

**MEMORANDUM OF AGREEMENT
AMONG THE
NATIONAL PARK SERVICE
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION
OFFICER AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE
ISSUANCE OF A SPECIAL USE PERMIT FOR DEMOLITION OF THE
FOUNDRY BRANCH TRESTLE BRIDGE
GLOVER-ARCHBOLD PARK
WASHINGTON, DISTRICT OF COLUMBIA**

This Memorandum of Agreement (MOA) is made by and among the National Park Service (NPS) Rock Creek Park, the District of Columbia State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) referred to collectively herein as the “Signatories” or individually as a “Signatory”, as well as the Washington Metropolitan Area Transit Authority (WMATA) as an Invited Signatory (upon signing, also a Signatory) pursuant to Section 106 of the National Historic Preservation Act (“NHPA”) of 1966, as amended, 54 U.S.C. § 301608 and its implementing regulations, 36 CFR part 800.

PREAMBLE

WHEREAS, on March 14, 2018, WMATA submitted a Special Use Permit (SUP) application to the NPS to access federal park land within Glover-Archbold Park to “remove electric powerline, trestle bridge, concrete footers, and related materials” associated with the Foundry Branch Trestle Bridge (Trestle); and

WHEREAS, the Trestle is a streetcar bridge that was constructed in 1896 as part of the Washington and Great Falls Electric Railway Company line that connected Georgetown in the District of Columbia to Cabin John, Maryland from 1897 to 1960; and

WHEREAS, D.C. Transit System, Inc. (D.C. Transit), the former owner of the Trestle and Lots 817 and 822 underlying the Trestle (Underlying Properties), ceased operations on the Trestle in 1960; and

WHEREAS, in 1997, WMATA became the owner of the Trestle and Underlying Properties pursuant to Orders by the United States Court of Appeals for the District of Columbia in litigation arising from D.C. Transit’s fare overcharges for bus service, directing D.C. Transit to transfer all assets of certain established restitution trust funds, including the Trestle and Underlying Properties, to WMATA for the sole purpose of sale to fund public buses; and

WHEREAS, WMATA conducted an engineering study for the Trestle in 2014, and determined that it was structurally unsound; and

WHEREAS, in 2016 the NPS learned of the findings documented in the 2014 engineering study and immediately closed the area under the Trestle to protect park visitors, and subsequently authorized WMATA to fence off the area underneath the Trestle for public safety; and

WHEREAS, issuance of a SUP constitutes an Undertaking under 36 CFR § 800.16(y) and requires a Section 106 review because it has the potential to affect historic properties; and

WHEREAS, this SUP will allow for construction of temporary access routes and staging areas, vegetation removal, and landscape improvements following demolition and removal of the Trestle including re-establishment and reopening of the north-south historic trail (Trail), a contributing resource to the Park, that extends under the Trestle; and

WHEREAS, the Trestle is a contributing resource to Glover-Archbold Park, which is listed in the National Register of Historic Places (National Register) and the DC Inventory of Historic Sites; and

WHEREAS, the Trestle is historically significant as the last remaining streetcar bridge in the District of Columbia; and

WHEREAS, the National Capital Planning Commission (NCPC) has approval authority over projects on federal land located within the District of Columbia pursuant to the National Capital Planning Act (40 USC § 8722(b)(1) and (d)) such approval is part of the undertaking; and

WHEREAS, the NPS and NCPC have agreed that the NPS will be the lead Federal agency pursuant to 36 CFR 800.2(a)(2) for the Undertaking to fulfill their collective Section 106 responsibilities; and

WHEREAS, the NPS initiated consultation with the SHPO pursuant to 36 CFR § 8003(c) on May 11, 2018, and reinitiated Section 106 consultation in a letter dated February 8, 2021, which provided the Area of Potential Effects (APE) for the Undertaking in accordance with 36 CFR § 800.4(a)(1), and which now also includes the vertical extent of the APE measuring no greater than three (3) feet deep, see Attachment A – “Area of Potential Effect”; and

WHEREAS, in consultation and in coordination with other Consulting Parties, the NPS considered alternatives to avoid the Undertaking's adverse effects on historic properties; and

WHEREAS, in March 2018, WMATA filed an application for a raze permit with the D.C. Department of Consumer and Regulatory Affairs to demolish the Trestle; and

WHEREAS, in 2018 the D.C. Department of Transportation (DDOT) conducted a feasibility study to determine whether they should acquire, rehabilitate, and adaptively reuse the Trestle and adjacent land as a multi-use trail between the Foxhall neighborhood and Georgetown; and

WHEREAS, in January 2020, DDOT issued a final feasibility study for a Palisades Trolley Trail and the Foundry Branch Trolley Trestle Bridge and determined, based on several factors including cost, constructability, topography, and right-of-way impacts, that rehabilitating the Trestle for use as part of a possible trail was not feasible, the District would “not be moving forward” with rehabilitation and reuse of the Trestle, and the District would “not seek to acquire ownership” of the Trestle; and

WHEREAS, WMATA has for years attempted to sell or convey the Trestle and the Underlying Properties outright to federal or District agencies but has found no willing buyer or recipient; and

WHEREAS, after conducting a full public hearing and receiving evidence and briefing, the D.C. Mayor’s Agent for Historic Preservation issued a Decision and Order on September 23, 2020, to clear the raze permit for approval; and

WHEREAS, on October 21, 2020, the DC Preservation League (DCPL) filed a petition with the District of Columbia Court of Appeals to review the motion allowing the raze permit, and WMATA intervened on behalf of respondent, Docket Number 20-AA-614; and

WHEREAS, on September 15, 2022, the District of Columbia Court of Appeals ruled to vacate the Mayor’s Agent’s previous decision and to remand for further proceedings and explanation; and

WHEREAS, the “Coalition to Save the Foundry Branch Trestle” was formed in 2022, with the goal to inform the public about the potential use of the Trestle as a rehabilitated transportation asset; and

WHEREAS, on February 27, 2023, Advisory Neighborhood Commission (ANC) 2E passed a resolution urging preservation and restoration of the Trestle; and

WHEREAS, on May 10, 2023, following further briefing on remand, the D.C. Mayor’s Agent again cleared WMATA’s requested raze permit for the Trestle, concluding based on clear and convincing evidence in the record that the Trestle is a public safety concern and has no future use, and denial of the permit would cause unreasonable economic hardship to WMATA; and

WHEREAS, DCPL again appealed to the Mayor’s Agent’s decision to the District of Columbia Court of Appeals, which dismissed the appeal on July 26, 2023; and

WHEREAS, on August 1, 2023, at the request of the DCPL, the firm Simpson Gumpertz & Heger Inc. completed preliminary observations and recommendations regarding the feasibility of rehabilitating the Trestle; and

WHEREAS, the Foundry Branch Trolley Trestle Plan Act of 2023 was approved by the D.C. City Council, requiring the Council’s approval for acquisition of the Trestle by the D.C. government; and

WHEREAS, narrative from the Fiscal Year (FY) 2024 D.C. budget noted, “...the District shall not acquire, nor spend any funds in furtherance of acquiring, the Foundry Branch Trolley Trestle, except to submit to the [D.C. City] Council a plan for the future use of the Trolley Trestle, as well as a risk mitigation plan to accommodate the potential liability that may be incurred by the District from the time it acquires the Trolley Trestle until it is restored, repurposed, or demolished consistent with the Foundry Branch Trolley Trestle Plan Act of 2023”; and

WHEREAS, funds were allocated to DDOT’s Trails Master Project in the FY 2024 D.C. budget for planning future restoration and possible purchase of the Foundry Branch Trestle Bridge in accordance with the Foundry Branch Trolley Trestle Plan Act of 2023; and

WHEREAS, in a February 2024 statement to the D.C. City Council, DDOT’s acting director noted that the funding is insufficient to proceed with any design, compliance, or construction efforts, and that moving forward with acquisition of the Trestle should only occur if DDOT is prepared to invest the funds necessary to build trail connections in this area. DDOT instead recommended that this funding be allocated to the proposed Arizona Avenue Connector to the Capital Crescent Trail project; and

WHEREAS, the funding provided in the FY 2025 D.C. budget was redirected by DDOT away from the Trestle; and

WHEREAS, throughout consultation, NPS provided opportunities for the public to comment on the proposed Undertaking via the NPS Planning, Environment, & Public Comment system; and

WHEREAS, the NPS has invited various parties to participate in consultation including the United States Commission of Fine Arts, the National Capital Planning Commission, the DCPL, the Coalition to Save the Foundry Branch Trestle, and ANC 2E, among others (see Attachment B for the complete list of Consulting Parties); and

WHEREAS, federally recognized Indian Tribes with ancestral connections to Glover-Archbold Park were invited by the NPS to participate in consultation but no tribe expressed interest in being a consulting party; and

WHEREAS, the NPS conducted four (4) Section 106 consultation meetings on the following dates: March 30, 2021; May 11, 2022; April 22, 2024; and October 25, 2024, to engage with Consulting Parties, inform the public of the Undertaking, and apprise attendees of the actions described above; and

WHEREAS, WMATA completed a Phase 1A archeological investigation of the APE in 2022, which

determined that the potential for archaeological resources within the area is low, and that it is unlikely that intact deposits will be affected as the excavation associated with demolition will occur within previously disturbed soils; and

WHEREAS, the NPS and the SHPO concurred with the findings of the Phase 1A archeological investigation on April 20, 2022; and

WHEREAS, in the absence of any approved or funded plan or proposal to utilize the Trestle for any purpose, in consultation, the NPS determined that the Undertaking will have adverse effects on Glover-Archbold Park. Specifically, the Undertaking will directly affect the physical integrity of the Trestle, a contributing historic structure, and diminish the integrity of the setting, feeling, and association of Glover-Archbold Park; and

WHEREAS, in consultation, the NPS also identified and evaluated several approaches to minimize adverse effects and determined that the Trestle footers could be retained; and

WHEREAS, upon substantial completion of the demolition and removal of the Trestle, the NPS shall also require WMATA, as a condition of the SUP, to re-establish the natural landscape around the Trestle Underlying Properties and enable the NPS to re-open the Trail for public use; and

WHEREAS, in March 2021, in accordance with 36 CFR § 800.6(a)(1), the NPS notified the ACHP of its adverse effect determination and on April 21, 2021, the ACHP notified the NPS of its decision to participate in consultation; and

WHEREAS, the NPS invited WMATA to sign this MOA since it owns and proposes to demolish the Trestle; and

NOW, THEREFORE, the NPS, the SHPO, and the ACHP (and WMATA as an Invited Signatory, upon signing also a Signatory), agree that the Undertaking shall be implemented in accordance with the following stipulations to consider the effect of the Undertaking on the historic properties.

STIPULATIONS

The NPS shall ensure the following measures are carried out:

I. GENERAL REQUIREMENTS

A. Coordination

1. The NPS shall ensure that the clauses in this MOA, which apply to and set forth requirements for WMATA, are substantively listed as conditions in the SUP permit.

II. PERSONNEL QUALIFICATIONS

All work performed pursuant under the SUP shall be accomplished by, or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary's Professional Standards (*Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines [As Amended and Annotated]*, 48 FR 44716, formerly published in 36 CFR § 61). Principal investigators for archaeological investigations must comply with District of Columbia archaeology policies including the *DC Archaeology Guidelines*.

III. MITIGATION

A. Historic Property Documentation – HAER Level II

1. Prior to alteration of any portion of the Trestle by WMATA (or its contractors or

associates) and within six (6) months of the last signature on this MOA, WMATA shall hire a qualified contractor to complete documentation of the Trestle and its abutments and footers according to Historic American Engineering Records (HAER) "Level II" standards (as set forth in the National Park Service's HAER guidelines). Documentation shall include a descriptive and historical narrative, drawings, and large format photographs of the Trestle.

2. The NPS shall submit the completed HAER documentation to the SHPO for a thirty (30) day review and comment period prior to alteration of any portion of the Trestle. The HAER documentation may be revised to address any comments from the SHPO. Following approval by the SHPO, the NPS shall provide a digital copy of the final documentation to the SHPO, WMATA, and the Signatories.

B. Complete Amendment to the Glover-Archbold Park National Register Nomination Form

1. Within two (2) years of the last signature on this MOA, WMATA shall enlist staff or hire a qualified contractor to submit an update to the Glover-Archbold Park National Register nomination form. The amendment shall include revisions to Sections 7 and 8, an updated contributing resource list, and updated photographs and maps to reflect the loss of the Trestle.
2. WMATA shall submit the updated National Register nomination to the NPS for a forty-five (45) day review and comment period. Following NPS approval, the NPS shall provide a digital copy of the nomination to the SHPO for a forty-five (45) day review and comment period. Following NPS review and comment, WMATA shall revise the nomination within forty-five (45) days, then resubmit the revised nomination to the NPS for approval. Following NPS approval of the revised nomination, which shall occur within forty-five (45) days of WMATA's submission, the NPS shall provide a digital copy of the nomination to the SHPO for a forty-five (45) day review and comment period. Following receipt of comments from the SHPO, WMATA shall then revise the nomination within forty-five (45) days to address these comments and submit the documentation to the NPS for transmission to the SHPO for concurrence. Within six (6) months, the NPS shall submit the amendment to the NPS Federal Preservation Officer for signature and submittal to the Keeper of the National Register of Historic Places.

C. Interpretive Signage

1. In consultation with the NPS and the SHPO and within two (2) years of the last signature on this MOA, WMATA shall hire a qualified contractor to develop and complete a draft design for two (2) interpretive wayside panels describing the Trestle. Design and installation of the wayside panels will adhere to NPS Director's Order 52 to comply with NPS sign standards and accessibility guidelines developed by the NPS Harpers Ferry Center.
2. The interpretive wayside panels may describe the historical and architectural characteristics of the Trestle including the remaining footers (see Section III (D)(1) below) as well as the Trestle's function as part of the Washington and Great Falls Electric Railway Company operations. They may also serve to contextualize the Trestle's relationship with Glover-Archbold Park to include the contributions of Charles Carroll Glover and Anne Archbold in the creation of the park.
3. Within forty-five (45) days of completing the draft wayside design, WMATA shall distribute the design to the NPS, Signatories, and Consulting Parties for a thirty (30) day

review and comment period. Within forty-five (45) days of receiving comments from the NPS, Signatories, and Consulting Parties, WMATA shall revise the wayside panels detail to address the comments and then submit the revised wayside panels to the NPS, Signatories, and Consulting Parties for a second thirty (30) day review period. At the completion of the second review period, WMATA shall have forty-five (45) days to revise the panels and work with the NPS and the SHPO to finalize the design and content of the interpretive panels.

4. Within six (6) months of finalizing the wayside design, WMATA shall complete fabrication of the interpretive wayside panels to NPS standards and install them in a location mutually agreeable to the NPS, the SHPO, and WMATA along Canal Road NW, in a location and manner that is accessible to all visitors.

D. Preservation of Trestle Footers

1. During demolition of the Trestle, WMATA shall preserve and protect the remaining low concrete Trestle footers in situ to provide tangible evidence of the former location and horizontal spatial delineation of the structure.

E. Landscape Re-Establishment

1. As part of issuing the Special Use Permit to WMATA for the Undertaking, the NPS shall include conditions that describe and direct landscape re-establishment within the WMATA Staging, Access and Limits of Disturbance (LOD) Plan. Prior to the issuance of this Permit, the NPS shall provide a thirty (30) day review period for the Signatories and Consulting Parties to review and comment on the proposed landscape re-establishment activities and shall consider such comments prior to finalizing these activities. The goal of the landscape re-establishment is to return the Trestle site and its surroundings, which are character-defining features, to a natural condition, while maintaining the viewsheds associated with the open central valley corridor in this location. This will allow the park to continue to function as a critical greenway that extends from upper Northwest Washington, D.C. to the Potomac River. In the future, the NPS will complete a Cultural Landscape Report for Glover-Archbold Park to identify and evaluate historic views and vistas.
2. Following completion of the thirty (30) day review period, the NPS shall finalize responses to all comments and issue the Special Use Permit to WMATA for the Undertaking.
3. Within six (6) months of the completion of all demolition work associated with the Undertaking, WMATA shall complete the initial landscape re-establishment of the former Trestle site to include staging areas and access routes as noted in the proposed LOD provided as Attachment C. The initial landscape re-establishment shall include work needed to reopen the Glover-Archbold Trail and selective removal and replanting of vegetation within the project area.
4. At the completion of the initial landscape re-establishment work, WMATA shall begin a five (5) year vegetation maintenance period, included as part of the Permit conditions, to ensure the survival and integrity of the newly planted landscape materials.

IV. POST-REVIEW DISCOVERIES

A. Archaeological Discoveries

1. If a previously unidentified archaeological resource is discovered in the APE during ground disturbing activities, WMATA shall prevent further disturbance in the area and immediately notify the NPS.
2. The NPS shall consult with the SHPO to determine eligibility, documentation requirements, and whether adverse effects can be avoided or minimized. If adverse effects cannot be avoided, then the NPS shall consult with the SHPO to propose a Treatment Plan to mitigate adverse effects.
3. If data recovery is selected as mitigation, then that work shall be conducted according to *DC Archaeology Guidelines* and shall not commence until an archaeological work plan has been approved by the NPS and the SHPO.

B. Treatment of Human Remains

1. Should human remains, burials, or funerary objects be discovered during Project construction, the NPS shall immediately notify the SHPO. Within twenty-four (24) hours, the NPS will implement measures to protect the human remains from inclement weather and vandalism and notify the Metropolitan Police Department and the District of Columbia Office of the Chief Medical Examiner (OCME) of the discovery.
2. Sufficient description of the discovery shall be provided to allow the OCME to complete its obligations under Statute § 5-1406 of the District of Columbia or other applicable law(s).
3. If the OCME determines that the human remains are not subject to a criminal investigation by local or federal authorities, the NPS shall determine appropriate disposition in consultation with the SHPO. The NPS shall comply with all applicable federal and District of Columbia laws and regulations governing the discovery and disposition of human remains.
4. In the event an unanticipated discovery includes human remains, funerary objects, sacred objects, or objects of cultural patrimony, the NPS will comply with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 *et seq.*) and the accompanying regulations at 43 CFR 10. Pursuant to an applicable NAGPRA Plan of Action or as otherwise required, the NPS will ensure that any human remains are left in situ, are not exposed, and remain protected while the park complies with relevant provisions of applicable Federal, State, and/or local laws.
5. When applicable, the NPS will consider the principles within the ACHP's *Policy Statement on Burial Sites, Human Remains, and Funerary Objects*, dated March 1, 2023. In implementing the Agreement, the NPS will fulfill its obligation to consult with Tribes consistent with all relevant Executive Orders, Secretary's Orders, the Department of the Interior Departmental Manual, and NPS Director's Orders and Related Guidance.

V. DISPUTE RESOLUTION

Should any Signatory object in writing to the NPS regarding any actions proposed as part of the Undertaking or the way the terms of this MOA are implemented, the NPS shall consult with such Signatory to resolve the objection. If the NPS determines that such objection cannot be resolved, the NPS shall notify the other Signatories and attempt to resolve the objection. If the NPS determines that such objection cannot still be resolved, the NPS shall:

- A. Forward all documentation relevant to the dispute, including the NPS's proposed resolution, to

the ACHP. The ACHP shall provide the NPS with its advice on the resolution of the objection within forty-five (45) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NPS shall prepare a written response that considers any written recommendations or comments regarding the dispute from the ACHP and Signatories and provide them with a copy of the response. The NPS will then proceed according to its final decision.

- B. If the ACHP does not provide advice regarding the dispute within forty-five (45) days, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NPS shall prepare a written response that considers any timely comments regarding the dispute from the Signatories and provide the Signatories with a copy of the written response.
- C. The NPS's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all Signatories and filed with the ACHP.

VII. TERMINATION

- A. If any Signatory to this MOA determines that the terms of the MOA cannot be or are not being carried out, that party shall immediately notify the other Signatories in writing and consult with them to seek resolution or an amendment. If within sixty (60) calendar days, or another timeframe agreed to by all Signatories, an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.
- B. If the MOA is terminated, then prior to work continuing with the Undertaking, the NPS must either (a) execute a new agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The NPS shall notify each Signatory as to the course of action it will pursue.

VIII. COUNTERPARTS

This MOA may be executed in counterparts, each separately and together constituting one and the same document. Execution and delivery of this MOA by electronic mail shall be sufficient for all purposes and shall be binding on any party to this MOA.

IX. ELECTRONIC COPIES

Within one (1) week of the last signature on this MOA, the NPS shall provide each Signatory with one high quality, legible, full color, electronic copy of this fully executed MOA and all its attachments fully integrated into one, single document. Internet links shall not be used to provide copies of attachments since links to web-based information often change. If the electronic copy is too large to send by e-mail, the NPS shall provide each Signatory with a copy of this MOA as described above, via other suitable, electronic means.

X. REPORTING

The NPS shall provide an annual status update to the Signatories and Consulting Parties via the public Planning, Environment & Public Comment (PEPC) website within thirty (30) days of the anniversary of the execution of this MOA unless the MOA is terminated pursuant to Stipulation VII, ten years have elapsed, or the NPS provides the Signatories with written notice that the terms

of the MOA have been fulfilled, whichever occurs first. Updates will be provided on the PEPC project webpage located at: [ParkPlanning - Demolition of Foundry Branch Trestle](#). WMATA shall cooperate fully in providing the NPS with updates and reports on the status of its efforts to ensure timely delivery of the annual status updates.

XI. EMERGENCY ACTIONS

The NPS shall utilize the emergency actions clause in the 2008 NPS Nationwide Programmatic Agreement for Compliance with Section 106 for this Undertaking. Emergencies are those actions deemed necessary by the Superintendent as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a state. Emergency actions are only those actions required to resolve the emergency at that time, and they are limited to undertakings that will be started within thirty (30) days after the emergency has been declared. The Superintendent will notify the SHPO within 24 hours of the declared emergency or as soon as conditions permit.

XII. DURATION

- A. The date of execution of this MOA shall be the date the last Signatory signs the MOA.
- B. Unless terminated pursuant to Stipulation VII, this MOA shall be in effect for ten (10) years from the date of its execution or until the NPS provides the Signatories with written notice of its determination when the terms of the MOA have been fulfilled, whichever occurs first. Upon this determination, the MOA shall have no further force or effect.

Execution of this MOA by the Signatories (NPS, SHPO, and ACHP) including Invited Signatories (WMATA upon signing) and implementation of its terms demonstrate that the NPS has taken into account the effects of this Undertaking on historic properties and afforded the ACHP a reasonable opportunity to comment.

SIGNATURES FOLLOW ON SEPARATE PAGES

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GLOVER-ARCHBOLD PARK

NATIONAL PARK SERVICE

Brian Joyner
Superintendent, Rock Creek Park

Date

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DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER

David J. Maloney
District of Columbia State Historic Preservation Officer

Date

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ADVISORY COUNCIL ON HISTORIC PRESERVATION

Reid Nelson
Executive Director

Date

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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Randy Clarke
General Manager

Date

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The following documents are appended to this MOA:

Attachment A: Area of Potential Effects

Attachment B: List of Invited Consulting Parties

Attachment C: Proposed WMATA Staging, Access and LOD Plan

Attachment A: Area of Potential Effects



Attachment B: List of Invited Consulting Parties

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--	info@committeeof100.net
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Attachment C: Proposed WMATA Staging, Access and LOD Plan

