during the public comment period. On April 10, 2015, the FEIS was published with the public comment period lasting until May 15, 2015. However, a decision whether to proceed with the proposed action was delayed and, in the absence of appropriated funds for the project, no Record of Decision was issued by the Director of the BOP at that time.

Upon appropriation of funds for the project, the BOP resumed the NEPA process with publication of a *Notice of Intent to Prepare a DSEIS* for development of a new FCI/FPC in the Federal Register (Volume 85, Number 126, June 30, 2020). Preparation of a DSEIS and FSEIS followed with updated information concerning the purpose and need for

developing a new FCI/FPC in Leavenworth, Kansas, potential impacts and mitigation measures associated with the project, along with additional opportunities for the public and others to voice their interests and provide comments concerning the proposed action.

Over the course of DSEIS and FSEIS preparation, the BOP also arranged and held meetings with representatives of the City of Leavenworth, U.S. Army Garrison Fort Leavenworth, utility providers, and federal and state regulatory agencies. In addition, on August 20, 2020, the Director of the BOP and members of his staff, along with federal, state, and local elected and appointed representatives, economic development officials, media, and others, toured USP Leavenworth and participated at a roundtable discussion with local leaders and others in the City of Leavenworth.

Publication of the DSEIS occurred on November 20, 2020, initiating a public comment period lasting no less than 45 days during which Federal, state, regional and local officials, agencies, Native American tribes, and the public were again invited to comment on the proposed project. During the public comment period, the BOP hosted a second (virtual) public hearing on December 3, 2020, which approximately 35 citizens attended, followed by reports in newspapers with local and regional circulations.

Based on the extensive public participation process involving a public scoping meeting, numerous agency information/coordination meetings, two public hearings, all comments received from those who reviewed the DEIS, FEIS, DSEIS, and FSEIS, I have decided to proceed with the development of the FCI/FPC as summarized above and described in the FSEIS at the East Site located within the USP property in Leavenworth, Kansas.

IV. RATIONALE

My decision is based on the following.

To continue accomplishing the BOP's mission there is a need to develop new facilities and infrastructure to replace aging and obsolete institutions. USP Leavenworth, constructed in 1906, is among the oldest facilities in the federal prison system and given its age and condition, requires costly and difficult to implement security, life safety, mechanical, electrical, and plumbing system

replacements and/or upgrades. Replacing the existing USP and FPC with a new FCI/FPC is the most effective means to meet current standards and future inmate housing needs. A wide range of alternatives were considered with the most feasible evaluated against security, operational, environmental, and infrastructure criteria until a preferred alternative was identified. These criteria specified that the preferred alternative must meet project goals, demonstrate utility, and represent a reasonable and practicable alternative, taking into consideration cost, existing technology, and logistics. Development of the FCI/FPC within the East Site at the USP in Leavenworth, Kansas best meets the BOP's goals and objectives for the project and is considered to be the environmentally-preferred alternative.

Construction and operation of the proposed FCI/FPC would result in less than significant impacts to topography, geology, soils, water and biological resources, archaeological resources, land use, transportation movements, meteorological conditions, noise levels, and air quality as defined by NEPA. While FCI/FPC development would cause limited unavoidable impacts, construction and operation would comply with all federal statutes, implementing regulations, Executive Orders, and other consultation, review, and permit requirements potentially applicable to this project. Any unavoidable impacts to topography, soils, water resources, land use, historic properties, transportation movements, noise levels, and air quality would follow the mitigation measures identified for each resource to reduce or eliminate impacts.

The plan to develop the new correctional facilities includes vacating the existing USP and FPC upon activation of the new FCI/FPC. To avoid potential adverse effects to historic architectural resources represented by the USP, the BOP shall conduct a Transition Study to identify those measures and services to be maintained in order to avoid deterioration of the structures and infrastructure as well as options for possible future uses and/or missions for the facility other than housing inmates. There are no plans to alter or demolish the existing USP structure and the facility will be maintained until other uses and missions can be determined.


Development of the proposed FCI/FPC would result in beneficial impacts by providing a much-needed new facility

to replace the aged USP Leavenworth and, in concert with other BOP actions, would contribute to implementation of national justice goals and objectives. The proposed project enjoys widespread support among elected officials representing the City of Leavenworth, neighboring communities within Leavenworth County, and the State of Kansas. This is due, in part, to the beneficial impacts on the regional economy of eastern Kansas/western Missouri that would be realized by virtue of the facility's development budget of approximately \$356 million, maintaining its 338-person workforce, and the approximately \$40 million annual operating budget.

Environmental and other relevant concerns presented by interested agencies, organizations, Native American tribes, and private citizens have been fully addressed within the FSEIS and this ROD. The comments and responses thereto are hereby acknowledged and measures to mitigate potential adverse impacts described within the FSEIS are incorporated within this ROD by reference.

V. CONCLUSION

After consulting with BOP staff and being apprised of material in the DEIS, FEIS, DSEIS and FSEIS, it is my decision that the BOP should proceed with the development of the proposed FCI/FPC in accordance with the East Site plan at the USP in Leavenworth, Kansas.



M.D. Carvajal
Director
Federal Bureau of Prisons



Date