

**MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND
THE WASHINGTON, DC MARTIN LUTHER KING, JR.
NATIONAL MEMORIAL PROJECT FOUNDATION, INC.
REGARDING
ESTABLISHMENT OF THE MARTIN LUTHER KING, JR. MEMORIAL
WEST POTOMAC PARK, WASHINGTON, DC**

WHEREAS, Public Law 104-333, Section 508, enacted by President William J. Clinton on November 12, 1996, authorized the Alpha Phi Alpha Fraternity (Fraternity) to establish a memorial to Martin Luther King, Jr. (Memorial) on lands under the administrative jurisdiction of the Secretary of the Interior (Secretary) in the District of Columbia or its environs (Undertaking) in compliance with the Commemorative Works Act of 1986, as amended; and

WHEREAS, the Fraternity has organized the Washington, DC Martin Luther King, Jr. National Memorial Project Foundation, Inc. (Foundation) to implement the Memorial project; and

WHEREAS, Public Law 105-201, enacted on July 16, 1998, authorized the Memorial to be located within Area I (Attachment 1, Commemorative Works Act Map Number 869/86501); and

WHEREAS, the National Park Service (NPS), in its letter of March 4, 1999 to the District of Columbia State Historic Preservation Officer (DC SHPO), provided notice that selection of a site near the edge of the Tidal Basin and West Basin Drive had been proposed and that its selection and development had potential for an adverse effect on the landscape and National Register qualities of West Potomac Park; and

WHEREAS, in December 1999, the NPS, the National Capital Planning Commission (NCPC) the Commission of Fine Arts (CFA) and the Secretary selected, in conformance with the Commemorative Works Act and in scheduled public meetings of NCPC and CFA, the 4-acre site administered by the NPS on behalf of the Secretary that constitutes the site for the proposed Memorial; and

WHEREAS, the NPS, in cooperation with the Foundation, released for public comment the July 2005 Environmental Assessment for the Memorial; and

WHEREAS, on September 13, 2005, the NPS advised the DC SHPO that the proposed concept design for the Memorial would potentially have an adverse effect on the National Register qualities of West Potomac Park; and

WHEREAS, on September 19, 2005, the NPS provided the first of several opportunities for public participation in the review of the Undertaking by providing notice and conducting a consultation meeting in order to present information and solicit verbal and written comments so that the design of the Memorial could be revised accordingly; and

WHEREAS, the NPS's Environmental Assessment of July 2005 identified the need for a visitor support facility (Visitor Facility) to include restrooms and visitor information since the closest restrooms are 750 feet away and there will be great interest in the Memorial's subject matter from both domestic and international visitors and the Visitor Facility was incorporated into the concept design in December 2005; and

WHEREAS, during 2006 and 2007, the design of the Memorial was further refined and revised as a result of the Foundation's selection of a design-build team and in consultation with the NPS, the future managers of the Memorial, as a part of the CFA and the NCPC conceptual and preliminary design review processes; and

WHEREAS, the NPS, by letter dated February 20, 2008, invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation process and the ACHP, having received the invitation on February 28, 2008, notified the NPS on March 7, 2008 of the ACHP's decision to participate in the consultation; and

WHEREAS, the Foundation has participated in the consultation, has been assigned responsibilities under this Memorandum of Agreement (Agreement) and has been invited to be a signatory to this Agreement; and

WHEREAS, the National Coalition to Save Our Mall and the National Trust for Historic Preservation (Consulting Parties) have also participated in consultation, and the National Coalition to Save Our Mall has been invited to concur in this Agreement pursuant to 36 CFR 800.6(b)(2); and,

WHEREAS, additional opportunities for consulting parties to comment on the design of the Memorial were provided at consultation meetings held on March 3, 2008, April 22, 2008 and June 30, 2008; and

WHEREAS, the NPS has determined that the Undertaking will constitute an adverse effect on historic properties through physical alteration of site features; relocation or removal of 9 cherry trees; demolition and reconstruction of a portion of West Basin Drive; provision of a Visitor Facility; and the potential realignment of West Basin Drive and introduction of security barriers; and

WHEREAS, the NPS has consulted with the DC SHPO and the ACHP to avoid, minimize, or mitigate the adverse effects pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the NPS has considered recommendations proposed by the signatories and the consulting parties and has addressed them through design modification to the extent possible at this time; and

WHEREAS: through the process of consultation and design analysis, the length, height, and location of Visitor Facility have been adjusted to minimize potential impacts of the structure and the north eave has been extended to provide shelter for visitors; and

WHEREAS, the CFA gave Revised Concept Approval on May 23, 2008 and the NCPC gave Preliminary Approval of the project which included the Visitor Facility; and

WHEREAS, the NPS and the DC SHPO agree that the adverse effect of the Visitor Facility has been minimized through design modification; while other consulting parties have requested that additional consultation be arranged before NPS makes a final decision on the design of the Visitor Facility; and

WHEREAS, the NPS has identified the need for security features to address potential threats to this specific Memorial after most of the design was complete and a limited number of bollards at

the 3 entrances were determined by the NPS to be the most compatible solution based upon a thorough design analysis; and

WHEREAS, all of the design modifications that have been incorporated into the Memorial plans thus far are dated June 24, 2008 and attached hereto as Attachment 2 (June 24, 2008 plans); and

WHEREAS, this Agreement provides for additional review and comment opportunities for any changes to the June 24, 2008 plans;

NOW, THEREFORE, the NPS, the Foundation, the DC SHPO, and the ACHP agree that the undertaking shall be carried out in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

The NPS shall ensure that the following measures are carried out:

1. (a) To the extent possible, the final design of the Undertaking will be compatible with the historic and architectural qualities of West Potomac Park in terms of scale, massing, materials; will be accomplished with the least possible disruption to features and facilities of the park; and will be as similar as possible to the June 24, 2008 plans. At present, three issues that have been introduced, but not resolved, include the potential realignment of West Basin Drive to reflect the curved edge of the Tidal Basin, the introduction of security barriers into the Memorial design, and the treatment of the Visitor Facility.

Before making a final decision on these issues, the NPS will consult in accordance with Stipulation 1(d) of this Agreement.

Before approving any changes to the June 24, 2008 plans that may be proposed subsequent to the execution of this Agreement as a part of a review by CFA, NCPC or NPS or for any other reason, the NPS shall:

- i. Review the proposed changes and make a determination as to whether the changes result in a new adverse effect that has not already been taken into account and/or an intensification of a known adverse effect that has already been considered and minimized pursuant to this Agreement; and
- ii. Forward its determination and all documentation necessary to explain the proposed changes to the signatories and the consulting parties for a 14-day review and comment period.

(b) If the NPS determines that no new adverse effects would result or no known adverse effects would be intensified and all signatories and all consulting parties agree in writing within the 14-day review period, the NPS shall be required to take no further action other than submitting copies of the final plans pursuant to Stipulation 2 of this Agreement. The NPS may assume concurrence with its finding if any party fails to respond in writing within the review and comment period.

(c) If the NPS determines that no new adverse effects have been found or no known adverse effects would be intensified and any signatory or consulting party objects in writing within the 14-day review period, the NPS shall consult with the objecting party as follows:

NPS shall consult with the objecting party to seek ways to resolve the objection. If NPS determines that the objection cannot be resolved, NPS shall forward the objection to the ACHP with a request for recommendations, along with relevant documentation not previously furnished to the ACHP. Within 14 days of receipt, the ACHP will either:

- i. provide the NPS with recommendations, which the NPS will take into account in reaching a final decision regarding the objection; or
- ii. notify the NPS that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment within 45 days. Any ACHP comment provided in response to such a request shall be taken into account, and responded to, by NPS in accordance with 36 CFR 800.7(c) (4) with reference to the subject of the dispute.

Any recommendation or comment provided by the ACHP will be understood to pertain only to subject of the objection; the NPS's responsibility to carry out all actions under this Agreement that are not subjects of the objection will remain unchanged.

(d) If the NPS determines that a new adverse effect would result or a known adverse effect would be intensified, NPS will consult further with all signatory and consulting parties to identify means to avoid, minimize, or mitigate the adverse effects and to consider amending the Agreement pursuant to Stipulation 6 [not] of this Agreement.

2. The NPS will submit a copy of the final plans for Memorial to the DC SHPO, the ACHP, and to any other signatory or consulting party which requests a copy for their records.
3. The NPS will update the public via the Planning, Environment, & Public Comment (PEPC) website on actions taken to implement the terms of this MOA.
4. The NPS will provide update semi-annual status reports for the signatories and consulting parties
5. This Agreement will be valid for a period of five years from the date of the last signature.
6. This Agreement may be amended when an amendment is agreed to in writing by all signatories. The amendment will be effective on the date of the last signature.
7. If any signatory to this Agreement determines that the terms of the Agreement cannot be or are not being carried out, that signatory shall so notify the other signatories and consult with them to seek amendment of the Agreement. If within fifteen (15) days an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories. Once the Agreement is terminated, and prior to work continuing on the Undertaking, NPS must either (a) execute a new Memorandum of Agreement pursuant to 36 CFR Section 800.6 or (b) request, take into account, and respond to the comments of the ACHP per 36 CFR 800.7. NPS will notify the signatories as to the course of action it will pursue.

Execution of this Agreement and implementation of its terms evidences that NPS has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that NPS has taken into account the effect of the Undertaking on historic properties.

SIGNATORIES:

Lisa A Mendelson-Telmini
Regional Director, National Capital Region, NPS

8/25/08
Date

see attached
District of Columbia State Historic Preservation Officer

Date

John M. Fowler
Executive Director, Advisory Council on Historic Preservation

8/25/08
Date

[Signature]
Executive Architect, Washington, D.C. Martin Luther King, Jr.
National Memorial Project Foundation, Inc.

8.25.08
Date

CONCURRING PARTIES:

President, National Coalition to Save Our Mall

Date

Attachments:

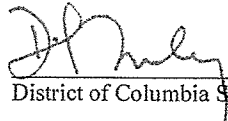
1. Commemorative Works Act Map
2. June 24, 2008 design brochure handout at June 30, 2008 106 consultation

The National Register nomination for East and West Potomac Parks is available at the website: <http://www.nps.gov/nationalmallplan/> by selecting "History". This website can also provide access to the viewer: Cultural Landscape Inventories, and the Jefferson Memorial Cultural Landscape Inventory.

SIGNATORIES:

Regional Director, National Capital Region, NPS

Date

 DAVID MALONEY
District of Columbia State Historic Preservation Officer

8/22/08
Date

Executive Director, Advisory Council on Historic Preservation

Date

Executive Architect, Washington, D.C. Martin Luther King, Jr.
National Memorial Project Foundation, Inc.

Date

President, National Coalition to Save Our Mall

Date

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