

Programmatic Agreement Among
The Advisory Council on Historic Preservation,
The Pennsylvania State Historic Preservation Officer,
The Delaware Nation,
The Delaware Tribe of Indians,
The Stockbridge-Munsee Community,
The City of Philadelphia,

and

The National Park Service

Regarding

**The Land Exchange between the National Center for the American Revolution and
the National Park Service**

WHEREAS, the National Park Service (NPS) in 2008 entered into a Programmatic Agreement with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO); and

WHEREAS, the United States of America, Department of the Interior, National Park Service (NPS) entered into an agreement with the National Center for the American Revolution (ARC), a private, non-profit entity, to initiate a land exchange that includes parcels at Valley Forge National Historical Park (VAFO) and Independence National Historical Park (INHP) (Attachment 1 - *the signed agreement*); and

WHEREAS, the NPS ~~expects to~~^{will} receive from ARC clear and marketable title to the tract of land containing 78 acres, more or less, located within the boundaries of VAFO (Attachment 2 – *map showing VAFO parcel*);² and, ~~in exchange,~~

~~**WHEREAS**~~, the NPS ~~expects to~~^{will} convey to ARC clear and marketable title to the Independence Living History Center (ILHC) located at the southeast corner of 3rd and Chestnut Streets within the boundaries of INHP (Attachment 3 – *map showing INDE conceptual subdivision plan*); and

WHEREAS, the NPS ~~has determined that this exchange (undertaking) is an undertaking subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, and its implementing regulations under 36 C.F.R. part 800 (2004); and~~

Comment [11]: Combine these two Whereas clauses. One cannot happen without the other. The relationship should be made explicit.

WHEREAS, INHP cultural resources staff have determined that the ILHC building, constructed ca 1975, does not meet the criteria for listing on the National Register of Historic Places; and

WHEREAS, the NPS has determined that the Area of Potential Effect (APE) for the undertaking at INHP includes parts of three adjacent National Register Historic Districts, several National Historic Landmarks including the First Bank of the United States located directly across Third Street from the exchange parcel, and extends east to west from 2nd Street to 6th Street and north to south from Ranstead Street to Walnut Street (Attachment 4 – Area of Potential Effect site plan); and

WHEREAS, the NPS has determined that National Register eligible cultural resources, including archeological sites and Native American remains, may exist on the INHP land exchange tract itself; and

WHEREAS, the NPS has determined that possible unspecified development associated with the land exchange will potentially have adverse effects on National Register eligible cultural resources found on the INHP exchange parcel and the surrounding National Register Historic Districts; and

WHEREAS, the NPS has consulted with PASHPO, the ACHP, the Delaware Nation, the Delaware Tribe of Indians, the Stockbridge-Munsee Community, the City of Philadelphia and other identified stakeholders pursuant to 36 C.F.R. part 800 (2004). ~~and to the 1999 revisions to Section 106 of the amended National Historic Preservation Act (16 USC 470f).~~

NOW, THEREFORE, the NPS, PASHPO, ACHP, the Delaware Nation, the Delaware Tribe of Indians, the Stockbridge-Munsee Community, and the City of Philadelphia agree ~~that the undertaking will be carried out jointly complete this undertaking~~ in accordance with the following stipulations and general provisions in order to take into account the effects ~~of the undertaking and mitigating potential adverse effects to the property as a result of the land exchange~~ on historic properties.

The NPS shall ensure that the following stipulations are carried out:

Stipulations

1. **Prior to transfer**, ~~the~~ the NPS will move the ILHC public archeology lab and its associated collections to a new location. The transfer of the INHP parcel will be accomplished with only temporary interruption to the operations of the lab. The NPS will ensure that this interruption does not significantly delay the completion of outstanding compliance activities related to the National Constitution Center archeological site and that the public continues to enjoy access to the lab **including the relocated collections** at its new location.

Comment [I2]: The transfer of land out of federal control without long-term preservation of the property's historic significance is an adverse effect. Please address this in a whereas clause, specifically whether it is or is not protected per the terms of 36 CFR 800.

2. Prior to transfer, ~~t~~The NPS will complete an archeological background and identification study, sometimes referred to as a Level IA archeological assessment, of known or potential archeological resources contained within the INHP land exchange parcel. The identification study produced will meet Secretary of the Interior's Standards for Archeological Documentation
3. Prior to transfer, ~~t~~The NPS will ~~develop and~~ execute and record legally binding deed restrictions that extend protection to cultural resources on the INHP land exchange parcel after the land is transferred into private ownership. Restrictions shall include adequate provisions to address archeological findings, tribal interests, architectural scale, and visual compatibility with the surrounding character and setting of the National Register Historic Districts. The deed restriction will be substantially similar to the one in ~~Attachment 5 – deed restrictions~~.
4. The NPS will accept as part of the exchange the parcel of land within the boundaries of VAFO and will preserve said parcel according to accepted standards outlined in the Secretary of the Interior's Standards for the Treatment of Historic Properties, NPS Management Policies (2006), and relevant Director's Orders addressing cultural resources. The NPS will carry out Section 106 review of its future undertakings on this exchange parcel as applicable.
5. Following the transfer, ~~t~~The City of Philadelphia will ensure an open and transparent review process for the exchange parcel rezoning and redevelopment and take the views of the public into account before issuing final approvals.

5-6. Report

General Provisions

7. Terms of Agreement. This Agreement shall become effective after the date of the last signatory. The Agreement shall be null and void if its terms are not carried out within five years after the date of its approval execution, unless the signatories agree in writing to an extension for carrying out its terms. Otherwise, this Agreement shall become null and void when the project undertaking is complete, all of the above stipulations are fulfilled, and the SHPO has been provided with the aforementioned written report as to the actions taken to fulfill the terms of the Agreement. The Agreement and any amendments shall be binding upon the parties, their successors, and assigns. The execution of this Agreement shall not be delayed due to changes in personnel.

8. Monitoring of Agreement. The signatories responsible parties or their designees shall meet as needed to review the terms of this PA, and determine whether revisions or amendments are needed. Meetings may be called by any signatory, and shall be memorialized and considered part of the administrative record for this project undertaking.

Comment [14]: This should be spelled out to identify who will have ownership and authority over treatment of artifacts, and where they will be stored.

Comment [j5]: In fact, I'd argue that they should finalize the deed language before executing the MOA, and state here that the deed restrictions will be the ones in Attachment 5 (as opposed to substantially similar to them).

Comment [16]: The current deed restriction does not include this important provision. Just as with signage, protection of the adjacent districts should receive prior review and approval in writing by the Grantor. Alternatively, there should be language clearly identifying a review process conducted by the City of Philadelphia in which the views of the public can be taken into account by the National Park Service when they comment on the development proposal. Identify notice provisions, availability of plans for review, format of consultation, means of providing comment to approving bodies, etc.

Comment [17]: Stipulations shall indicate terms of consultation with interested parties to obtain their views on compatibility with the surrounding character and setting of the National Register Historic Districts. See above.

Comment [18]: This needs to be fleshed out. How much time will the public have to respond, at what points during the design, so that their concerns can be taken into account in altering the plans if necessary, by what means will public participation be ensured (re-zoning? Permitting? Other?)

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Comment [19]: See "Terms of Agreement", there should be a report as to the actions taken to fulfill the terms of the Agreement. Format? Distribution? Timing? Yes, need to flesh this stipulation out.

9. Amendment of Agreement. The Agreement may be modified by amendment at any time by mutual written concurrence of all parties the signatories. ~~Amendment of the Agreement as necessary shall be accomplished in the same manner as the original agreement. Amendments will be in writing and approved by the original signatories or their designated official.~~

10. Termination of Agreement. Any party-signatory to this Agreement may terminate it by providing thirty (30) calendar days notice to the other parties, provided that the parties will consult during the period prior to termination to seek ~~agreements on~~ amendments per Stipulation 9, above, or other actions that would avoid termination. In the event of termination ~~by the SHPO~~, the NPS will negotiate a new Programmatic Agreement in accordance with 36 C.F.R. § 800.14(b)(3) or request, consider, and respond to the comments of the ACHP, in accordance with 36 CFR Part 800.7[ac].

11. Dispute Resolution. Disputes regarding the completion of the terms of this Agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the NPS or SHPO may request the participation of ACHP to assist in resolving the dispute. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The NPS's responsibility to carry out all actions under this Agreement that is not the subjects of dispute will remain unchanged.

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure be raised by a member of the public, the NPS shall take the objection into account and consult as needed with the objecting party and the SHPOs.

Execution and implementation of the terms of this Agreement evidences that NPS has taken into account the effects of this undertaking on historic properties and has afforded the ACHP an opportunity to comment, in compliance with Section 106.

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For the National Park Service

Cynthia A MacLeod, Superintendent, INHP

Date

Michael Caldwell, Superintendent, VAFO

Date

For the Commonwealth of Pennsylvania:

Comment [I10]: What is the effect of termination of the agreement once the transfer has occurred? What if terminated by NPS or the City of Philadelphia? Will the ACHP be involved? Should termination be mutually agreed or resolved in some way?

Comment [j11]: Please replace this with our boilerplate language for dispute resolution.

Comment [I12]: A final clause should be inserted to indicate that implementation of the stipulations indicates compliance with Section 106.

Barbara Franco, Pennsylvania State Historic Preservation Officer Date

For the Advisory Council on Historic Preservation:

Date

[ADD SIGNATORY LINE FOR ARC]

For the Delaware Nation

Date

For the Delaware Tribe of Indians

Date

For the Stockbridge-Munsee Community

Date

For the City of Philadelphia

Date

References Cited:

Independence NHP Draft Archeological Overview and Assessment
List of Classified Structures
1994 Cultural Landscape Inventory
National Register of Historic Places Nomination Form

To view attachments, please go to:
<http://parkplanning.nps.gov/inde>

DRAFT