

**PROGRAMMATIC AGREEMENT  
AMONG  
THE NATIONAL PARK SERVICE  
THE NATIONAL CAPITAL PLANNING COMMISSION  
THE GOVERNMENT OF THE DISTRICT OF COLUMBIA  
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION  
OFFICER  
AND  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING  
THE LEVEE IMPROVEMENTS PROJECT  
WASHINGTON, D.C.**

**WHEREAS**, the West Potomac Park Levee (Levee) is an earthen berm extending from the Potomac River to the Washington Monument that provides flood protection to central Washington, D.C.; and

**WHEREAS**, the National Park Service (NPS) is the Federal agency that controls, operates, and maintains the Levee; and

**WHEREAS**, the U. S. Army Corps of Engineers (USACE) inspected the Levee in 2007 and rated it “unacceptable” due to post-Hurricane Katrina standards; and

**WHEREAS**, decertification of the Levee prompted the Federal Emergency Management Administration (FEMA) to issue new 100-year floodplain maps that would have placed large new areas of central Washington within the flood risk area and required additional flood insurance, building upgrades and other costly flood control measures; and

**WHEREAS**, the Government of the District of Columbia (DC) requested that FEMA delay issuing the new floodplain maps and FEMA agreed, provided that DC would design and implement Levee improvements that would contain a 100-year flood by November, 2009 (FEMA required level of protection); and

**WHEREAS**, USACE recommended that the Levee improvements be designed to a greater height that would provide a 700,000 cubic feet per second level of protection as originally authorized by Congress in the Flood Control Act of 1936 (Congressionally authorized level of protection); and

**WHEREAS**, NPS allocated funds and initiated planning for the design and construction of Levee improvements that will provide the Congressionally authorized level of protection and, in Phase I, consist of flood walls, a post and panel closure system across 17<sup>th</sup> Street NW and an on-site post and panel storage facility and, in Phase II, minor increases in grade along the existing berm and 23<sup>rd</sup> Street NW as well as the permanent earthwork, surface treatments and plant materials necessary to ensure that the Levee improvements are compatible with their surrounding natural and cultural environment (Undertaking); and

**WHEREAS**, DC also allocated funds and has been working in collaboration with NPS to provide planning, design and construction assistance for the Levee Improvements Project; and

**WHEREAS**, NPS, pursuant to the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 USC 470), initiated consultation with the District of Columbia State Historic Preservation Officer (DC SHPO) and, noting the potential for adverse effects, requested the Advisory Council on Historic Preservation (ACHP) to participate in the consultation; and

**WHEREAS**, ACHP determined that it would participate in the consultation; and

**WHEREAS**, NPS consulted with other parties including, but not limited to, the Commission of Fine Arts (CFA), the Committee of 100, the District of Columbia Office of Planning (DCOP) the District of Columbia Department of Transportation (DDOT), the General Services Administration, the National Trust for Historic Preservation, the National Coalition to Save Our Mall, the USACE and the Washington Metropolitan Area Transit Authority (WMATA); and

**WHEREAS**, NPS provided numerous opportunities for review and comment on the Undertaking including documentation prepared for National Environmental Policy Act (NEPA) purposes and posted on the NPS's Planning, Environment and Public Comment (PEPC) website, regular inter-governmental agency working group sessions, public meetings and/or site visits held on May 23, June 26-27, and August 19, September 8 and October 23, 2008 and public meetings of the DC Historic Preservation Review Board, the CFA and the NCPC; and

**WHEREAS**, NPS, in consultation with DC SHPO, ACHP and the consulting parties, defined the Area of Potential Effect (APE) and identified numerous National Register listed properties within the APE including, but not limited to West Potomac Park, the Washington Monument and Grounds and the L'Enfant Plan for the City of Washington (Appendix A); and

**WHEREAS**, the APE also likely contains National Register-eligible archaeological resources such as the possible remains of the 17<sup>th</sup> Street Wharf; and

**WHEREAS**, this Programmatic Agreement (PA) is being executed pursuant to 36 CFR 800.14(b)(1)(ii) because the Undertaking is a complex, phased project whose effects on historic properties cannot be fully determined until the NCPC and the CFA complete their reviews and funding to design and implement future phases of work is secured; and

**WHEREAS**, this PA establishes processes to consider the effects of design revisions that may occur as the result of CFA and NCPC reviews and future phases of work; and

**WHEREAS**, NCPC and DC have been invited to be signatories to this PA pursuant to 36 CFR 800.6(c)(2) because of their respective approval responsibility and assistance role.

**NOW, THEREFORE**, NPS, NCPC, DC, DC SHPO and ACHP agree that NPS shall ensure that the Undertaking will be carried out in accordance with 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. Levee Improvements Project Plans for Phase I

The Levee Improvements Project Plans for Phase I, which were developed through Section 106 consultation and represent the “preferred alternative” selected pursuant to NEPA, are attached for reference in Appendix B. The NPS and DC (NPS/DC) shall implement Phase I of the Levee Improvements Project in accordance with these plans.

2. CFA and NCPC Review of Levee Improvements Project Plans

a. Levee Improvements Project Plans may be subject to change as a result of future CFA and NCPC reviews. NPS/DC shall ensure that any changes required as a result of those reviews are treated in the following manner:

i. If CFA and/or NCPC do not require any changes, NPS/DC shall implement the plans as they were approved in accordance with this PA.

ii. If CFA and/or NCPC do require changes to plans that were previously approved in accordance with this PA, NPS/DC, within fourteen (14) days of each CFA and/or NCPC approval, shall forward the plans approved by CFA and/or NCPC and supporting documentation to DC SHPO and ACHP along with a written determination as to whether the required changes would result in new adverse effects on historic properties or the intensification of previously identified adverse effects.

iii. Within fourteen (14) days of receipt of the documentation specified in Stipulation 2(a)(ii) of this PA, DC SHPO and ACHP shall notify NPS/DC in writing of their concurrence or non-concurrence regarding whether any changes would result in new adverse effects on historic properties or any previously identified adverse effects would be intensified. NPS/DC may assume concurrence on the part of DC SHPO and/or ACHP if either party fails to respond within the specified review and comment period.

iv. If NPS/DC, DC SHPO and ACHP agree that there will be no new adverse effects and that no previously identified adverse effects

will be intensified, NPS/DC shall notify the invited signatories in writing and the consulting parties via a posting on PEPC, or a similar site, and shall provide a fourteen (14) day review and comment period. If an invited signatory or a consulting party objects in writing or via the PEPC website, NPS/DC shall resolve the dispute in accordance with Stipulation 6 (Dispute Resolution) of this PA.

- v. If NPS/DC, DC SHPO or ACHP determines that there will be new adverse effects or that previously identified adverse effects will be intensified, NPS/DC shall notify the invited signatories in writing and the consulting parties via a posting on PEPC, or a similar site, and shall consult with all parties to identify means to avoid, minimize, or mitigate the adverse effects, to consider amending this the PA in accordance with Stipulation 9 (Amendments) and/or to determine how the resolution of adverse effects will be documented.

3. Mitigation for the Levee Improvements Project

- a. Within three (3) months of the date of the last signature on this PA, NPS/DC shall prepare a draft mitigation plan that includes timeframes and recommendations for how NPS/DC will implement the following:
  - i. Temporary measures that will be used to mitigate the adverse visual effects of the exposed flood walls until Phase II of the Levee Improvements Project is completed. Such measures may include, but not be limited to, the use of concrete stains, minor earthwork, limited plant materials and other appropriate approaches.
  - ii. A stabilization plan for the exterior of the Lockkeeper's House that is consistent with *The Secretary of Interior's Standards for the Treatment of Historic Properties*.
  - iii. Additional public interpretation and education materials that broadly address the historical development of the flood control system and associated themes by identifying the Levee as a contributing resource of the Constitution Gardens cultural landscape and explaining the importance of the resource. Public interpretation and historical education media may include, but not be limited to, interpretive posters, wayside exhibits, reconstruction drawings, NPS-style brochures and internet-based content.
- b. The mitigation plan shall be coordinated with the National Mall Plan and other relevant planning initiatives to the greatest extent possible.

- c. NPS/DC shall provide the signatories and invited signatories with copies of the draft mitigation plan, notify the consulting parties via a posting on PEPC and provide all parties thirty (30) days for review and comment.
  - d. NPS/DC shall take into account any comments received within the thirty (30)-day review period and consult with the commenting parties until consensus is reached regarding the final mitigation plan or until such time that NPS/DC determines that consensus cannot be reached. The NPS shall resolve any failure to agree regarding the final mitigation plan in accordance with Stipulation 6 (Dispute Resolution) of this PA.
  - e. Any changes to the final mitigation plan that result from CFA and NCPC review shall be evaluated in accordance with Stipulation 2 (CFA and NCPC Review of Levee Improvements Project Plans) of this PA prior to implementation.
  - f. The NPS/DC shall implement the final mitigation plan in accordance with timeframes and specifications included therein.
  - g. The parties to this PA acknowledge that the permanent earthwork, surface treatment and plant material measures that are to be carried out in Phase II will provide additional mitigation for the adverse effects of the Levee Improvements Project.
4. Development and Review of Levee Improvements Project Plans for Phase II
- a. Within one (1) year of the date of the last signature on this PA, NPS/DC shall request funding and pursue, as a high priority, the development of draft plans for design, construction and implementation of Phase II of the Levee Improvements Project (Phase II Plans). Phase II Plans shall be developed in consultation with the signatories and invited signatories and shall include detailed drawings, descriptions, timeframes and recommendations for how NPS/DC will implement the remaining work that must be completed to provide the Congressionally authorized level of flood protection (i.e. minor increases in grade along the existing berm and along 23<sup>rd</sup> Street NW) and the measures that will be used to permanently mitigate the adverse visual effects of the exposed flood walls including, but not limited to, the use of stone veneer, significant earthwork, substantial plant materials and other appropriate approaches.
  - b. The Phase II Plans shall be coordinated with the National Mall Plan and other relevant planning initiatives to the extent possible.
  - c. NPS/DC shall provide the signatories and invited signatories with copies of the draft Phase II Plans, notify the consulting parties via a posting on PEPC and provide all parties thirty (30) days for review and comment.

- d. NPS/DC shall take into account any comments received within the thirty (30)-day review period and consult with the commenting parties until consensus is reached regarding the final Phase II Plans or until such time that the NPS determines that consensus cannot be reached. The NPS shall resolve any failure to agree regarding the final Phase II Plans plan in accordance with Stipulation 6 (Dispute Resolution) of this PA.
  - e. Any changes to the final Phase II Plans that result from CFA and NCPC review shall be evaluated in accordance with Stipulation 2 (CFA and NCPC Review of Levee Improvements Project Plans) of this PA prior to implementation.
  - f. NPS/DC shall implement the final Phase II Plans in accordance with timeframes and specifications included therein.
5. Archaeological Provisions
- a. NPS/DC shall immediately initiate development of public interpretation and education materials that will be used during and after archaeological fieldwork because archaeological investigations must be carried out in advance of construction activities. The interpretation and education materials will broadly address the historical development of the lower Tiber Creek waterfront, including the Washington City Canal, the 17<sup>th</sup> Street Wharf and associated themes. NPS/DC shall make recommendations regarding the types of appropriate media, how the materials might be distributed and displayed to the public and for how long they might be distributed and displayed to the public. NPS/DC shall develop these materials in close consultation with the DC SHPO and make a reasonable and good faith effort to incorporate DC SHPO comments within the timeframe allowed.
  - b. NPS/DC shall ensure that the archaeological investigations of the possible remnants of the 17<sup>th</sup> Street Wharf and other potentially National Register eligible archaeological resources shall be undertaken in coordination with the construction of Phase I and Phase II if the latter requires additional ground disturbing activities that have the potential to affect archaeological historic properties.
  - c. Given the difficulties associated with opening excavations in a public park and an active roadway, NPS/DC shall schedule the archaeological field investigations to occur when 17<sup>th</sup> Street is closed for construction. NPS/DC shall ensure that the archaeological fieldwork will be coordinated with the construction program and will consist of two elements: (i) testing and documentation of archaeological resources and (ii) monitoring of construction.

- d. NPS/DC shall ensure that all archaeological work required under the terms of this PA is conducted under the supervision of an archaeologist who meets the professional qualification standards outlined in the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44738-9), as published in the Code of Federal Regulations, 36 CFR Part 61.
  - e. NPS/DC shall ensure that all archaeological work required under the terms of this PA shall take into account current professional standards and guidelines, including *The Secretary of the Interior's Standards for Archeological Documentation* [as amended and annotated], the *Guidelines for Archeological Investigations in the District of Columbia* (1998) and the ACHP's *Handbook on the Treatment of Archeological Properties* (1988).
  - f. NPS/DC shall ensure that all other aspects of archaeological work relating to research designs, curation of artifacts, post-review discoveries and treatment of human remains, if applicable, shall be carried out in accordance with the Archaeological Resources Protection Act (ARPA) permit that will be issued by the NPS or, as subject to the conditions of a contract if the archaeological work is to be carried out by a firm under contract to the NPS/DC.
6. Dispute Resolution
- a. Should any signatory, invited signatory or consulting party to this PA object in writing to NPS regarding any action carried out in accordance with this PA, the signatories and invited signatories shall consult to resolve the objection. Should the signatories be unable to resolve the disagreement, NPS shall forward its proposed resolution of the dispute and any other documentation relevant to the dispute to ACHP. Within 45 days after receipt of all pertinent documentation, ACHP will either:
    - i. Provide the NPS with recommendations, which NPS will take into account in reaching a final decision regarding the dispute; or
    - ii. Notify NPS that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment. Any ACHP comment provided in response to 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 of the dispute; NPS's responsibility to carry out all actions under this PA that are not subjects of the dispute will remain unchanged.

7. Reporting and Notifications

NPS will update the public on the status of the Levee Improvements Project and on the status of NPS's compliance with this PA via the PEPC website and electronic notification on at least a semi-annual basis.

8. Duration

This PA shall be valid for a period of eight (8) years from the date of the last signature.

9. 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.

10. 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 notification 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 the 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.

SIGNATURES FOLLOW ON NEXT PAGE

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

**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:**

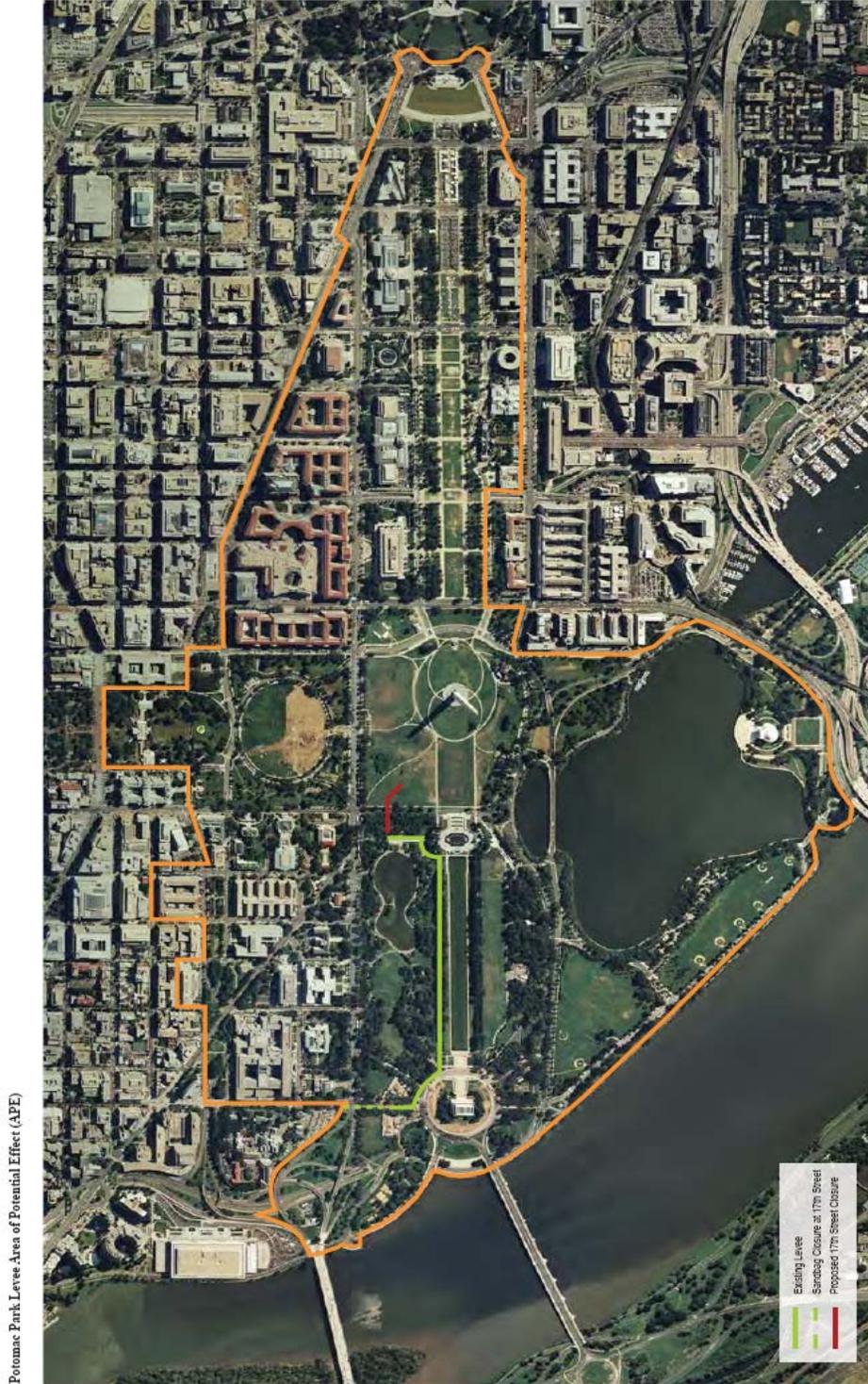
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Executive Director, National Capital Planning Commission

\_\_\_\_\_  
Date

\_\_\_\_\_  
District of Columbia City Administrator

\_\_\_\_\_  
Date

APPENDIX A  
The Levee Improvements Project  
Area of Potential Effect (APE)



APPENDIX B  
The Levee Improvements Project  
Plans for Phase I

INSERT PLANS HERE

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