

Draft Programmatic Agreement
Among
The National Park Service
The District of Columbia State Historic Preservation Officer
And
The Advisory Council on Historic Preservation
Regarding
The National Mall Plan
Washington, D.C.

The National Park Service (NPS) manages the National Mall for the American public. The NPS initiated a planning process for the National Mall in 2006. In accordance with NPS policies and the National Environmental Policy Act (NEPA), the NPS subsequently developed The National Mall Plan. In June 2010, the NPS issued a Final Environmental Impact Statement, which includes an agency preferred alternative as well as a no-action alternative and three action alternatives. The NEPA analysis of the alternatives in the National Mall Plan has been developed concurrently and in coordination with consultation under Section 106 of the National Historic Preservation Act (NHPA). This Programmatic Agreement (PA) between the NPS, the State Historic Preservation Officer (DC SHPO) and other signatories establishes the process and procedures that will be used for the purposes of Section 106 of the act to implement aspects of the National Mall Plan, including individual design and construction projects outlined in the plan.

CONTEXT - HISTORIC RESOURCES

The National Mall, which dates from 1791 and the founding of the federal city is one of the most historic and important public spaces in our nation. As outlined in the L'Enfant, Senate Park Commission (McMillan) and other 19th and 20th century plans, it is a place of great significance in our nation's history and is at the heart of our capital city.

1. **Whereas** the National Mall is part of a designed historic landscape together with surrounding areas that were addressed and envisioned in historic plans
2. **Whereas** the NPS lands include cultural landscapes relating to distinct places and development in our nation's history (See attached map)
3. **Whereas** the National Mall contains commemorative works of public art that are managed as historic resources. (See attached map)
4. **Whereas** the National Mall Plan study area contains implemented portions of historic plans commonly referred to as the L'Enfant (1791), McMillan (1901), National Capital Planning Commission plans of the 1930s; the Skidmore Owings and Merrill plans of the 1960s and

1970s; and is addressed by current approved plans - Extending the Legacy (1997), Memorials and Museums Master Plan (2001)

5. **Whereas** the National Mall is the location for historic or iconic buildings and great museums, which contain important national collections
6. **Whereas** the Area of Potential Effect (APE) was defined as a result of a consultation process in the National Mall Plan. The Area of Potential Effect (APE) includes and is surrounded by National Register of Historic Places historic districts (National Mall Historic District; Washington Monument and Grounds; East and West Potomac Park Historic District; Northwest Rectangle Historic District; Seventeenth Street Historic District; Lafayette Square Historic District; Federal Triangle Historic District; Downtown Historic District; Pennsylvania Avenue National Historic Site/District. (See attached map)
7. **Whereas** the documentation of historic properties, historic districts in the APE is incomplete,
8. **Whereas** there is an NPS Nationwide Programmatic Agreement (2008) in place to facilitate Section 106 consultation for NPS undertakings

ISSUES AND NEED FOR PLANNING

The National Mall Plan was developed to address a number of critical planning needs.

1. **Whereas** the National Mall was not designed for the level of use it receives with more than 25 million visits annually resulting in an unacceptable level of wear and tear on historic resources and designed historic landscape
2. **Whereas** the National Mall is the nation's primary civic space and serves as our democratic stage and also serves as open space for visitors and local residents
3. **Whereas** the National Mall exists within an urban context and incorporates properties with national and local significance
4. **Whereas** the important symbolic, democratic and civic purpose of the National Mall warrants exemplifying and incorporating universal access principles to buildings and landscapes to welcome all citizens inclusively
5. **Whereas** the NPS has identified a significant backlog of deferred maintenance repairs of over \$400 million, and
6. **Whereas** the needs of visitors to the National Mall are not presently met for amenities, facilities, services, group visitation, circulation/transportation, accessibility or recreation

PUBLIC ENGAGEMENT IN THE NATIONAL MALL PLAN

The NPS incorporated public engagement in both NEPA compliance and Section 106 requirements as part of the planning process. Public engagement included participation by Cooperating Agencies (federal and local agencies) and Section 106 Consulting Parties, as well as the American public at large. NPS will continue to use its websites for public outreach and communication.

1. **Whereas** NPS considered the information provided by the public and used it in many ways, including, planning, and describing the important public values of the National Mall, developing the range of alternatives considered, identifying elements for inclusion in the preferred alternative, as well as refining the preferred alternative

2. **Whereas** opportunities for public engagement included a symposium, nine public meetings, walking tours as well as the development of a dedicated planning website, four newsletters and a Draft National Mall Plan Environmental Impact Statement
3. **Whereas** NPS received more than 30,000 comments from people located in every state in the union, as well as from participants at numerous public meetings and presentations with diverse groups; and from planning and design professionals at all levels, including students at several universities and a blue ribbon panel of planning, architecture, and landscape architecture professionals (APA, ASLA and AIA)
4. **Whereas** NPS learned from the public comment process that several issues of concern required further explanation:
 - 4.1. The protection and unchanged nature of First Amendment rights – a issue that resulted in the development of a brochure about “The First Amendment on the National Mall”
 - 4.2. The definition of the planning area and the extent of cooperative planning with other agencies
 - 4.3. The importance of historic plans; and the role of the 1997 NCPC plan “Extending the Legacy” as today’s successor to the L’Enfant and McMillan plans
 - 4.4. The distinction between planning concepts never implemented and extant built historic elements
5. **Whereas** local and federal agencies cooperating under NEPA participated throughout the planning process in eleven multi-day workshops, the agencies also met on specific topics, provided the NPS with pertinent data, and
 - 5.1. The Cooperating Agencies worked with NPS to define planning principles, discuss common issues, develop and refine the range of alternatives to be analyzed; and participated in a series of workshops focused on the development of the preferred alternative by rating, ranking and combining alternative ideas relative to advantages and planning principle objectives; and
 - 5.2. Several cooperating agencies worked together to coordinate their respective planning efforts and to illustrate adjacent planning areas and common objectives in a brochure “Planning Together for Central Washington.” Coordinated plans include the District of Columbia’s Center City Action Agenda, National Capital Planning Commission/U.S. Commission of Fine Arts Monumental Core Framework Plan; Architect of the Capitol’s Capitol Complex Master Plan; and the National Park Service National Mall Plan.
 - 5.3. (See attached list of invited cooperating agencies)
6. **Whereas**, beginning in 2008 NPS invited and engaged 106 consulting parties in thirteen consultation meetings; provided a bus tour of the National Mall; engaged in discussions to identify historic resources and property requiring preservation and protection; discussed ideas for the range of plan alternatives; requested comment prior to the development of newsletter 4 and the DEIS; and provided information about NPS policies, and criteria, and guidelines; posted to the website background materials, such as Cultural Landscape Inventories (Union Square, The Mall, Constitution Gardens, Washington Monument, The District of Columbia War Memorial) and documents such as the McMillan Commission report, National Register nominations, and cultural landscape reports; developed maps illustrating information on the area of potential effect (APE), historic resources and districts, cultural landscapes, and a

comparative analysis of the McMillan Plan Mall Systems and the planning area; and created a graphic timeline showing the development of critical plans (see attached maps from EIS); posted consultation meeting notes on the website and related meeting materials

7. **Whereas** NPS considered and addressed consulting party comments by providing a response in meetings; posted annotated meeting notes online; incorporated consulting party ideas in alternatives, in the refined alternatives, or the preferred alternative; or analyzed and explained in the DEIS and FEIS phases of consultation the reasons an idea was considered but dismissed
8. **Whereas** the high level of interest in projects on the National Mall necessitates a clear consultation protocol for facilitating maximum public participation
9. **Whereas** the consulting parties participated in the development of this programmatic agreement, including a consultation protocol, and will continue to be invited to participate in subsequent individual project consultations associated with recommendations in the FEIS that have the potential to affect historic properties
10. (See attached list of those who requested consulting party status)

PROGRAMMATIC AGREEMENT STIPULATIONS

NOW THEREFORE, NPS, DC SHPO, ACHP, NCPC, CFA and DC agree that NPS shall ensure that the National Mall Plan outcomes will be carried out in accordance with the following stipulations in order to take into account the effects of plan undertakings on historic properties. This programmatic agreement is developed to address the “effects,” the “adverse effects,” or the “potential adverse effects” of the National Mall Plan. Determinations of effect will be made for individual undertakings carried out.

The NPS shall ensure that the following measures are carried out

1. Revise and update The National Mall National Register Historic District nomination.
 - 1.1. Funding will be requested and when it is available, the NPS will revise and update the National Mall Historic District nomination to include to all areas of the NPS-managed National Mall, as the current nomination describes only a component (The Mall, including Union Square), rather than the entire National Mall. The revised nomination will most likely add the following NPS managed sites and features but is not intended to be limited to these sites and features alone: the Washington Monument and grounds and areas within West Potomac Park, including the World War II Memorial, Constitution Gardens and the 56 Signers of the Declaration of Independence Memorial, Vietnam Veterans Memorial, Korean War Veterans Memorial, District of Columbia War Memorial, Ash Woods, Lincoln Memorial/Circle and Radial Roads, Lincoln Memorial Reflecting Pool, the Watergate Steps, the Tidal Basin, Thomas Jefferson Memorial, FDR Memorial, MLK, Jr. Memorial, George Mason Memorial and sections of the Potomac Riverfront. This action was proposed, discussed and supported at the March 9, 2010 Section 106 consulting party meeting.
 - 1.2. In addition, as part of the National Register nomination revision and update process, the NPS will also address the possibility of defining and establishing a National Register Historic District or National Historic Landmark nomination (if feasible) for the area that extends beyond the jurisdictional boundaries of the NPS to include areas in or adjacent

to the “Great Cross-Axis of the National Mall,” such as but not limited to the museums of the National Gallery of Art and Smithsonian Institution; the Department of Agriculture, the U.S. Capitol Grounds, as well as the White House and President’s Park.

2. The comprehensive and coordinated vision for future of the National Mall as described in the National Mall Plan will be implemented over time as individual projects are designed and constructed in accordance with the plan vision. Such projects will conform to the planning principles (Appendix F in the FEIS) and will be undertaken as funding is requested and becomes available or is acquired through other sources such as donated funds to the Trust for the National Mall; opportunities provided by Congress through special allocations such as the American Revitalization and Recovery Act; or other unique opportunities. The NPS will consider the project priority listings (see attached) that address general categories of priority levels for individual projects, and their associated compliance needs, costs, and the degree of resource or visitor experience improvements anticipated, as well as any project dependencies or projects necessary before an individual project can proceed.
3. Consultation process for individual construction projects or undertakings will follow regulations and processes established in (800.16) the regulations or the NPS nationwide Programmatic Agreement of 2008. Section 106 consultations will focus on historic preservation and avoiding, minimizing or mitigating adverse effects; and explore a range of alternatives for proposed projects that are consistent with the National Mall plan vision concepts and planning principles.
4. Project Planning and Design. Environmental Assessments will be prepared for most projects during conceptual design, as required by NPS’ NEPA regulations
 - 4.1. Conceptual alternatives will be developed in sufficient detail for adequate public comment and agency analysis of the impacts
 - 4.1.1. Design criteria will include:
 - 4.1.1.1. The Secretary of the Interior’s Standards
 - 4.1.1.2. Character defining elements and historic context identified with respect to sensitive design, appropriate scale, contextually compatible materials, colors and textures, even as the design program responds to the greatly differing needs of today and tomorrow and maximizes sustainable approaches
 - 4.1.1.3. Views and vistas will be protected as appropriate, and the condition of vegetation that defines views will be improved
 - 4.1.1.4. Individual projects should meet planning principles and objectives defined in the FEIS to:
 - 4.1.1.4.1. Provide a welcoming environment that can sustain very high levels of use
 - 4.1.1.4.2. Protect cultural resources and respect the legacy of historic plans even while the designed historic landscape will evolve to accommodate contemporary uses in a sustainable manner
 - 4.1.1.4.3. Improve natural resource conditions of the designed landscape
 - 4.1.1.4.4. Enhance the ability of the National Mall to function as our national civic stage
 - 4.1.1.4.5. Improve access and circulation

- 4.1.1.4.6. Improve visitor experiences and convenience by including visitor information, education and enjoyment; visitor amenities and services; health, safety and security; and sustainable park operations
 - 4.2. Planning document availability. Planning documents will be available online through PEPC and the National Mall Plan website; planning documents will be sent to all signatories and consulting parties through email, in a CD, electronic or print version
 - 4.3. Review times.
 - 4.3.1. Reviews may vary in intensity and length depending on the individual undertaking and the level of public interest and consultation. Consulting party review of new or intensified effects shall conform to the timeframes and other requirements of 36CFR 800.5(c).
 - 4.3.2. Signatory review for projects will include review of early concepts in planning documents and schematic design;
 - 4.3.3. Consultations will occur during the development of the planning documents and schematic design
 - 4.3.4. Public comment will be sought during the development of the planning documents
 - 4.4. Commenting.
 - 4.4.1. Signatory comments are internal and pre-decisional and may be provided during internal discussions, in meeting notes, by correspondence, or on an internal online location such as PEPC
 - 4.4.2. Consulting party or public comments will be submitted online on a site such as PEPC, through consulting party meeting notes, or in live-media discussions such as webcasts. NPS will continue to consider all comments from consulting parties in the decision making process.
5. CFA and NCPC Review of projects
 - 5.1.1. Many projects listed on the attached priority listing will be subject to reviews by the National Capital Planning Commission and the U.S. Commission of Fine Arts.
6. Mitigation initiatives or efforts
 - 6.1.1. Mitigation efforts - once designs for proposed projects with the potential for an adverse effect on historic properties have demonstrated through effective design the ways in which the new work avoids, minimizes or mitigates and effect of the project but is still considered to be adverse effect, appropriate mitigations will be prepared for projects as recommended by the signatories and consulting parties. Mitigation will be addressed in individual project agreement documents.
 - 6.1.2. NPS shall take into account any comments received within the thirty (30) day review period and consult with consulting parties until consensus is reached regarding the final mitigation plan or until such time that the NPS/DC determine that consensus cannot be reached. The NPS shall resolve any failure to agree regarding the final mitigation plan in accordance with Stipulation 8 (Dispute Resolution) of this PA. The NPS shall implement mitigation in accordance with the timeframes and specifications included therein.

6.1.3.1 Interpretation and Education materials produced about the resource, the undertaking, and the preservation and protection of the resource may include, but is not limited to new or revised wayside signs, NPS style brochures, and internet based content.

Background Information

7. At the beginning of the project planning phase, the NPS will provide the design and construction professionals involved with the individual project background information, including copies of the final National Mall plan, the summary plan, plan actions proposed (from alternatives matrix), and planning principles (FEIS appendix F); general cultural resources background documentation; specific information about relevant historic resources; cultural landscape and pertinent historic structures inventories or reports and recommended treatment goals; maps, photos and other data. The NPS will provide the public information about contributing historic features and post on-line any documentation on the referenced historic resources and
8. Archeology. Many areas on the National Mall were constructed on fill and do not contain any archaeological resources. However, the remaining naturally occurring areas may have potential or include known sites. NPS will consult with the DC SHPO and coordinate in advance of a proposed undertaking with all appropriate entities to establish areas where no further archeological survey will be necessary and where areas for potential archeology remain. NPS will follow all procedures within the Secretary of the Interior's Standards as well as provide information on any projects that result in archeological investigation.
9. Reporting and notification. NPS will update the public on the status of projects and compliance on the National Mall Plan website with electronic notification on at least a semi-annual basis.
10. Dispute resolution. Should any signatory, invited signatory, concurring signatory, or consulting party to this PA object to NPS in writing regarding an action carried out in accordance with this PA, the signatories will consult to resolve the objection. Should the signatories be unable to resolve the disagreement, NPS shall forward its background information on the dispute as well as its proposed resolution of the dispute to the ACHP. Within 45 days after receipt of all pertinent documentation, ACHP will either: Provide the NPS with written recommendations, which NPS will take into account in reaching a final decision regarding the dispute, or notify NPS that it will comment pursuant to 36 CFR 800.7 (c), and proceed to comment. Any ACHP comment provided in such a request shall be taken into account by NPS in accordance with 36 CFR 800.7 (c)(4) with reference to the subject of the dispute. Any ACHP recommendation or comment will be understood to pertain only to the subject matter of the dispute; NPS's responsibility to carry out all actions under this PA that are not subjects of dispute will remain unchanged.
11. Duration. The PA shall be valid for fifteen (15) years from the date of the last signature and may be updated for ten year periods until the next update of planning for the National Mall.
12. Amendments. This PA may be amended when an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date a copy signed by all of the signatories is filed with ACHP.
13. Termination. If any signatory or invited signatory to this PA determines that the terms of the PA cannot or are not being carried out, that objecting party shall so notify the other

signatories and invited signatories in writing and consult with them to seek amendment of the PA. If within thirty (30) days, an amendment cannot be reached, any signatory may terminate the PA upon written notice to the other signatories and invited signatories. Once the PA is terminated, and prior to work continuing on the Undertaking, NPS must (a) either execute a new Programmatic Agreement pursuant to 36 CFR Section 800.14 or (b) request, take into account, and respond to comments of the ACHP per 36 CFR Section 800.7. NPS will notify the signatories and invited signatories as to the course of action it will pursue.

SIGNATORIES:

Regional Director, National Capital Region, NPS Date

District of Columbia State Historic Preservation Officer Date

Executive Director, Advisory Council on Historic Preservation Date

INVITED SIGNATORIES

Executive Director, National Capital Planning Commission Date

Director, Office of Planning, District of Columbia Date

Secretary, U.S. Commission of Fine Arts Date

CONCURRING PARTIES

Architect of the Capitol or Designated Representative Date

Director, National Gallery of Art or Designated Representative Date

Secretary, Department of Agriculture or Designated Representative Date

Secretary, Smithsonian Institution or Designated Representative Date

Administrator, General Services Administration or Designated Representative Date