

**PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
AND
[OTHERS IF IDENTIFIED DURING CONSULTATION]
REGARDING
THE TIDAL BASIN DEVELOPMENT CONCEPT PLAN**

This Programmatic Agreement (PA) is made as of the ___ day of _____, by and among the National Park Service (NPS), District of Columbia State Historic Preservation Office (DC SHPO), the National Capital Planning Commission (NCPC), and [others if identified during consultation] (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 Tidal Basin Development Concept Plan (Undertaking); and

WHEREAS, the NPS prepared the Tidal Basin Development Concept Plan as part of the stipulations agreed upon in a Memorandum of Agreement (MOA) with the DC SHPO and NCPC dated May 15, 2023, to resolve the adverse effects resulting from the Rehabilitation of Tidal Basin and West Potomac Park Seawalls project; and

WHEREAS, the Tidal Basin Development Concept Plan includes the Tidal Basin and surrounding land located within West Potomac Park. It includes sites such as the Franklin Delano Roosevelt Memorial, the Martin Luther King, Jr. Memorial, the Thomas Jefferson Memorial, and historic Japanese cherry tree plantings; and

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

WHEREAS, National Mall and Memorial Parks, which administers more than 1,000 acres of park land within the District of Columbia, including fourteen units of the National Park System, as well as more than 150 reservations, circles, fountains, squares, triangles, and park spaces, also came to be administered by NPS under 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 wildlife in the system’s units and to provide for the enjoyment of the scenery, natural and

WHEREAS, the Undertaking will provide direction for the long-term management and rehabilitation of the Tidal Basin Landscape to address degradation on the Tidal Basin area resulting from heavy visitation, inundation of brackish water, escalating maintenance costs, and the needed replacement of existing concrete barriers around the Jefferson Memorial to increase security (Exhibits A-1 to A-5 and B); and

WHEREAS, the Undertaking is subject to review under Section 106 of the NHPA as amended (54 U.S.C. § 306108) and NPS will be the federal agency responsible for compliance; and

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WHEREAS, the Undertaking is 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 Consulting Parties on September 17, 2024, and the letter can be found in Appendix A; and

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

WHEREAS, 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)), and this approval would constitute an Undertaking as defined at 36 CFR § 800.16(y). NCPC has elected to fulfill its Section 106 responsibilities by participating in this consultation and is a Signatory to this PA pursuant to 36 CFR § 800.6(c)(2); 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 Capitol within which the Project 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 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 is invited to concur with this PA pursuant to 36 CFR § 800.6(c)(3); and

WHEREAS, in letters dated September 17, 2024, the NPS informed the Federally recognized sovereign Indian Nations 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 project and invited them to be a Consulting Party. The Federally recognized sovereign Indian Nations include the Absentee Shawnee Tribe of Indians of Oklahoma Nation, Catawba Indian Nation, Chickahominy Indian Tribe, Chickahominy Tribe Eastern Division, Monacan Indian Nation, Nansemond Indian Nation, Pamunkey Indian Tribe, Rappahannock Tribe, Shawnee Tribe, and Upper Mattaponi Indian Tribe (collectively referred to as “Native American Tribes” in this PA). The NPS invites each of these Native American Tribes to concur with this PA pursuant to 36 C.F.R. § 800.6(c)(3). All the letters sent to Native American Tribes can be found in Appendix A; and

WHEREAS, the Native American Tribes that did not respond to the invitation continue to be included in the Section 106 process through invitations to Consulting Parties meetings and will continue to be invited to any subsequent consulting Parties meetings; and

WHEREAS, the NPS will notify the Native American Tribes in the event that any pre-historic resources are discovered and 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 April 24, 2025, and June 4, 2025, respectively. The full list of Consulting Parties invited is provided in Appendix B, along with presentation materials from both consulting party meetings; and

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WHEREAS, the NPS, in consultation with DC SHPO, NCPC, 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 Exhibit C; and

WHEREAS, the NPS identified fifteen (15) historic resources within the APE (that also encompass numerous contributing features), including the Tidal Basin Landscape, the Thomas Jefferson Memorial and Landscape, the National Mall Historic District, the East and West Potomac Parks Historic District, the Plan of the City of Washington, the Liberty Loan Federal Building, the Auditors Building Complex, the Bureau of Engraving and Printing Building, the US Department of Agriculture (USDA) South Building, the USDA Administration Building, the Baltimore & Potomac Railroad, the Arlington National Cemetery Historic District, the George Washington Memorial Parkway and Mount Vernon Memorial Highway, the Pentagon, and the White House; and

WHEREAS, pursuant to 36 CFR § 800.5(a) the NPS, in consultation with the DC SHPO, NCPC, and the Consulting Parties, have applied the criteria of adverse effect to the various alternative concepts, and have determined that implementation of the Tidal Basin Development Concept Plan will result in adverse effects on historic properties within the Area of Potential Effects, as outlined in the *Tidal Basin Development Concept Plan Assessment of Effects Report* (Appendix C); and

WHEREAS, specific design details are not developed at the concept planning level, therefore, the Development Concept Plan Assessment of Effects includes a determination of “potential adverse effect” from certain actions. This determination indicates a potential to create adverse effects from individual or cumulative actions. These effects will be further assessed as part of future Section 106 reviews of individual projects, as required under the terms of this PA; and

WHEREAS, to the maximum extent feasible, the proposed project design for the Development Concept Plan 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* and *Guidelines for the Treatment of Cultural Landscapes*; and

WHEREAS, the NPS conducted two Section 106 Consulting Party 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 February 19, 2025, through March 21, 2025; an EA, published [INSERT DATE] 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 Advisory Council on Historic Preservation (ACHP) of its determination of an adverse effect with specified documentation on [INSERT DATE], and on [INSERT DATE] the ACHP [chose or chose not] to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, NPS, DC SHPO, and NCPC agree that, if the Undertaking is implemented in accordance with the following stipulations taking into account the adverse effects on historic properties, these stipulations will govern compliance with Sections 106 of the NHPA.

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STIPULATIONS

NPS will ensure that the following measures are carried out:

I. GENERAL

A. APPLICABILITY

1. NPS will use the terms and conditions of this PA to fulfill its Section 106 responsibilities and those of other Federal agencies who designate NPS as the lead Federal agency pursuant to 36 C.F.R. § 800.2(a)(2). Federal agencies that do not designate NPS as the lead Federal agency remain individually responsible for their compliance with Section 106.
2. In the event a Federal agency or other agency issues federal funding or approvals for the Undertakings, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this PA and notifying and consulting with the Signatories. Any necessary amendments will be considered in accordance with Stipulation XI of this PA.

B. TIME AND NOTIFICATIONS

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

C. 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 PA are carried out.
- b. NPS is responsible for all government-to-government consultation with Federally recognized Native American 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.

2. DC SHPO

- a. DC SHPO will review Project submittals according to the timeframes defined within this MOA, and participate in consultation, as requested by NPS.

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3. NCPC
 - a. NCPC will review Project submittals according to the timeframes defined within this MOA, and participate in consultation, as requested by NPS.
 - b. These reviews do not supersede the statutory or regulatory obligations of this body, and NCPC will review and approve the project components as required.
4. CFA
 - a. CFA will review Project submittals according to the timeframes defined within this MOA, and participate in consultation, as requested by NPS.
 - b. These reviews do not supersede the statutory or regulatory obligations of this body, and CFA will review and approve the project components as required.

II. PROFESSIONAL QUALIFICATIONS STANDARDS

NPS will ensure that all historic preservation work performed by the relevant agency pursuant to will 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 of the Interior's Historic Preservation Qualification Standards* (62 Federal Register § 33708) as amended on June 20, 1997.

III. RESOLUTION OF POTENTIAL ADVERSE EFFECTS

- A. Ongoing and Future Consultation: the general concept plans included in Exhibits A-1 to A-5 and Exhibit B illustrate the proposed Undertaking current as of the date of the last signature on this PA. Additional consultation will be required for each project developed for the implementation of the Tidal Basin Development Concept Plan. As each project is designed, there is potential for unidentified adverse effects and for previously identified adverse effects as outlined in the *Tidal Basin Development Concept Plan Assessment of Effects* (Appendix C) to be intensified. Therefore, the NPS shall continue to consult with the Signatories, Consulting Parties, and the public, and take their comments into account in accordance with this PA and 36 CFR Part 800 as follows:

1. Preliminary Project Consultation

Early in the design development of each project, the NPS will initiate preliminary consultation with the Signatories regarding the proposed designs for infrastructure or site changes, and will incorporate comments provided into the design to the greatest extent feasible, in light of the project's goals and objectives, and this PA. This early consultation will be centered around virtual group meetings and will occur during the schematic phase of design development or pre-submission phase, consistent with the NCPC Submission Guidelines, and before 15% design development drawings.

- a. The NPS will work with the Signatories to define the scope of the project(s), preliminarily assess adverse effects, develop and/or update the Consulting Parties list, and define the formal Section 106 consultation schedule and level of effort as they relate to the proposed project(s). Specifically, the NPS will work with the Signatories to determine whether consulting party meetings will be required, and if so, outline a meeting schedule dependent upon the level of complexity of the project. If any Signatory

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believes a consulting party meeting(s) is/are necessary because a project is likely to result in an adverse effect, the NPS shall agree to conduct such a meeting(s).

2. Section 106 Consultation Process and Procedures

Implementation of the Tidal Basin Development Concept Plan will be carried out over a period of an estimated twenty (20) years, with each project designed within the framework outlined in the Preferred Alternative and in this PA. The NPS shall reevaluate, seek comments from the Signatories and Consulting Parties, revise when appropriate, and finalize all determinations of effect as outlined in the *Tidal Basin Development Concept Plan Assessment of Effects*, including all “no adverse effect” determinations, through future consultation. The design and implementation of each project will undergo a separate and substantive Section 106 review and consultation process pursuant to this PA.

- a. **Initiating Consultation:** After the development of a schematic design and preliminary project consultation in accordance with Stipulation III.A.1, the NPS will formally initiate consultation with the DC SHPO and the Signatories via letter and notify the Consulting Parties.
- b. **Nature of Consultation:** Based upon the results of preliminary project consultation carried out in accordance with Stipulation III.A.1, the NPS shall provide sufficient time for a Consulting Parties Meeting or Meetings to occur, if necessary, before making a determination of effect in accordance with Stipulation III.A.2.c.
- c. **Assessment of Effect:** Based upon early consultation conducted in accordance with Stipulation III.A.1 above, the NPS shall apply the criteria of adverse effect in consultation with the DC SHPO and Consulting Parties and determine if the project(s) will result in “No Historic Properties Affected”, “No Adverse Effect”, or “Adverse Effect” on historic properties within the Area of Potential Effects (Exhibit C). Such determinations will be based upon the submission of up-to-date and detailed plans, drawings, specifications, and additional information necessary to make final determinations of effect.
 - i. **No Historic Properties Affected:** The Tidal Basin project area encompasses several historic properties, but there may be specific projects that will have no effect on said historic properties. If the NPS reaches a determination of “No Historic Properties Affected”, the NPS will notify the Signatories in writing, provide sufficient project documentation to support its determination, and request concurrence. The NPS shall simultaneously provide the project documentation and determination to the Consulting Parties.
 - a. The Signatories and Consulting Parties shall have thirty (30) days from receipt 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.
 - b. If there are no objections to the determination within the specified timeframes, the NPS may move forward with the project as proposed. Any objections shall be addressed in accordance with Stipulation IX].

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- ii. Determination of No Adverse Effect: If the NPS determines a project will result in “No Adverse Effect,” it will notify the Signatories in writing, provide sufficient project documentation to support its determination, and request concurrence. The NPS shall simultaneously provide the project documentation and determination to the Consulting Parties.
 - a. The Signatories and Consulting Parties shall have thirty (30) days from receipt 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. If there are no objections to the determination, the NPS may move forward with the project as proposed.
 - b. If a Consulting Party responds that it does 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 IX of this PA. 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.
 - c. If the disagreement cannot be resolved, the NPS will refer its determination to the ACHP per 36 CFR 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,” the NPS will consider whether further consultation is required under Stipulation III.A.2.C.iii.
- iii. Determination of Adverse Effect: If the NPS determines a project will result in an “Adverse Effect,” including any previously unidentified, intensified or cumulative “Adverse Effects,” it will notify the Signatories in writing, provide sufficient documentation to support its determination; distribute the determination and each project submittal and determination for Consulting Party review, and consult further with the Signatories and Consulting Parties to seek ways to avoid the “Adverse Effect.”
 - a. The Signatories and Consulting Parties shall have thirty (30) days from receipt 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. These review periods will occur prior to conducting a Consulting Parties meeting.
 - b. 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(s) in the manner that avoids the “Adverse Effect(s).”
 - c. If avoidance is not possible, NPS shall consult further with the Signatories and Consulting Parties to identify ways to minimize or mitigate the “Adverse Effect(s).” Agreed upon minimization and mitigation measures shall be

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formalized in Memoranda of Agreement (MOA) executed pursuant to 36 CFR 800.6. Any disagreement regarding “Adverse Effect” determinations shall be referred to the ACHP per Stipulation IX.

3. Continuing Involvement of Consulting Parties and the Public

Consulting Parties and the public will continue to have the opportunity to comment on each project for the implementation of the Tidal Basin Development Concept Plan during Section 106 consultation pursuant to this PA.

- a. At the initiation of each Section 106 consultation, the NPS shall consult with the DC SHPO and the Signatories to update and expand the Consulting Parties list as suggested.
- b. The NPS shall provide project documentation and determinations of effect to the Consulting Parties and/or public through one of the following:
 - i. Provide project documentation and determinations of effect via email.
 - ii. Develop a project-specific website, and post all project information to the website, with notification to the Consulting Parties as information is posted.
- c. The NPS will establish a schedule for project-specific Section 106 consultation with critical dates and identified opportunities for providing input in accordance with Stipulation III.A.1. The NPS will keep the Consulting Parties and the public informed of the established schedule via one of the formats outlined in Stipulation III.A.3.b.

4. Minimization Measures for the Preferred Alternative

The following measures, which were discussed and agreed upon during Section 106 consultation to minimize adverse effects on historic properties, shall be applied and incorporated into associated designs, as appropriate, and serve as a starting point for future Section 106 consultation in accordance with Stipulation III.A.2:

- a. Lower Elevation of Pedestrian Bridge at Kutz Bridge: The proposed pedestrian bridge adjacent to the Kutz Bridge will be lower in elevation than the Kutz Bridge to minimize new obstructions of views and viewsheds.
- b. Traffic Studies for Road Realignment: The NPS will complete traffic studies to understand traffic implications of proposed road realignment and ways to minimize adverse effects on historic properties.
- c. Preservation, Repair, and Rehabilitation: to the extent practicable, all future preservation, repair, and rehabilitation efforts will be carried out in accordance the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* and *Guidelines for the Treatment of Cultural Landscapes*.

5. Specific Mitigation Measures

The NPS shall ensure that mitigation measures commensurate with final adverse effect determinations made pursuant to this PA shall be identified in future consultation with the Signatories and Consulting Parties and implemented in accordance with individual project Memoranda of Agreement. It is understood that the following measures are a starting point

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for future consultation and are not necessarily sufficient to adequately mitigate all adverse effects that may result from implementation of the Tidal Basin Development Concept Plan, including any adverse effects which may have been previously unidentified and any which may be intensified and/or cumulative. At a minimum, these mitigation measures shall include the following:

a. Cultural Landscape Reports

- i. The NPS will prepare Cultural Landscape Reports (CLRs) for the following resources: 1) the Floral Library, 2) Vegetation and Viewsheds around the Tidal Basin, 3) Recreational areas along Ohio and W Basin Drives SW in the southwest and northwest zones (shown in Exhibits A-4 and A-5), and 4) Jefferson Memorial Landscape. These documents shall be informed by the ongoing Viewshed Protection Plan and the Preservation Planting Plan for the separate, but nearby, Long Bridge Project.
- ii. The CLRs will include, at a minimum: a landscape history; description of existing conditions of landscape features; evaluation of the landscapes' significance and integrity; an analysis of landscape characteristics; and treatment recommendations.
- iii. The NPS shall prepare the CLRs prior to the execution of any project element associated with the subject of the respective CLR(s).

b. [Other specific measures developed through consultation to be included here.]

6. Implementation of Projects

The Development Concept Plan will be constructed in phases over an estimated twenty (20) year period. The NPS will ensure that the following measures will be carried out in association with the implementation and construction of the Development Concept Plan projects:

- a. Design and Construction Phasing - The Development Concept Plan projects will be designed and implemented as funding becomes available. A phased implementation approach is anticipated, and a schedule for each phase would be developed and communicated with the Signatories as funding is made available. Construction of any phase will be coordinated with other events occurring at the park during construction to minimize disruption and facilitate logistics for the event to occur at an alternative location if required.
- b. Required Federal Agency Reviews - The Signatories will be informed of the outcomes of formal reviews by the NCPC, Commission of Fine Arts, and the DC SHPO, per annual reporting under Stipulation V. Upon request, the NPS will provide requesting Signatories a copy of the project materials submitted to the agency pursuant to the associated review.
- c. Monitoring of Adjacent Historic Properties - To ensure that the construction and implementation of the Tidal Basin Development Concept Plan does not harm the stability of the historic structures within the Area of Potential Effects, the NPS will complete extensive baseline information to document pre-construction conditions and will develop a Monitoring Plan that requires the NPS to install, prior to the testing phase, vibration and monitoring devices to be used during testing and all phases of construction. Testing and

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construction shall be temporarily halted should any vibration, noise, settlement or unanticipated circumstances exceed the safe limits outlined in the Monitoring Plan. Work shall resume only after remediation and consultation with the Signatories.

- d. Tidal Basin Circulation - The NPS will endeavor to maintain pedestrian access and circulation through the landscaped areas of the Tidal Basin as much as is practical during construction.
- e. Interpretive Signage Related to Construction - The NPS shall prepare interpretive exhibits to be in place at the start of construction on each project. The exhibit will provide summary information on the history of the associated building and the relationship of the project to the Development Concept Plan. The nature of the exhibits will be flexible, based upon individual projects' construction-related closures, and is intended to educate the public about construction activities.
- f. Maintenance of Website - The NPS will maintain the Tidal Basin Development Concept Plan website. The NPS will continue to post ongoing project implementation studies during this interim period. The NPS will publicize future Section 106 consultation on design projects for the implementation of the Development Concept Plan in accordance with Stipulation III.A.3.

7. Emergency Actions

Emergency actions are those actions deemed necessary by the NPS as an immediate and direct response to an emergency situation. Provisions of this PA shall not restrict or otherwise impede the NPS from taking immediate actions deemed necessary as an immediate and direct response to an emergency situation, to protect life and property, detect or otherwise respond to a credible terrorist threat or attack upon the Tidal Basin, or to address an emergency condition resulting from construction. Emergency actions under this PA are only those implemented within thirty (30) calendar days from the initiation of the emergency situation.

- a. If the emergency action has the potential to affect historic properties, the NPS shall notify the DC SHPO, Signatories, and other relevant parties as appropriate, prior to undertaking the action, when feasible. As part of the notification, the NPS shall provide a plan to address the emergency. The DC SHPO shall have seven (7) calendar days to review and comment on the plan to address the emergency. If the DC SHPO does not comment or does not object to the plan within the review period, the NPS shall implement the proposed plan.
- b. If the NPS is unable to consult prior to carrying out emergency actions, the NPS shall notify the DC SHPO, Signatories, and other parties as appropriate, within forty-eight (48) hours after the initiation of the emergency action. This notification shall include a description of the emergency action taken, the effects of the action(s) to historic properties, and, where appropriate, any further proposed measures to avoid, minimize, or mitigate potential adverse effects to historic properties. The DC SHPO shall have seven (7) calendar days to review and comment on the proposal where further action is required to address the emergency. If the DC SHPO does not comment or does not object to the plan within the review period, the NPS shall implement the proposed plan.
- c. Where possible, such emergency actions shall be undertaken in a manner that does not preclude future preservation or restoration of historic properties.

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- d. Immediate rescue and salvage operations conducted to preserve life or property are exempt from these and all other provisions of this PA.

IV. MODIFICATIONS TO THE DEVELOPMENT CONCEPT PLAN

Due to the extended timeframe for design and implementation of the Tidal Basin Development Concept Plan, modifications to the Plan may be necessary. The NPS will consult with the Signatories and Consulting Parties on any amendment/modification to the Plan in accordance with Stipulations III.A.1 and III.A.2. Notice will be provided to the Signatories and Consulting Parties of any submissions to NCPC or CFA for review and approval of the Plan amendment/modification.

V. MONITORING AND REPORTING

Each year, until the PA expires or is terminated, the NPS shall provide the Signatories with a summary report detailing work undertaken pursuant to its terms, or a statement of “no activity”. The report will be issued annually on or before July 31st. The report will summarize the efforts carried out during the prior year, updates on current Section 106 consultation processes, and any projects planned for the coming year. The NPS shall convene a meeting to discuss the information contained in the annual report as required, or when requested by a Signatory. Failure to provide such summary report may be considered noncompliance with the terms of the PA pursuant to Stipulation XI.

VI. POST-REVIEW DISCOVERIES

- A. If newly identified historic properties are discovered during construction or unanticipated effects on known historic properties are identified, 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 PA 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.
 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 Advisory Council on Historic Preservation (ACHP) to review the dispute in accordance with Stipulation IX.
 5. If no Signatory provides written comments within the agreed upon time, NPS will assume they have no comments regarding the discovery and may then proceed with the submitted plan.

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- B. *Treatment of Human Remains*. In the event that human remains, burials, or funerary objects are discovered during construction of the Plan or any action taken pursuant to this PA within the District of Columbia, 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.

VII. CONFIDENTIALITY

- A. If disclosure of locational information could result in the disturbance of a cultural resource, all Signatories to this PA 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.

VIII. DURATION

This PA will expire if its terms are not carried out within twenty-five (25) years from the date of its execution. Twelve (12) months prior to expiration, NPS may consult with the Signatories to reconsider the terms of this PA and amend it in accordance with Stipulation XI below.

IX. DISPUTE RESOLUTION

- A. Should any Signatory or Consulting Party to this PA object at any time to any actions proposed or the manner in which the terms of the PA 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:

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1. Forward all documentation relevant to the dispute, including NPS's proposed resolution, to the ACHP with a copy to the Consulting Parties to this PA 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 this 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 PA that are not the subject of the dispute.

X. ADOPTABILITY

In the event that a Federal agency other than NPS is considering providing financial assistance, permits, licenses, or approvals for the Plan, such Federal agency may become a Signatory to this PA as a means of satisfying its Section 106 compliance responsibilities. To become a Signatory to this PA, the agency official must provide written notice to the Signatories that the agency agrees to the terms of the PA, specifying the extent of the agency's intent to participate in the PA, and identifying the lead Federal agency for the 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, or the approval will be considered implicit. Any other modifications to the PA will be considered in accordance with Stipulation XI.

XI. AMENDMENTS TO THE PA AND NON-COMPLIANCE

Any Signatory to this PA 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.

XII. TERMINATION AND WITHDRAWAL

If any Signatory to this PA determines that the terms of the PA 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 Stipulations IX or XI of the PA. If within sixty (60) days a resolution 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 either (a) execute a new PA 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.

XIII. SIGNATURES AND EFFECTIVE DATE

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

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signatory party is provided with a copy of the fully executed PA. Execution and implementation of this PA 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 SEPARATE PAGES

EXHIBIT A-1: Development Concept Plan – Overview

EXHIBIT A-2: Development Concept Plan – Northeast Zone

EXHIBIT A-3: Development Concept Plan – Southeast Zone

EXHIBIT A-4: Development Concept Plan – Southwest Zone

EXHIBIT A-5: Development Concept Plan – Northwest Zone

EXHIBIT B: Jefferson Memorial Security Improvements

EXHIBIT C: Area of Potential Effect

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Tidal Basin Development Concept Plan**

**PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
AND
[OTHERS IF IDENTIFIED DURING CONSULTATION]
REGARDING
THE TIDAL BASIN DEVELOPMENT CONCEPT PLAN**

NATIONAL PARK SERVICE

BY: Kevin Griess

Date

Superintendent
National Mall and Memorial Parks

**Programmatic Agreement
Tidal Basin Development Concept Plan**

**PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
AND
[OTHERS IF IDENTIFIED DURING CONSULTATION]
REGARDING
THE TIDAL BASIN DEVELOPMENT CONCEPT PLAN**

DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE

BY: David Maloney

Date

DC Historic Preservation Officer

**Programmatic Agreement
Tidal Basin Development Concept Plan**

**PROGRAMMATIC AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
AND
[OTHERS IF IDENTIFIED DURING CONSULTATION]
REGARDING
THE TIDAL BASIN DEVELOPMENT CONCEPT PLAN**

NATIONAL CAPITAL PLANNING COMMISSION

BY: Marcel Acosta
Executive Director

Date

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Tidal Basin Development Concept Plan

EXHIBIT A-1: Tidal Basin Development Concept Plan – Overview



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Tidal Basin Development Concept Plan**

EXHIBIT A-2: Tidal Basin Development Concept Plan – Northeast Zone



LEGEND

- | | | |
|------------------------------|-------------------------------|--------------------------|
| 1. TIDAL BASIN (WATER) | 8. PEDESTRIAN WALKWAY | 15. CRICKET FIELD |
| 2. FLORAL LIBRARY | 9. PEDESTRIAN BRIDGE | 16. TIDAL LANDSCAPE |
| 3. CHERRY TREES (THROUGHOUT) | 10. PARKING | 17. ROADWAY ADJUSTMENT |
| 4. COMFORT STATION | 11. DROP-OFF | PEDESTRIAN CIRCULATION |
| 5. PADDLE BOAT DOCK | 12. MULTI-USE FIELD (5 TOTAL) | BIKE/SCOOTER CIRCULATION |
| 6. TIERED SEATING | 13. SOFTBALL FIELD (8 TOTAL) | |
| 7. BIKE PATH | 14. RUGBY FIELD | |

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Tidal Basin Development Concept Plan**

EXHIBIT A-3: Tidal Basin Development Concept Plan – Southeast Zone



LEGEND



- | | | |
|------------------------------|-------------------------------|---|
| 1. TIDAL BASIN (WATER) | 8. PEDESTRIAN WALKWAY | 15. CRICKET FIELD |
| 2. FLORAL LIBRARY | 9. PEDESTRIAN BRIDGE | 16. TIDAL LANDSCAPE |
| 3. CHERRY TREES (THROUGHOUT) | 10. PARKING | 17. ROADWAY ADJUSTMENT |
| 4. COMFORT STATION | 11. DROP-OFF | █ PEDESTRIAN CIRCULATION |
| 5. PADDLE BOAT DOCK | 12. MULTI-USE FIELD (5 TOTAL) | - - - BIKE/SCOOTER CIRCULATION |
| 6. TIERED SEATING | 13. SOFTBALL FIELD (8 TOTAL) | |
| 7. BIKE PATH | 14. RUGBY FIELD | |

**Programmatic Agreement
Tidal Basin Development Concept Plan**

EXHIBIT A-4: Tidal Basin Development Concept Plan – Southwest Zone

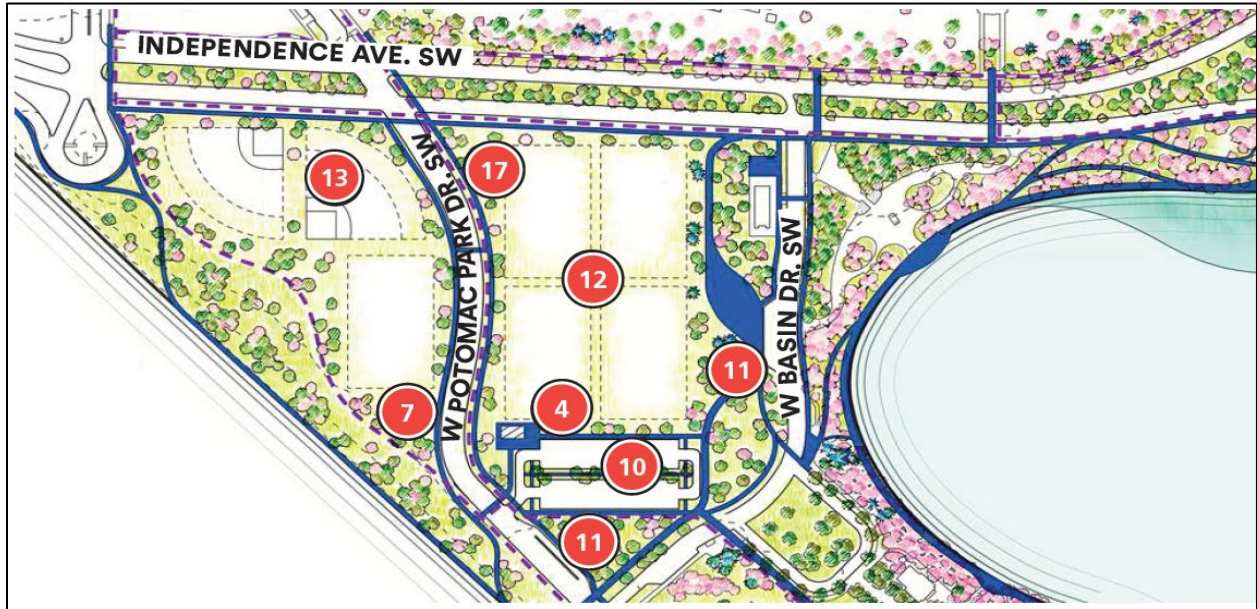


LEGEND

- | | | |
|------------------------------|-------------------------------|--|
| 1. TIDAL BASIN (WATER) | 8. PEDESTRIAN WALKWAY | 15. CRICKET FIELD |
| 2. FLORAL LIBRARY | 9. PEDESTRIAN BRIDGE | 16. TIDAL LANDSCAPE |
| 3. CHERRY TREES (THROUGHOUT) | 10. PARKING | 17. ROADWAY ADJUSTMENT |
| 4. COMFORT STATION | 11. DROP-OFF |  PEDESTRIAN CIRCULATION |
| 5. PADDLE BOAT DOCK | 12. MULTI-USE FIELD (5 TOTAL) |  BIKE/SCOOTER CIRCULATION |
| 6. TIERED SEATING | 13. SOFTBALL FIELD (8 TOTAL) | |
| 7. BIKE PATH | 14. RUGBY FIELD | |

Programmatic Agreement
Tidal Basin Development Concept Plan

EXHIBIT A-5: Tidal Basin Development Concept Plan – Northwest Zone

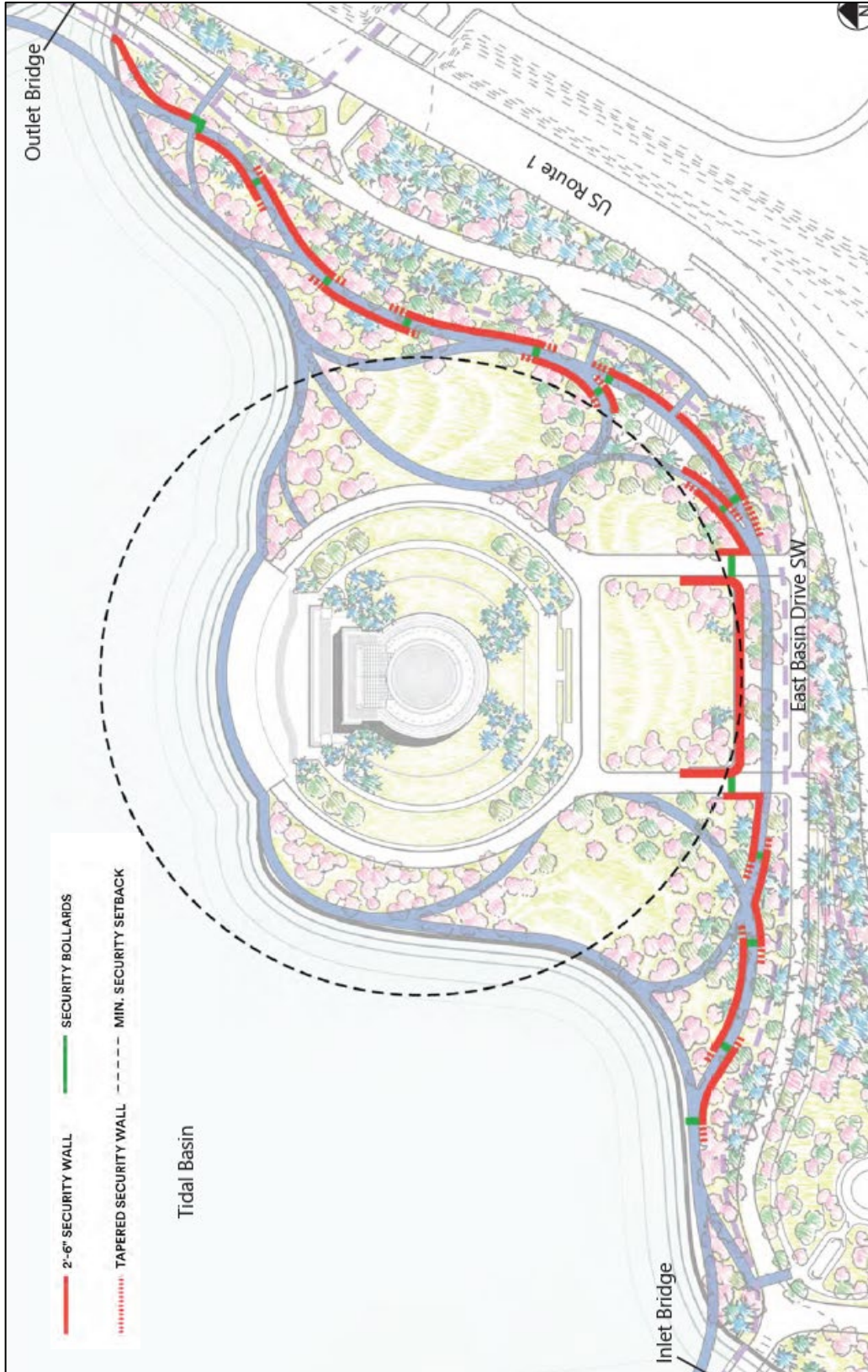


LEGEND

- | | | |
|------------------------------|-------------------------------|--------------------------------|
| 1. TIDAL BASIN (WATER) | 8. PEDESTRIAN WALKWAY | 15. CRICKET FIELD |
| 2. FLORAL LIBRARY | 9. PEDESTRIAN BRIDGE | 16. TIDAL LANDSCAPE |
| 3. CHERRY TREES (THROUGHOUT) | 10. PARKING | 17. ROADWAY ADJUSTMENT |
| 4. COMFORT STATION | 11. DROP-OFF | — PEDESTRIAN CIRCULATION |
| 5. PADDLE BOAT DOCK | 12. MULTI-USE FIELD (5 TOTAL) | - - - BIKE/SCOOTER CIRCULATION |
| 6. TIERED SEATING | 13. SOFTBALL FIELD (8 TOTAL) | |
| 7. BIKE PATH | 14. RUGBY FIELD | |

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Tidal Basin Development Concept Plan

EXHIBIT B: Jefferson Memorial Security Improvements



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Tidal Basin Development Concept Plan

EXHIBIT C: Area of Potential Effect

