

**[DRAFT] PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE
THE NATIONAL CAPITAL PLANNING COMMISSION
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE LINCOLN MEMORIAL REFLECTING POOL AREA REHABILITATION PROJECT
WEST POTOMAC PARK, THE NATIONAL MALL
WASHINGTON, D.C.**

WHEREAS, the National Park Service (NPS) utilizing the American Recovery and Reinvestment Act of 2009 (ARRA) proposes to carry out the Lincoln Memorial Reflecting Pool Area Rehabilitation Project (Reflecting Pool Rehabilitation), which includes, but may not be limited to, the structural repair of the Reflecting Pool basin; the reengineering of the Reflecting Pool water delivery and circulation system ; the paving of “social paths” in the lawn along the north and south sides of the Reflecting Pool; the installation of bollards, knee walls and other measures for security on the east side of the Lincoln Memorial; the addition of universally accessible paths; and the rehabilitation of existing pathways, street furniture, and the installation of permanent lighting along the Elm Walks; (Undertaking); and

WHEREAS, the Reflecting Pool and its setting (Reflecting Pool Area), is a key feature of historic, architectural, and symbolic significance in the East and West Potomac Parks Historic District, a property listed in the National Register of Historic Places (NRHP), and a key feature in the Lincoln Memorial Grounds Cultural Landscape, a property eligible for the NRHP, as well as a contributing element of several other designated historic properties, including the National Mall as a whole; and

WHEREAS, the National Park Service (NPS) is the Federal agency that controls, operates, interprets, preserves and maintains the Reflecting Pool Area; and

WHEREAS, the NPS has identified substantial and on-going deterioration in the physical condition of the Reflecting Pool Area, including structural deficiencies in the Reflecting Pool itself due to differential settlement of the underlying soils and consequent water leakage, as well as deterioration of surrounding elements such as the lawn (worn down to dirt paths by foot traffic), the paved Elm Walks, and the system of walls, stairs, and landings, known as the “lower approachway,” that connect the Pool to the plaza of the Lincoln Memorial to its west; and

WHEREAS, the NPS recognizes the need for universal access between the Lincoln Memorial Circle, East Plaza, and the Reflecting Pool and has identified areas located north and south of the lower approachway and at the west end of the Elm Walks as locations for that accessible connection; and

WHEREAS, the nature and intensity of visitor use of the Reflecting Pool Area has recently changed, particularly since the construction of the World War II Memorial to the east, which has dramatically increased pedestrian traffic between the two memorials, as well as increased visitation after nightfall and increased demand for safe and accessible pedestrian circulation; and

WHEREAS, the NPS recognizes that its obligation to facilitate visitor access cannot be allowed to compromise the physical security of the Lincoln Memorial and other monuments or the peaceful setting and historic commemorative character of this sector of the National Mall; and

WHEREAS, the quality of the water in the Reflecting Pool are also important factors in the appearance of the historic property and the current conditions of wastage, algae build-up, and avian fecal contamination do not meet current NPS environmental standards; and

WHEREAS, NPS, pursuant to the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 USC 470), issued letters dated July 7, 2009 initiating consultation with the District of Columbia State Historic Preservation Officer (DC SHPO) and inviting the Advisory Council on Historic Preservation (ACHP) to participate in the consultation; and

WHEREAS, the ACHP elected to participate in the consultation and to sign this Programmatic Agreement (PA); and

WHEREAS, NPS has consulted with other parties (Appendix A of this PA) including, but not limited to, the Committee of 100 on the Federal City, the National Trust for Historic Preservation, and the National Coalition to Save Our Mall; and

WHEREAS, the National Capital Planning Commission (NCPC) commented favorably on the concept designs for the undertaking at its meeting on September 5, 2009, and the U.S. Commission of Fine Arts (CFA) commented favorably during its reviews of the concept designs at its meetings on July 16, 2009 and February 18, 2010; and

WHEREAS, NPS has provided opportunities for review and comment on the Undertaking, as its planning and design proceeded, at public meetings (including concept presentations at CFA and NCPC), consulting party meetings, and site visits held throughout 2009 and into early 2010; and

WHEREAS, NPS posted an Environmental Assessment (EA) on its Planning, Environment, and Public Comment (PEPC) website for 30 days, received comments and hopes to issue a Finding of No Significant Impact (FONSI) in March, 2010 with its environmentally preferred alternative; and

WHEREAS, NPS, in consultation with DC SHPO, ACHP, and the consulting parties, defined an Area of Potential Effect (APE) for the Undertaking (Appendix B of this PA) extending beyond the project's immediate limits of construction and encompassing ten (10) individually listed NRHP historic properties, one (1) NRHP historic district (East and West Potomac Parks), six (6) cultural landscapes, and eleven (11) memorials; and

WHEREAS, because the Undertaking will require construction only on made land or "fill", mostly dredged silt from the Potomac River, no archeological investigation is warranted; and

WHEREAS, the NPS, in consultation with DC SHPO, NCPC, ACHP, and the consulting parties, determined that the Undertaking will have adverse effects upon historic properties and that such adverse effects include, but may not be limited to, the introduction of bollards and security walls in conjunction with a new pedestrian circulation system into the primary visual axis of the National Mall; changes in topography; the removal of components of the historic fabric such as the underlying infrastructure of the Reflecting Pool; the introduction of new materials and elements such as a granite plaza and stone dust paths or concrete sidewalks surrounding the Reflecting Pool; the installation of permanent lighting along the north and south Elm walks; and the possible loss of a limited number of historic elm trees that contribute to cultural landscapes; and

WHEREAS, the NPS made significant progress in avoiding, minimizing, and mitigating some adverse effects by means of the Section 106 and National Environmental Policy Act (NEPA) review processes, specifically the selection and refinement of alternatives for each major project component that respond to public comments and adhere to the *Secretary of Interior Standards for the Treatment of Historic Properties* and *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes*, resulting in the release of a Selected Alternative in February 2010, along with additional graphics illustrating the water filtration and circulation system (Water System Option); and

WHEREAS, timeframes associated with ARRA funding require the NPS to pursue project planning, design, and National Historic Preservation Act (NHPA) and NEPA compliance for the Undertaking on an accelerated basis so that the construction contract for the Undertaking can be obligated no later than the end of Fiscal Year 2010 (September 30, 2010); and

WHEREAS, the procedures of NCPC require completion of NHPA and NEPA compliance prior to giving its legally mandated final approval to projects within the District of Columbia (National Capital Planning Act of 1952), and

WHEREAS, NCPC and CFA are empowered to request design modifications after NHPA and NEPA compliance have been completed;

NOW, THEREFORE, NPS, DC SHPO, NCPC and ACHP agree 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. Evaluation of the Lincoln Reflecting Pool Area Rehabilitation Project Concept Plans

NPS, DC SHPO, ACHP, and NCPC agree to work cooperatively and expeditiously in accordance with the terms of this PA to further evaluate and refine the Lincoln Reflecting Pool Area Rehabilitation Project Concept Plans as defined in NAMA 150274: Lincoln Memorial Reflecting Pool: Description of the Selected Alternative, National Park Service, February 2010 (Appendix C of this PA) and Rehabilitation of the Lincoln Memorial Reflecting Pool and Surrounding Area Environmental Assessment. (Appendix D of this PA.) Both documents, as well as all interim and subsequent presentation materials have been or will be posted on the PEPC website at www.parkplanning.nps.gov/.

The following issues have generated most of the comments on the Undertaking's potential adverse effects on historic properties and have been further analyzed and refined by the NPS to achieve avoidance, minimization, or mitigation:

- a. The security barriers and circulation systems at the interface of the Reflecting Pool with the East Plaza of the Lincoln Memorial have been the subject of extensive design studies intended to minimize the use of historically inappropriate features such as unsightly, non-ADA compliant asphalt ramps, bollards, and concrete barriers that interrupt the vista of the Reflecting Pool and the principal east-west axis of the National Mall. Further design development and review has provided additional minimization of adverse effects,

including the removal of all temporary barriers and a selected number of permanently installed bollards at the East Plaza, the addition of universally accessible paths, and the replication of a missing concrete walk at the southeast end of the Reflecting Pool.

- b. The paving of the dirt or “social paths” adjacent to the granite coping to the north and south of the Pool does not reflect the historic green lawn of these areas. However, neither do the existing dirt paths. The design, scale, color, and materials of the paving will be compatible with the granite coping of the Reflecting Pool, but not appear to be an extension of the coping. Further design review in consultation with signatories and with input from the public and consulting parties will provide additional minimization of adverse effects.
- c. The design, scale, and materials of the street furniture and paving along the Elm Walks will be compatible with the historic setting. Street furniture includes existing benches and trash receptacles, which will be refurbished or replaced in-kind, and the replacement of temporary light standards with a new permanent type of standard, which will be installed along with the benches and waste receptacles on the outboard side of the north and south elms walks to minimize the effect of night time light levels and reflections in the pool water. Final selection of the design for new light standards in consultation with the signatories and with input from the public and consulting parties will also avoid or minimize adverse effects.
- d. All options for the Water System, as defined in Option C of Appendix C, require some construction of infrastructure (utility lines, intake structure, treatment building, etc) which may be partially visible and have adverse visual effects on cultural landscapes adjacent to the Lincoln Memorial Reflecting Pool Area. Although natural approaches to water filtration and circulation into and out of the Reflecting Pool were requested in public comments, the natural approaches could not meet the project requirements for visual compatibility and water quality. NPS engineers have identified a technical solution that meets the project requirements, as well as NPS goals for sustainability, and that minimizes adverse visual effects.

Subsequent to the public release of the EA, the NPS entered the design development phase of the project and conducted design review, engineering evaluations, and financial analysis on each component of the project. These studies helped to inform the NPS on factors previously considered in the conceptual design phase, which in turn gave justification to the NPS to modify and refine certain design aspects of Option C from what was previously described in the original EA. Modifications to the water system were made to enhance the water quality in the Reflecting Pool and to minimize the adverse impacts to resources within and around the project area.

Under modified Option C (modified Water System Option), the water supply will be drawn from the Tidal Basin, without adversely affecting the historic wall of the basin, and be screened at the wet well intake to eliminate debris. To enhance water quality, the water will be treated and filtered prior to entering the Reflecting Pool, where it will be continuously re-circulated. With the exception of the water treatment building, all utilities and structures associated with the modified Water System Option will be below grade. Further design development of the water treatment building, which will be located in an existing service area, will include cladding the building with dark colored finishes and

increasing the existing vegetative buffer to screen the building from Independence Avenue on the south and the athletic fields on the north.

The location and design of the new equipment and structures required for implementation of the modified Water System Option have been designed in a manner so as to blend as harmoniously as possible with the existing scale and context of the adjacent cultural landscapes and will be located outside the primary viewsheds of the Reflecting Pool Area. Further review by the signatories and with input from the public and consulting parties on the design and location of the equipment and structures may provide additional minimization of any adverse visual effects.

2. Further Development of Reflecting Pool Area Rehabilitation Project Plans

- a. As indicated above, NPS must continue the further design development of the Reflecting Pool Area Rehabilitation Project on an expedited basis to meet strict ARRA deadlines for funds obligation. Certain design choices or details not resolved in the Project Plans submitted to CFA or NCPC will be significant to the successful avoidance, minimization or mitigation of adverse effect on historic properties and will be resolved through execution of this PA and continued consultation by the signatories, the public and consulting parties.
- b. Therefore, NPS will coordinate the further development of the project design in the following manner:
 - i. The NPS shall develop and refine the Project Plans to a degree of detail adequate for the public, DC SHPO and ACHP to provide additional comments on the Undertaking's effects on historic properties, particularly with regard to the issues described in Stipulation 1. These Project Plans will be made available with email notice to the public through the PEPC website and to DC SHPO, ACHP, and NCPC in writing and via email. Comments from all parties will be requested within seven (7) business days of posting on PEPC, and copies of these comments will be provided to the signatories within three (3) business days of the close of the public comment period (ten days after posting on PEPC).
 - ii. The NPS shall submit the Project Plans to CFA and NCPC in accordance with the procedures and submittal standards of those agencies and on such dates as meet the NPS and agencies' review scheduling requirements.
 - iii. Following the official review by CFA, the Project Plans will be sufficiently developed to allow the NPS to reassess the status of the project including any modifications requested by CFA and with regard to effects on historic properties. Specifically the NPS shall assess whether any changes have contributed to the avoidance, minimization, or mitigation of adverse effects; created new adverse effects; or intensified previously identified adverse effects. It will then submit this determination along with supporting documentation in writing and via email to DC SHPO, NCPC, and ACHP and to the public and consulting parties by posting on PEPC.
 - iv. Within three (3) business days of receipt of the documentation specified in Stipulation 2 (b) (iii) of this PA, DC SHPO and ACHP shall notify NPS in writing of their concurrence or non-concurrence with NPS's determination. NPS

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.

- v. If NPS, DC SHPO, and ACHP agree that previously identified adverse effects have been avoided, minimized, or mitigated through the cooperative review process to an acceptable extent and that there will be no new or intensified adverse effects, NPS shall notify the consulting parties via a posting on PEPC and shall provide a five (5) business day review and comment period. If a consulting party or a member of the public objects to a finding of no new or intensified adverse effects via the PEPC website, NPS shall take that objection into account as the project moves forward.
- vi. Following the official review by NCPC, the NPS shall reassess the status of the Project Plans including any modifications requested by NCPC and with regard to effects on historic properties. Specifically the NPS shall assess whether any changes have contributed to the avoidance, minimization, or mitigation of adverse effects; created new adverse effects; or intensified previously identified adverse effects. It will then submit this determination along with supporting documentation in writing and via email to DC SHPO, NCPC, and ACHP and to the public and consulting parties by posting on PEPC.
- vii. If NPS, DC SHPO, NCPC, or ACHP determines that there will be new adverse effects or that previously identified adverse effects have not been minimized or will be intensified, NPS shall notify the signatories through email and the public and consulting parties via email and a posting on PEPC and shall consult with the signatories within five (5) business days to identify means to avoid, minimize, or mitigate the adverse effects, and to determine how the resolution of adverse effects will be documented.
- viii. If the signatories are unable to identify ways to avoid, minimize, or mitigate the intensified or new adverse effect, the NPS shall resolve the dispute in accordance with Stipulation 4 (Dispute Resolution) of this PA.

3. Mitigation Plan

The NPS shall carry out the following mitigation measures, also outlined in the December 2009 Environmental Assessment.

- a. Additional interpretation and education appropriate to the historic context of the project and the site will be developed. The NPS shall prepare public interpretation and education materials that broadly address the historical development of the Reflecting Pool Area and its associated themes by indentifying the pool and the surrounding area as a contributing resource of the East and West Potomac Parks National Register Historic District and the Lincoln Memorial and National Mall cultural landscapes, incorporating information on the new water system, and explaining the importance of the resource. Public interpretation and historical education media may include, but not be limited to new and/or revised wayside signs, NPS-style brochures, and internet-based content.
- b. The gaps in the historically significant concentric rows of American elms around Lincoln Memorial Circle will be filled in with new plantings of American elm trees.

- c. Because consulting parties requested additional design information about the proposed water treatment building and walkways around the coping of the Reflecting Pool, the NPS will schedule an on-site review of proposed materials selected for the pool walks and cladding materials selected for the building. If feasible, this review session will occur prior to the NPS presentation to the CFA scheduled for March 18, 2010.

4. Dispute Resolution

- a. Should any signatory, the public, or consulting party to this PA object via email or PEPC to NPS per Stipulation 2 (b)(vii), the signatories shall consult to resolve the objection in five (5) business days to meet ARRA funding timeframes. Should the signatories be unable to resolve the disagreement, NPS shall forward via email its proposed resolution of the dispute and any other documentation relevant to the dispute to ACHP. Within ten (10) business 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.

5. Duration

This PA shall be valid for a period of four (4) years from the date of the last signature.

6. 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.

7. Termination

If any 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 in writing and consult with them to seek corrective action or amendment of the PA. If within fourteen (14) business days, an agreement or amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories. Once the PA is terminated, and prior to work continuing on the Undertaking, NPS must (a) either execute a new PA 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 as to the course of action it will pursue.

8. Anti-Deficiency Act

Any requirement for the payment or obligation of funds by the Government established by the terms of this PA shall be subject to availability of appropriated funds. No provision in this PA

shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341. If the availability of funds and compliance with the Anti-Deficiency Act impair the NPS' ability to perform under this PA, then the NPS shall consult in accordance with Stipulation 6 of this PA.

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.

Appendices Attached:

A. List of Consulting Parties

B. Reflecting Pool Rehabilitation Project Area of Potential Effect (APE)

Appendices Available on Line:

C. NAMA 150274: Lincoln Memorial Reflecting Pool: Description of the Selected Alternative, National Park Service, February 2010
<http://parkplanning.nps.gov/document.cfm?parkID=427&projectId=26512&documentID=31886>

D. Rehabilitation of the Lincoln Memorial Reflecting Pool and Surrounding Area Environmental Assessment, National Park Service, December 2009
<http://parkplanning.nps.gov/document.cfm?parkID=427&projectId=26512&documentID=31077>

SIGNATORIES

Margaret O'Dell
Regional Director, National Capital Region, NPS

Date

David Maloney
District of Columbia State Historic Preservation Officer

Date

Marcel C. Acosta
Executive Director
National Capital Planning Commission

Date

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

Date

In the Final MOA, each signature line will be on a separate page.

AREA OF POTENTIAL EFFECT



CONSULTING PARTIES

- American Institute of Architects (AIA)
- American Society of Landscape Architects (ASLA)
- Committee of 100
- Cultural Tourism D.C.
- DC Preservation League (DCPL)
- Dwight D. Eisenhower Memorial Commission
- Equal Honor for All
- National Association of Olmsted Parks
- National Coalition to Save Our Mall
- National Parks Conservation Association
- National Trust for Historic Preservation (NTHP)
- Society of Architectural Historians
- Smithsonian Institution
- Washington, D.C., Guild of Professional Tour Guides
- Washington, D.C., Martin Luther King, Jr. National Memorial Project Foundation