

**MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE REHABILITATION OF TIDAL BASIN AND WEST POTOMAC PARK SEAWALLS**

This Memorandum of Agreement (MOA) is made as of the 15 day of May, by and among the National Park Service (NPS), the National Capital Planning Commission (NCPC), the District of Columbia State Historic Preservation Office (DC SHPO) and the Advisory Council on Historic Preservation (ACHP) (all referred to collectively herein as “Signatories”), pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), 54 U.S.C. § 306108, and its implementing regulations 36 C.F.R. Part 800 regarding the Rehabilitation of Tidal Basin and West Potomac Park Seawalls (Undertaking); and

WHEREAS, National Mall and Memorial Parks, which administers more than 1,000 acres of park land within the District of Columbia, which includes fourteen units of the national park system, and more than 150 reservations, circles, fountains, squares, triangles, and park spaces, that are administered by NPS as provided for in Executive Order 6166; and

WHEREAS, the NPS is charged in its administration of the units of the national park system to meet the directives of other laws, regulations, and policies including the NPS Organic Act as codified in Title 54 USC § 100101(a) to “conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations”; and

WHEREAS, the Tidal Basin and West Potomac Park (Park) are part of the National Mall and Memorial Parks, owned by the United States government and administered by the NPS; and

WHEREAS, the Undertaking includes the Tidal Basin seawall from the Inlet Bridge to the Thomas Jefferson Memorial and from the Inlet Bridge to the Franklin Delano Roosevelt Memorial, as well as the full length of the West Potomac seawall. See **Exhibit A**; and

WHEREAS, the original seawalls were constructed from the late 1800s to early 1900s to retain the material that was dredged from the Potomac River to create West Potomac Park. In the years since their construction, the seawalls have significantly settled and been compromised. The seawalls were constructed on soft soils, and previous studies have determined that portions of the seawall have settled as much as five feet since the initial construction. See **Exhibit B**. Existing top-of-wall elevations range from +0.88 feet to +3.57 feet within the Tidal Basin project area and from 0.00 feet to +3.20 feet along West Potomac Park. As a result of this settlement and sea level rise, portions of the seawalls are overtopped twice daily during normal tidal conditions. Greater lengths of the seawall and areas of the Park are submerged during and after extreme weather events; and

WHEREAS, the West Potomac Park South seawalls are the oldest in the project area. The foundations were completed in 1884 and the top of the seawall completed in 1891; however, riprap and other fill-like concrete and asphalt have been periodically added to stabilize the wall or shoreline through the 1990s. The newest section of the wall is the West Potomac Park North portion, which dates to 1957. The Potomac Electric Power Company rebuilt this section of the wall with a concrete cap. Excavation of the soil behind the wall in this area revealed it was a cast-in-place concrete wall with a stone veneer. It is unknown if any of the original seawall stones remain. It is likely the historic foundations are still in place; and

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WHEREAS, the Tidal Basin West wall was reconstructed in 1907-1909, when the Inlet Bridge was constructed by the US Army Corps of Engineers. In 1941, an eight-inch-thick concrete coping was added to the top. The Tidal Basin East seawall dates to the early 1940s, when a section of the Tidal Basin itself was adjusted to make room for the construction of the Thomas Jefferson Memorial. The new seawall is composed of a concrete wall with a veneer of reused stones. The new wall was blended into the adjacent drystack stone wall so well that the transition point is almost imperceptible; and

WHEREAS, the Tidal Basin seawalls were constructed at an elevation of six-feet above “mean low tide” which is now referred to as “mean low water”. The current mean low water near the Tidal Basin is -1.25-feet relative to the North American Vertical Datum of 1988 (NAVD 88). Using the same six-feet vertical wall height and flood protection from history, a wall height of +4.75-feet NAVD88 will provide the same functionality as historically applied, thus defining “historic functional height”. See **Exhibit C**; and

WHEREAS, the Undertaking will be designed to restore the historic functional height of approximately 6,800 linear feet of seawalls within the Park, restore the cultural landscapes, improve visitor experience along the shorelines, stabilize and eliminate settlement of the seawalls, minimize soil erosion and safety hazards, and implement other improvements that will make the Park resilient to flooding during normal tidal events and minor flood stage events as well as adaptable to changing climate patterns. The Undertaking is primarily needed because the existing structural deficiencies of the seawalls negatively impact visitor experience, public safety, and cultural resources; and

WHEREAS, the Tidal Basin gates are managed by the U.S. Army Corps of Engineers (USACE) and any gate improvements would be prioritized for USACE needs and managed with USACE funding. The historic function of the Tidal Basin inlet gates was primarily to facilitate flushing of sediment within the Washington Channel. Though the gates include ‘curtain gates’ which were installed to prevent silt and other debris from entering the Tidal Basin during a flood, there is no evidence any of the gates were ever used to provide flood control, including during the noteworthy floods of 1936, 1942, or 1972 where historical photographs show significant parts of the land surrounding the Tidal Basin to be underwater.

WHEREAS, the Undertaking is subject to review under Section 106 of the NHPA and NPS will be the Federal agency responsible for compliance; and

WHEREAS, the Undertaking is also subject to review under National Environmental Policy Act (NEPA) (42 U.S.C. § 4231 et seq), and in accordance with NEPA, NPS has prepared an Environmental Assessment (EA); and

WHEREAS, in accordance with 36 C.F.R. § 800.3, NPS initiated Section 106 consultation with DC SHPO and Virginia State Historic Preservation Office (VA SHPO) on May 19, 2022. Both letters can be found in **Appendix A**; and

WHEREAS, the NCPC is a Consulting Party in the Section 106 process pursuant to 36 CFR § 800.3(f)(1), has approval authority over Federal projects located within the District of Columbia and has approval authority over all land transfers and physical alterations to Federal property pursuant to the National Capital Planning Act (40 U.S.C. § 8722(b)(1) and (d)), NCPC has elected to fulfill its Section 106 responsibilities by participating in this consultation and is a Signatory to this MOA pursuant to 36 CFR § 800.6(c)(2); and

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

WHEREAS, the U.S. Commission of Fine Arts (CFA) has a statutory obligation under the Shipstead-Luce Act of 1930 (Public Law 71-231) to regulate height, exterior design, and construction of private and semiprivate buildings in certain areas of the National Capital within which the Undertaking falls. CFA has design review authority over new structures erected in the District under the direction of the Federal government (Executive Order 1862) and plans for parks which “in any essential way affect the

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appearance of the City of Washington, or the District of Columbia” (Executive Order 3524). CFA is a Consulting Party in the Section 106 process pursuant to 36 CFR § 800.3(f)(1); and

WHEREAS, given the Undertaking’s potential for indirect and temporary effects to historic properties in the Commonwealth of Virginia, the VA SHPO is a Consulting Party in the Section 106 process pursuant to 36 CFR § 800.3(f)(1) and is invited to concur with this MOA pursuant to 36 CFR § 800.6(c)(3); and

WHEREAS, in letters dated May 19, 2022, the NPS informed the Federally recognized Indian Tribes that have a government-to-government relationship with the United States and an interest in the area affected by the Undertaking, pursuant to 36 C.F.R. § 800.2(c)(2), about the Undertaking and invited them to be a Consulting Party. The Federally recognized Indian Tribes include the Absentee Shawnee Tribe of Indians of Oklahoma Nation, Catawba Indian Nation, Cherokee Nation, Chickahominy Indian Tribe, Chickahominy Tribe Eastern Division, Delaware Nation, Monacan Indian Nation, Nansemond Indian Nation, Pamunkey Indian Tribe, Rappahannock Tribe, Shawnee Tribe, and Upper Mattaponi Indian Tribe (collectively referred to as “Indian Tribes” in this MOA). The NPS invites each of these Indian Tribes to concur with this MOA pursuant to 36 C.F.R. § 800.6(c)(3). All the letters sent to Indian Tribes can be found in **Appendix A**; and

WHEREAS, the Catawba Indian Nation, Cherokee Nation, Shawnee Tribe, and Delaware Nation accepted NPS’s invitation via mail or e-mail or to consult in the Section 106 process by attending the August 2, 2022, consulting party meeting; and

WHEREAS, the Indian Tribes that did not respond to the invitation continue to be included in the Section 106 process and were invited to the second Consulting Party meeting on December 15, 2022. The NPS will continue to consult with Indian Tribes throughout the process; and

WHEREAS, the NPS will notify the Indian Tribes in the event that any pre-historic resources are discovered that are considered potentially eligible for the National Register of Historic Places. Notification of any pre-historic resources will also be given should additional phases of archaeological investigation be necessary or in a Post Review Discovery; and,

WHEREAS, in accordance with 36 C.F.R. § 800.2(a)(4), the NPS invited individuals and organizations with a demonstrated interest in the Undertaking and the public to participate as Consulting Parties in the Section 106 process via meetings virtually held on August 2, 2022, and December 15, 2022, respectively. The full list of invited Consulting Parties is provided in **Appendix A** along with presentation materials from both consulting party meetings; and

WHEREAS, the NPS in consultation with ACHP, DC SHPO, VA SHPO, and the Consulting Parties, established the Area of Potential Effects (APE), as defined under 36 C.F.R. § 800.16(d). The APE is included in **Appendix A**; and

WHEREAS, the NPS identified ten (10) historic properties within the APE, including the National Mall Historic District (HD), the East and West Potomac Parks HD, the Washington Monument and Memorial Grounds HD, the Arlington National Cemetery HD, the George Washington Memorial Parkway, Mount Vernon Memorial Highway HD, the L’Enfant Plan of the City of Washington, the Martin Luther King, Jr. Memorial, the Franklin Delano Roosevelt Memorial, and the Thomas Jefferson Memorial and Grounds. A detailed list of historic properties within the APE, including contributing elements of historic districts, can be found in **Appendix A**; and

WHEREAS, the NPS prepared an Assessment of Effects (AOE) Report and determined that the rehabilitation of the seawall will have an adverse effect on historic properties due to the alteration and removal of historic fabric (most notably original stones and other materials used to construct the seawalls); the removal of trees (including Japanese cherry trees) and other vegetation; and construction-related activities that may cause temporary adverse effects on the above-mentioned Historic Districts. The AOE Report can be found in **Appendix A**; and

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WHEREAS, to the maximum extent feasible, the proposed project design for the rehabilitation of the seawalls within the project area will be consistent with *The Secretary's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, *Guidelines on Flood Adaption for Rehabilitating Historic Buildings*, and *Guidelines for the Treatment of Cultural Landscapes*; will retain the horizontal alignment of the seawalls to avoid changing the shape of the Tidal Basin and West Potomac Park; will require the seawalls to be reconstructed to their historical functional height to minimize adverse effects on views and viewsheds; will reuse as much historic stone as possible in the most visible portions of the new seawalls to minimize adverse effects that would result from the introduction of new materials; to retain as much of the historic vegetation as possible and create an associated planting plan that will restore any historic vegetation removed during the process; and

WHEREAS, the NPS has completed schematic design and the preferred solution is a pile supported concrete slab (relieving platform) which independently supports a concrete wall to eliminate additional loading and potential settlement of the compressible soils below the structure. See **Exhibit D**. The original stones will be salvaged, resized, and stacked to recreate the walls to ensure a consistent look and feel as the remaining historic walls. See **Exhibit E**. Riprap will be placed along the bottom of the pile-supported platform along West Potomac Park to reduce the erosive effects of wave action. The rehabilitated seawalls will have a structural service life of approximately 100 years.; and

WHEREAS, the NPS intends to contract with a Design/Build (DB) Contractor to complete the design and construct the Undertaking. The DB Contractor cannot change or eliminate the following requirements: 1) Top of proposed seawall elevations, 2) Installation of the rehabilitated wall along the historic wall alignments, 3) Salvage and re-use of existing historic ashlar seawall stone, and 4) Relieving platform concept must not impose additional loads on subsurface soils beneath sidewalks; and

WHEREAS, the existing stone masonry seawall will be removed and reconstructed along the historic alignment and to the historic functional height of the original seawalls, which placed the top of the seawalls approximately six feet above mean low water. The top of wall elevation for the rehabilitated seawall will need to be raised above the original construction elevations to achieve the historic functional height. The proposed top of wall elevation will be elevation +4.75 feet within the Tidal Basin and will be +5.50 feet along West Potomac Park. The higher elevation in West Potomac Park is necessary to account for wind and wave conditions along the Potomac River. To the extent possible, the stones of the historic wall will be salvaged and reused in the rehabilitation of these seawalls. Extant stones will be cut for maximum use of historic stone. Additional stones would be sourced based on color, size, and texture for consistency with the historic material. See **Exhibit E**; and

WHEREAS, the NPS conducted two Section 106 meetings to provide opportunities for the Consulting Parties to comment on the Undertaking, the delineation of the APE, the identification of historic properties, the assessment of effects on historic properties, and potential resolution strategies; and

WHEREAS, the NPS has sought and considered the views of the public on this Undertaking as evidenced by a public notice and public scoping comment period held July 19, 2022, through September 12, 2022; an EA, published March 6, 2023, as part of NPS's NEPA compliance and describing potential impacts to cultural resources, and requested, received, and replied to the public's comments as documented in the Finding of No Significant Impact; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), NPS notified the ACHP of its determination of an adverse effect with specified documentation on December 12, 2022, and on December 14, 2022, the ACHP chose to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, NPS, ACHP, DC SHPO, and NCPC agree that the Undertaking will be implemented in accordance with the following stipulations to take into account the effects of the undertaking on historic properties.

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STIPULATIONS

NPS will ensure that the following measures are carried out:

I. GENERAL

A. TIME AND NOTIFICATIONS

1. All time designations are in calendar days unless otherwise stipulated. If a review period ends on a Saturday, Sunday, or Federal holiday, the review period will be extended until the first following business day.
2. All communication and notifications required by this MOA will be sent by email or other electronic means.

B. ROLES AND RESPONSIBILITIES

1. NPS

- a. Pursuant to 36 C.F.R. § 800.2(a)(2), NPS has the responsibility to ensure the provisions of this MOA are carried out.
- b. NPS is responsible for all government-to-government consultation with Federally recognized Indian Tribes.
- c. NPS is responsible for coordinating Federal agencies' compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) within its jurisdictional areas.
- d. NPS is responsible for enforcing the applicable provisions of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. § 470aa et seq.), including but not limited to the issuance of permits, and investigation of any damages resulting from prohibited activities.

II. PROFESSIONAL QUALIFICATIONS STANDARDS

NPS will ensure that all historic preservation work performed in accordance with this MOA is accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in *The Secretary of the Interior's Historic Preservation Qualification Standards* (62 Federal Register § 33708) as amended on June 20, 1997.

III. RESOLUTION OF ADVERSE EFFECTS

A. *Design Review*: The NPS will continue to consult as final designs are developed by the Design Build Contractor. The NPS shall provide the proposed design documentation to the Signatories and Consulting Parties for consideration and consultation. The determinations of effect related to any changes made in the development of the final plans will be considered as part of the review. The NPS shall review the proposed design documentation focusing on any changes from the preliminary concepts and make a determination as to whether the proposed design may result in new adverse effects that have not already been resolved and/or the intensification of known adverse effects on historic properties.

1. Determination of No Adverse Effect: If the NPS determines there is no new adverse effect or intensification of known adverse effects on historic properties, it will notify the Signatories in writing, provide sufficient project documentation to support its determination, and request concurrence or comment. The NPS shall simultaneously provide the project documentation and determination to the Consulting Parties through one of the following: provide information via email, develop a project specific website, or post the information to the NPS PEPC website.

- a. The Signatories and Consulting Parties shall have thirty (30) days from receipt/posting of an adequately documented submission to review and comment on the determination. The

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DC SHPO shall have an additional fifteen (15) days to review and comment to take into account the comments of Consulting Parties and other Signatories. If there are no objections to the determination, the NPS may move forward with the project.

- b. The NPS will consult with the Signatories to determine if a Consulting Parties meeting(s) is required. If any Signatory requests such a meeting, the NPS shall meet with the Signatories and Consulting Parties within thirty (30) calendar days of the request to review the design.
- c. If any Signatory responds that it does not concur with the determination of “No Adverse Effect,” the NPS will consult with the Signatories to attempt to resolve the disagreement in accordance with Stipulation VI.A. If the Consulting Parties respond that they do not concur with the determination of “No Adverse Effect,” the NPS will notify the Signatories, consider the Consulting Party comments, and consult with all parties to resolve the disagreement. Any disagreement with a Consulting Party that cannot be resolved shall be addressed in accordance with Stipulation VI.A of this MOA.
- d. If the disagreement cannot be resolved, NPS will refer its determination to the ACHP per 36 C.F.R. 800.5(c)(3)(i) to determine whether the adverse effect criteria have been correctly applied. If the ACHP determines that the project will have “No Adverse Effect,” the NPS may proceed with its project accordingly. If the ACHP determines that the project may result in an “Adverse Effect,” NPS will consider whether further consultation is required under Stipulation VI.A.

2. Determination of Adverse Effect: If NPS determines that the project will result in any “Adverse Effects,” or intensified or cumulative “Adverse Effects,” it will notify the Signatories in writing, provide sufficient documentation to support its determination; share the determination via email, post each project submittal and determination to a project specific website, or post the information to NPS’s PEPC website for Consulting Party review, and consult further with the Signatories and Consulting Parties to seek alternatives or modifications to the Plan to avoid, minimize, and/or mitigate those additional “Adverse Effect(s).”

- a. The Signatories and Consulting Parties shall have thirty (30) days from receipt/posting of an adequately documented submission to review and comment on the determination. The DC SHPO shall have an additional fifteen (15) days to review and comment to take into account the comments of Consulting Parties and other Signatories. A Consulting Parties meeting, if requested, will occur during or after the review periods.
- b. The NPS will consult with the Signatories to determine if a Consulting Parties meeting(s) is required in accordance with Stipulation III.A.1.b and will allow for sufficient time for consultation as appropriate. If all parties agree that avoidance is possible, NPS will modify its plans accordingly, document the finding with the DC SHPO, and implement the project in the manner that avoids the “Adverse Effect(s).”
- c. If avoidance is not possible, the NPS shall consult further with the Signatories and the Consulting Parties to identify ways to minimize or mitigate the “Adverse Effect(s)” and to amend this MOA as necessary.

B. Avoidance Measures that will be incorporated into the Final Design

- 1. The horizontal alignment of the seawalls will be maintained to ensure the shape of the Tidal Basin will not be altered and to avoid any adverse effects that would result from altering the location of the historic seawalls.
- 2. Trees and vegetation within the construction area that are to remain will be protected throughout construction to avoid additional adverse effects that would relate to vegetation loss.

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C. Minimization Measures that will be incorporated into the Final Design

1. Construction of the new walls will be as consistent as possible with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*.
2. The maximum practicable amount of original stone from the historic stacked stone walls will be reused in the most visible portions of the new walls to minimize adverse visual effects that would result from the use of all new stone.
3. New stone will be placed on the lower levels of the new walls where tides will limit its visibility.
4. The new seawalls will be constructed using an ashlar pattern based upon the most common stacking patterns and other construction details of the historic seawalls. This will further minimize adverse visual effects by maintaining some visual consistency between the historic and new seawalls.
5. During construction, NPS will minimize temporary adverse effects to visitor experience with sensitive fencing and signage directing visitors around the construction. After construction, full access to the resources will be restored, consistent with that established by the Americans with Disabilities Act and Architectural Barriers Act Standards.

D. Mitigation Measures

1. The NPS will install one interpretive sign at the Tidal Basin educating the public on the history and significance of the Tidal Basin and the seawalls. Within twelve (12) months after execution of this MOA, the NPS will develop and provide drafts of the interpretive signage materials to the DC SHPO and NCPC for comment and approval prior to finalization. The sign will be consistent with NPS standards for waysides.
2. The NPS will complete a comprehensive plan / EA for the Tidal Basin. The intent of this effort is to provide direction for the long-term management and rehabilitation of the Tidal Basin cultural landscape based upon the vision of the National Mall Plan and other planning documents. The Plan/EA will evaluate concepts to rehabilitate the cultural landscape and protect/enhance area aquatic environments while accommodating and meeting very high levels of visitor use in an attractive, convenient, high quality, energy efficient and sustainable manner. The Plan will consider the following elements: multi-modal circulation and transportation; connectivity; conservation; tree preservation; protection of aquatic resources; climate change and sea level rise resilience; accessibility; memorials and cultural landscape protection; security; visitor experience, enjoyment, recreation, and services; seawall solutions and facilities; and flexible public spaces to accommodate a wide variety of national celebrations, First Amendment gatherings and other permitted activities.
3. To mitigate the loss of approximately 300 trees from the project area during the rehabilitation efforts, an estimated 381 trees will be replaced in kind, or with a more acceptable/suitable species that has the same visual qualities as the trees to be removed for the location, soil conditions, and the National Mall and Memorial Parks as determined appropriate by an interdisciplinary team led by the National Capital Region historical landscape architect. Trees will be replaced based on diameter at breast height (DBH) of trees removed, with an overall increase in total DBH at the site, as per NCPC policy:
 - a. Trees less than 10-inches in diameter will be replaced one tree for every one tree removed (1:1);
 - b. Trees 10-inches in diameter or greater will be replaced using the following formula: Tree Diameter (in inches) x Species Rating (as percentage) x Condition Rating (as percentage) = Score.

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- c. Trees will be replaced at the following rate based on the score: 1-4.9 = one tree, 5-9.9 = two trees, 10-14.9 = three trees, 15-19.9 = four trees, 20-24.9 = five trees, and 25+ = six trees.
- d. The replanting of additional, appropriate vegetation in the newly graded landscape will mitigate the adverse effects resulting from the loss of contributing vegetation and provide a more receptive environment for the vegetation to thrive.

IV. POST-REVIEW DISCOVERIES

- A. If newly identified historic properties are discovered or unanticipated effects on known historic properties are identified during construction, the NPS will comply with 36 C.F.R. § 800.13 by consulting with DC SHPO and, if applicable, Native American Tribes that may attach religious and/or cultural significance to the affected property; and by developing and implementing avoidance, minimization, or mitigation measures with the concurrence of DC SHPO and, if applicable, Native American Tribes.
 - 1. NPS will immediately cease all ground disturbing and/or construction activities within a fifty (50)-foot radius of the discovery. NPS will not resume ground disturbing and/or construction activities until the specified Section 106 process required by this MOA is complete.
 - 2. NPS will inform the Signatories of the discovery within forty-eight (48) hours and, together with the Signatories, will determine the projected path forward to comply with Section 106 within fourteen (14) calendar days or as expeditiously as possible.
 - 3. The Signatories will review the plan documents and provide written comments to NPS within seven (7) calendar days.
 - 4. NPS will consider the written comments to the fullest reasonable extent. Should NPS object to any comments made by the Signatories, NPS will provide a written explanation of their objection and will consult with the Signatories to resolve the objection. If no agreement is reached within thirty (30) calendar days following receipt of a written explanation, NPS will request the ACHP to review the dispute in accordance with Stipulation VI A.
 - 5. If no Signatory provides written comments within the agreed upon time, NPS may proceed with the submitted plan.
- B. *Treatment of Human Remains.* In the event that human remains, burials, or funerary objects are discovered during construction, NPS will immediately halt subsurface construction disturbance in the area of the discovery and in the surrounding area where additional remains can reasonably be expected to occur and will immediately notify DC SHPO and the District Chief Medical Examiner (CME) of the discovery under DC Code Section 5-1406 and other applicable laws and regulations.
 - 1. If the CME determines that the human remains are not subject to a criminal investigation by Federal or local authorities, NPS will comply with the applicable Federal or local laws and regulations governing the discovery and disposition of human remains and consider the ACHP's Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects (2007).
 - 2. For actions involving Native American human remains or burials, the appropriate Native American Tribes and the DC SHPO will be consulted to determine a treatment plan for the avoidance, recovery, or reburial of the remains.
 - 3. The NPS will ensure compliance with applicable laws in accordance with provisions of NAGPRA, as amended (Public Law 101-601, 25 U.S.C. 3001 et seq) and regulations of the Secretary of the Interior at 43 C.F.R. § 10.

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V. CONFIDENTIALITY

- A. If disclosure of locational information could result in the disturbance of a cultural resource, all Signatories to this MOA will ensure shared data, including data concerning the precise location and nature of historic properties, archeological sites, and properties of religious and cultural significance, are protected from public disclosure to the greatest extent permitted by law, in accordance with 36 C.F.R. § 800.11(c), Section 304 of the NHPA, Section 9 of the Archeological Resource Protection Act (ARPA) of 1979, and Executive Order on Sacred Sites 13007 C.F.R. 61-104 dated May 24, 1996.
- B. NPS standard policies, Director's Orders #28 and 28A and NPS management policies will be followed. In accordance with ARPA, the Superintendent of each park is the arbiter for what information can and cannot be released publicly.
- C. Consulting Parties and members of the public are not entitled to receive information protected from public disclosure.

VI. DISPUTE RESOLUTION

- A. Should any Signatory or Consulting Party to this MOA object at any time to any actions proposed or the manner in which the terms of the MOA are implemented, NPS will consult with such Signatory to resolve the objection. If NPS determines that such objection cannot be resolved within thirty (30) calendar days, NPS will:
 - 1. Forward all documentation relevant to the dispute, including NPS's proposed resolution, to the ACHP with a copy to the Signatories and Consulting Parties to this MOA and request that ACHP provide NPS with its comments on the resolution of the objection within thirty (30) calendar days of receiving the documentation.
 - 2. If the ACHP does not provide comment regarding the dispute within the thirty (30) calendar-day time period, NPS will make a final decision on the dispute and proceed accordingly.
 - 3. NPS will document its decision in a written response to the objection that takes into account any timely comments regarding the dispute from the Signatories and Consulting Parties and provide the ACHP and all parties with a copy of such written response.
 - 4. NPS may then proceed according to its decision.
 - 5. The Signatories remain responsible for carrying out all other actions subject to the terms of the MOA that are not the subject of the dispute.

VII. ADOPTABILITY

In the event that a Federal agency other than NPS or NCPC intends to provide financial assistance, permits, licenses, approvals or other assistance that meets the definition of undertaking at 36 CFR 800.16(y) and relates to the Undertaking, such Federal agency may become a Signatory to this MOA as a means of satisfying its Section 106 responsibilities. To become a Signatory to this MOA, the agency official must provide written notice to the Signatories that the agency agrees to the terms of the MOA, specifying the extent of the agency's involvement with the project, the agency's intent to participate in the MOA, and identifying NPS as the lead Federal agency for its undertaking. The participation of the agency is subject to approval by the Signatories, who must respond to the written notice within thirty (30) calendar days. If no responses are provided, the approval will be considered implicit.

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VIII. AMENDMENTS

Any Signatory to this MOA may request that it be amended. The Signatories will consult for no more than thirty (30) calendar days (or another time period agreed upon by all Signatories) to consider such amendment. The amendment will be effective on the date a copy, signed by all the Signatories, is filed with the ACHP.

IX. TERMINATION AND WITHDRAWAL

If any Signatory to this MOA determines that the terms of the MOA will not or cannot be carried out, that Signatory will immediately notify the other Signatories in writing and consult with them to seek resolution or amendment pursuant to Stipulation VIII of the MOA. If within sixty (60) days a resolution or Amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories. Once the MOA is terminated, and prior to work continuing on the Undertaking, NPS must either (a) execute a new MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. NPS will notify the Signatories as to the course of action it will pursue.

X. SIGNATURES AND EFFECTIVE DATE

This MOA may be executed in counterparts, with a separate page for each signatory. This MOA will become effective immediately upon execution by all Signatories.

XI. 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 of its attachments fully integrated into one, single document. Internet links shall not be used as a means 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, NPS shall provide each Signatory with a copy of this MOA as described above, on a compact disc or other suitable, electronic means.

XIII. DURATION

This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Six (6) months prior to expiration, NPS may consult with the Signatories to reconsider the terms of this MOA and amend it in accordance with Stipulation VIII above.

Execution and implementation of this MOA evidences that NPS has considered the effects of this Undertaking on historic properties and satisfied its responsibilities under Section 106 of the NHPA and its implementing regulations.


SIGNATURES AND EXHIBITS FOLLOW ON SEPERATE PAGES

**Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls**

**MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE REHABILITATION OF TIDAL BASIN AND WEST POTOMAC PARK SEAWALLS**

NATIONAL PARK SERVICE

**JEFFREY
REINBOLD**

 Digitally signed by JEFFREY
REINBOLD
Date: 2023.04.21 16:18:22
-04'00'

April 21, 2023

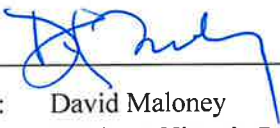
BY: Jeffrey P. Reinbold
Superintendent
National Mall and Memorial Parks

Date

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Rehabilitation of Tidal Basin and West Potomac Parks Seawalls**

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AMONG
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AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE REHABILITATION OF TIDAL BASIN AND WEST POTOMAC PARK SEAWALLS**

DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE

BY: 
David Maloney
DC State Historic Preservation Officer

4/21/2023
Date

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AMONG
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REGARDING
THE REHABILITATION OF TIDAL BASIN AND WEST POTOMAC PARK SEAWALLS**

NATIONAL CAPITAL PLANNING COMMISSION



4/21/2023

BY: Marcel Acosta
Executive Director

Date

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ADVISORY COUNCIL ON HISTORIC PRESERVATION



5.19.2023

BY: Reid Nelson, Executive Director

Date

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THE REHABILITATION OF TIDAL BASIN AND WEST POTOMAC PARK SEAWALLS**

CONCURRING PARTIES



6/22/2023

BY: Julie Langan
Virginia State Historic Preservation Officer

Date

Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls

EXHIBIT A: Seawalls to be rehabilitated by this project



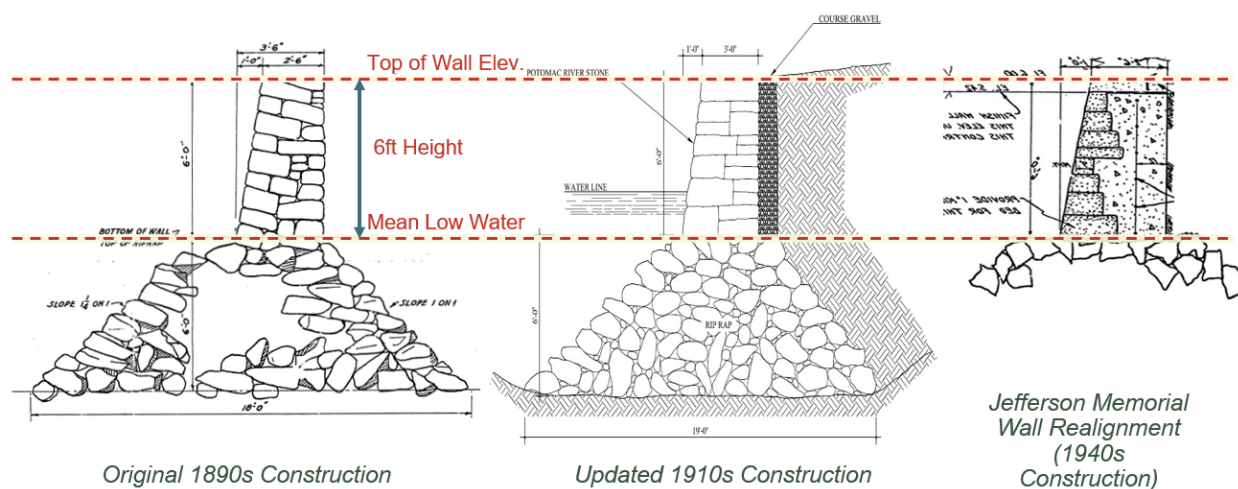
Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls

EXHIBIT B: Existing elevations of Seawalls



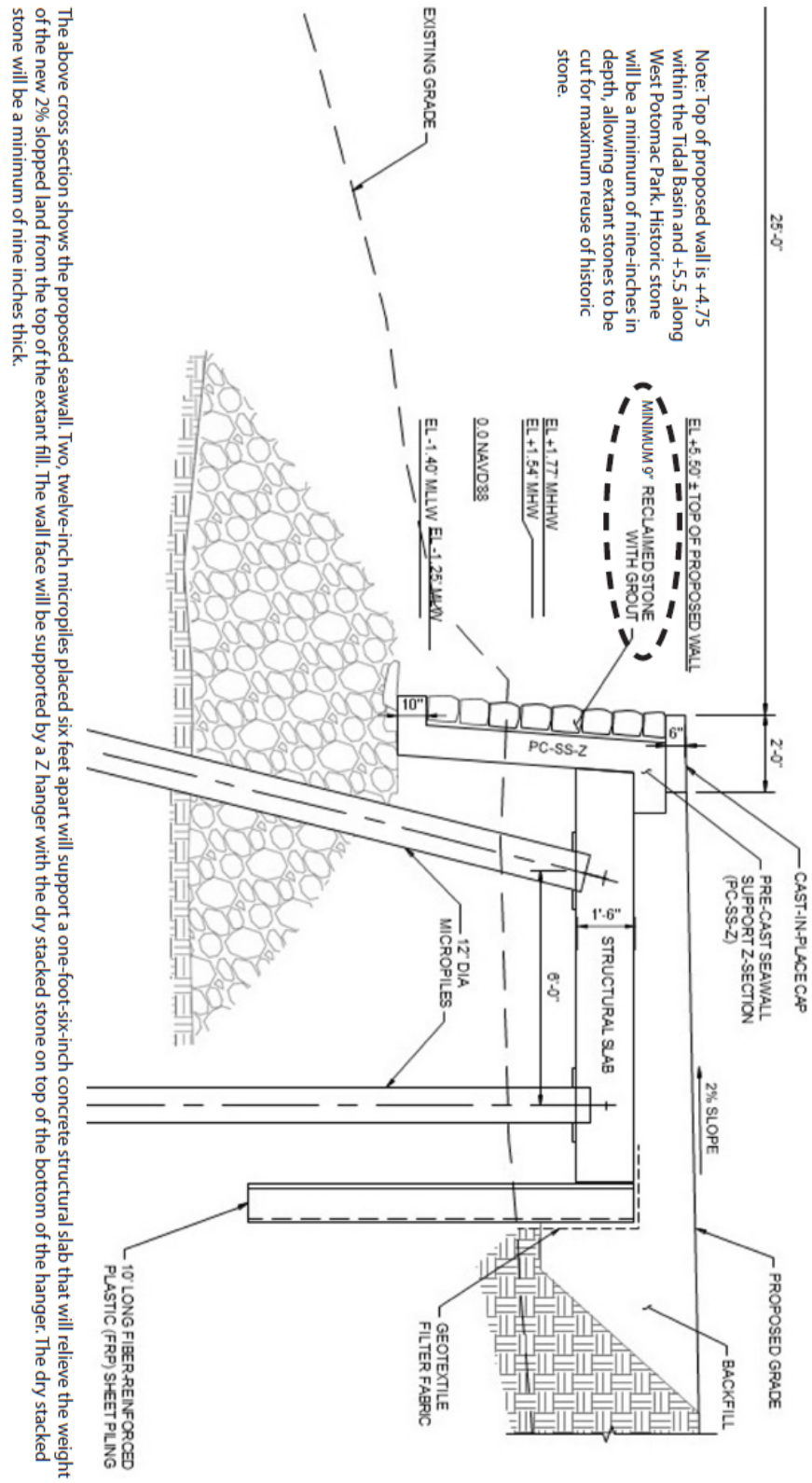
Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls

EXHIBIT C: Diagram to illustrate Historic Functional Height



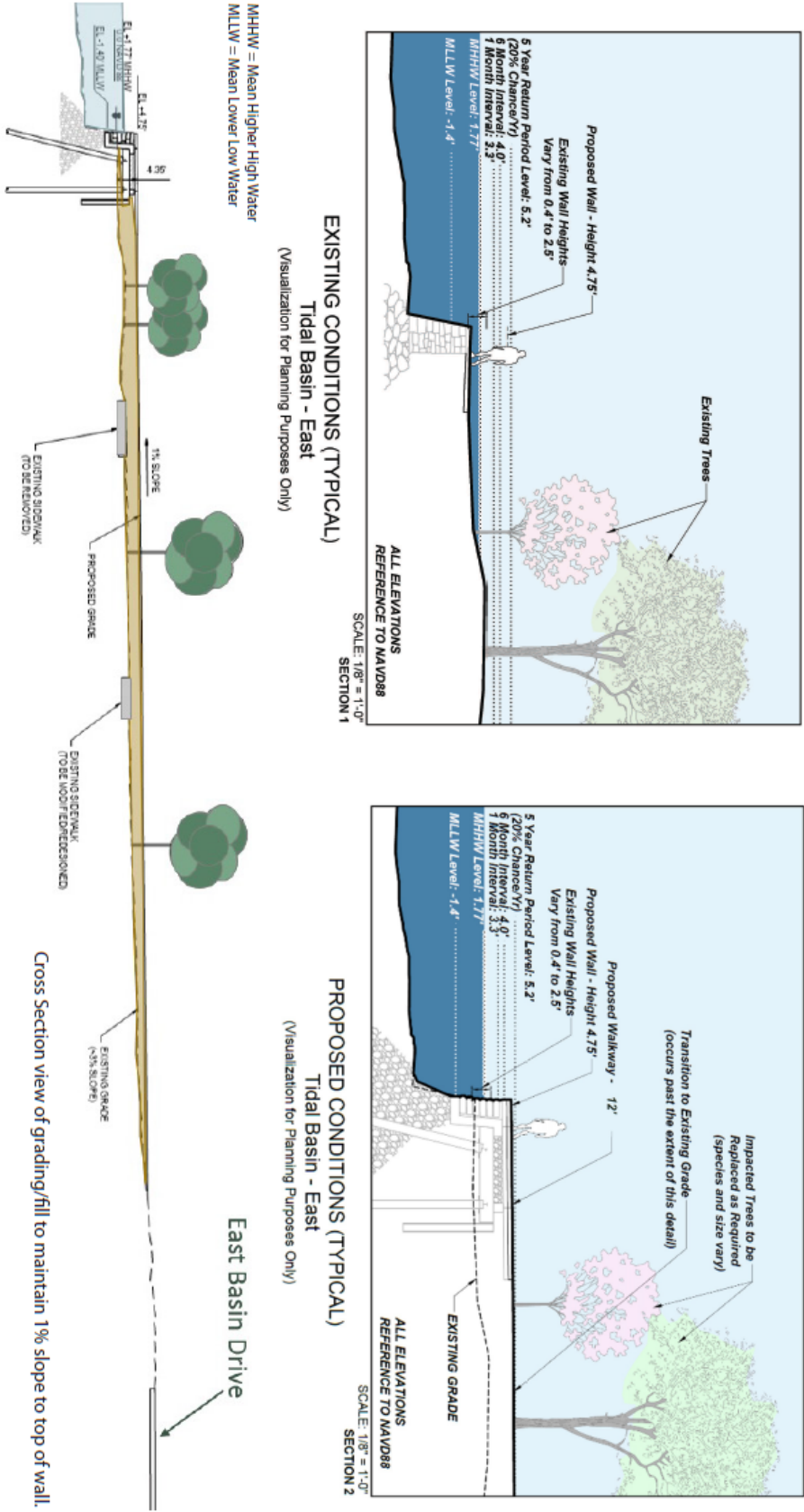
Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls

EXHIBIT D: Preferred Alternative



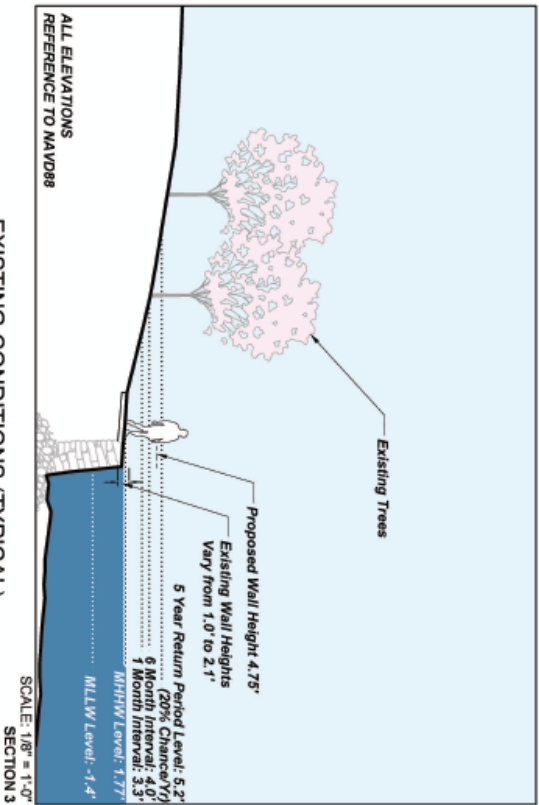
Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls

Tidal Basin East Cross Section



Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls

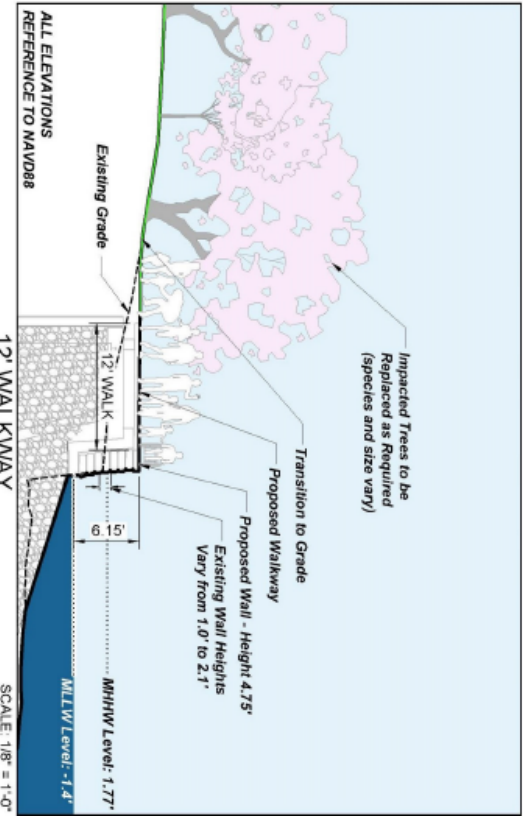
Tidal Basin West Cross Section



EXISTING CONDITIONS (TYPICAL)
Tidal Basin - West
(Visualization for Planning Purposes Only)



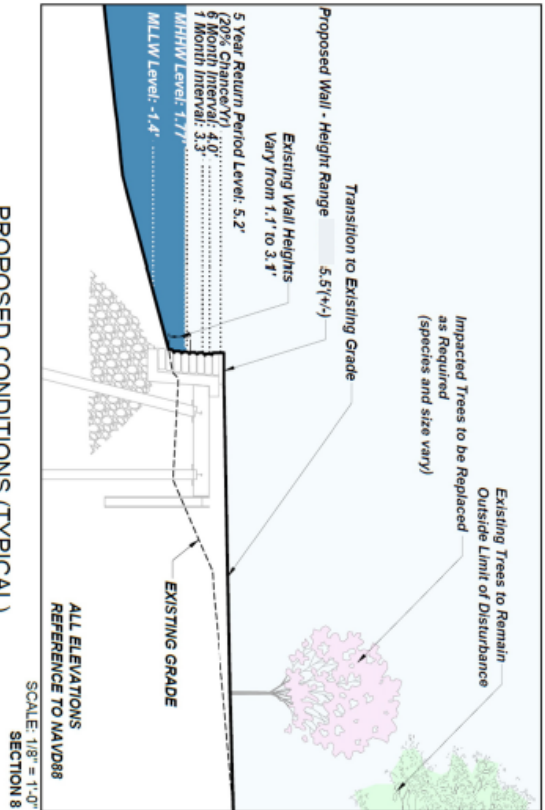
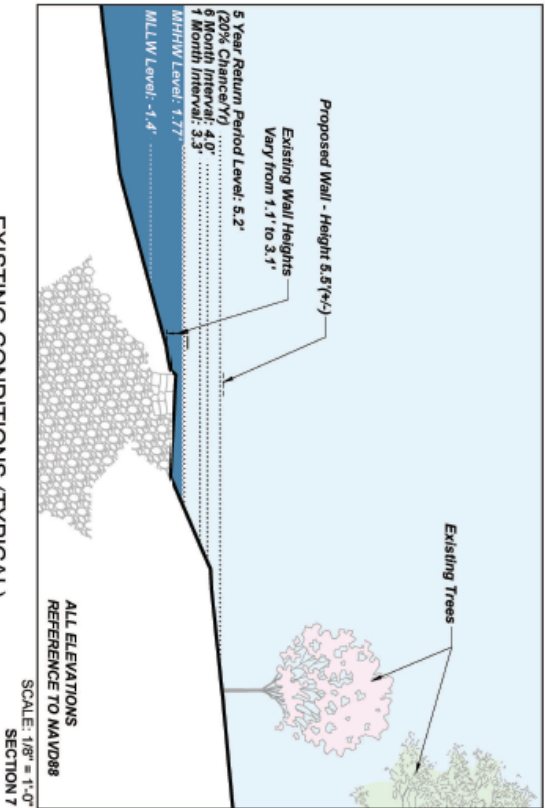
PROPOSED CONDITIONS (TYPICAL)
Tidal Basin - West
(Visualization for Planning Purposes Only)



Cross Section view of grading/fill to maintain 2% slope to top of wall.

Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls

West Potomac Park Cross Section



EXISTING CONDITIONS (TYPICAL)

West Potomac Park

(Visualization for Planning Purposes Only)

PROPOSED CONDITIONS (TYPICAL)

West Potomac Park

(Visualization for Planning Purposes Only)

MHHW = Mean Higher High Water
MLLW = Mean Lower Low Water

**Memorandum of Agreement
Rehabilitation of Tidal Basin and West Potomac Parks Seawalls**

EXHIBIT E: Seawall Character

There are a variety of seawall faces throughout the Tidal Basin and West Potomac Parks. Conditions vary from those with dry stacked stone with no mortar, to mortared or parged wall faces. Some of the walls are topped by concrete caps, other portions by stone caps. Newer portions of the seawalls have stone of varying size, cut and color, while older sections have stone of a more uniform size and color.



Acceptable Aesthetics for Proposed Seawalls

Looks #1, #3, and #5 are preferred for the following reasons: #1 Allows for the maximum reuse of historic stone; #3 Utilizes even coursing and stone size with rough and smooth face; #5 Is aesthetically pleasing with uniform stone color, medium gaps, and using both rough and smooth stone face. These three are preferred as they have variation in stone sizing, allowing for maximum reuse of stones, even coursing, and even coloring. The two not chosen have mortar to the edge of the wall face, and use stone of varying color and non-rectangular shape which contrasts with the historic dry stacked stone look.

