

Appendix E5:

Section 106 Draft Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
NATIONAL CAPITAL PLANNING COMMISSION, AND
THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

WHEREAS, the Federal Railroad Administration (FRA) and the District Department of Transportation (DDOT) are proposing potential improvements to railroad infrastructure located between the RO Interlocking near Long Bridge Park in Arlington, Virginia, and the L’Enfant (LE) Interlocking near 10th Street SW in the District of Columbia (Long Bridge Corridor)¹ to address insufficient capacity, resiliency, and redundancy to accommodate the projected demand in future rail services; and

WHEREAS, the Long Bridge Project (Project) consists of the construction of a new two track bridge upstream of the existing two-track Long Bridge to create a four-track crossing over the Potomac River (Appendix A, Figure 1), construction of a new two-track railroad bridge over the George Washington Memorial Parkway (GWMP), construction of two new tracks within the Long Bridge Corridor, and improvements to related railroad infrastructure. The Project proposes no alterations to the existing Long Bridge, a two-track railroad bridge constructed in 1904, that is currently owned and operated by CSX Transportation (CSXT), a Class I freight railroad; and

WHEREAS, the Project includes all associated mitigations triggered by applicable laws, such as the National Historic Preservation Act (NHPA) as amended (54 United States Code [U.S.C.] § 306108); the National Environmental Policy Act (NEPA) (42 U.S.C. § 4231 et seq.); and Section 4(f) of the United States Department of Transportation Act of 1966, 49 U.S.C. § 303 (Section 4(f)); and

WHEREAS, the Project is needed to ensure the Long Bridge Corridor continues to serve as a critical link connecting the local, regional, and national railroad network; and

WHEREAS, the FRA provided Fiscal Year 2014 grant funding (Grant # FR-TII-0036) to DDOT to conduct nondestructive project planning activities that have no potential to cause effects on historic properties, including preliminary engineering (PE) and environmental analysis of the Project; and

WHEREAS, if FRA provides funding for future construction of the Project, the FRA funding and Project implementation, which is the subject of this Programmatic Agreement (PA), will constitute an “Undertaking” subject to review under Section 106 of the NHPA, (Section 106) and FRA will be the federal agency responsible for compliance with Section 106; and

WHEREAS, FRA provided grant funding to DDOT (Planning Project Sponsor) for the PE and NHPA/NEPA compliance, but DDOT is not funding construction of the Project; and

¹ An interlocking is a segment of railroad infrastructure comprised of track, turnouts, and signals linked (interlocked) in a way that allows trains to safely move from one track to another, or across tracks, preventing conflicting train movements. Note that the proper name of RO Interlocking is “RO.” It is not an acronym.

WHEREAS, the Virginia Department of Rail and Public Transportation (DRPT) is the final design and construction sponsor for the Project (Construction Project Sponsor) who will be responsible for implementing the Project through final design and construction, including compliance with identified mitigation measures; and

WHEREAS, in accordance with NEPA, FRA and DDOT prepared an Environmental Impact Statement (EIS) for the Project; and

WHEREAS, the Project would impact National Park Service (NPS) park properties protected under Section 4(f), and FRA and DDOT determined that the proposed impacts would be mitigated through construction of a bike-pedestrian crossing over the Potomac River on a structure located upstream of the new railroad bridge (Appendix A, Figure 2); and

WHEREAS, phased identification and evaluation will occur for archaeological resources consistent with the *Long Bridge Project Phase IA Archaeological Assessment Report* dated July 24, 2018, therefore FRA will comply with Section 106 through the execution and implementation of this PA pursuant to 36 CFR §800.14(b); and

WHEREAS, in accordance with 36 CFR § 800.2(a)(4), FRA invited individuals and organizations with a demonstrated interest in the Project and the public to participate as Consulting Parties in the Section 106 process. The full list of Consulting Parties is provided in Appendix B; and

WHEREAS, FRA in consultation with DC State Historic Preservation Office (DC SHPO), Virginia Department of Historic Resources (VDHR), and the Consulting Parties, established the Project's Area of Potential Effects (APE), as defined under 36 CFR §800.16(d) and DC SHPO and VDHR concurred with the APE on July 12, 2017. The APE is illustrated in Appendix C; and

WHEREAS, FRA identified forty-two (42) historic properties within the APE, including the East and West Potomac Parks Historic District (listed in the National Register of Historic Places (NRHP) on November 30, 1973 (revised November 11, 2001)), the GWMP (listed in the NRHP on June 2, 1995), and the Mount Vernon Memorial Highway (MVMH) (listed in the NRHP on May 18, 1981). The Long Bridge is a contributing element to all three historic districts. DC SHPO and VDHR concurred with the *Identification of Historic Properties Technical Report* on March 23, 2018; both letters and the full report can be found in Appendix C, along with a complete list of historic properties in the APE; and

WHEREAS, FRA determined the Project will have an adverse effect on the GWMP, MVMH, and East and West Potomac Parks historic districts due to the introduction of new structures that would have visual effects, direct effects with the alteration of historic fabric within those districts, as well as temporary adverse effects due to construction related activities on the above mentioned districts, as well as the National Mall Historic District (listed in the NRHP on October 15, 1966 (revised December 8, 2016)); and

WHEREAS, DC SHPO concurred with the FRA's *Assessment of Effects Report* and the subsequent *Determination of Effect* in a letter dated November 8, 2018, and VDHR concurred with both in a letter dated November 9, 2018. Both letters can be found in Appendix D; and

WHEREAS, FRA considered avoidance measures during concept screening, and dismissed any alternatives that considered the construction of a new railroad bridge and associated railroad infrastructure outside of the existing Long Bridge Corridor thus avoiding potential effects to historic properties generated by expanding the Project. DC SHPO, in a letter dated November 8, 2018, and VDHR, in a letter

dated November 9, 2018, supported this approach (see [Appendix D](#)). Additionally, the new railroad bridge will be designed with a vertical clearance, visual appearance of the structural system, and alignment that closely references that of the existing Long Bridge as well as of the adjacent 14th Street-Metrorail bridge complex, thus avoiding potential adverse visual effects caused by a less compatible type of new bridge structure; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FRA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effects determination and provided the documentation specified in 36 CFR § 800.11(e). ACHP declined to participate in consultation pursuant to 36 CFR § 800.6(a)(1)(iv) in a letter dated December 21, 2018, which can be found in [Appendix E](#); and

WHEREAS, NPS is a Consulting Party in the Section 106 process pursuant to 36 CFR § 800.3(f)(1), manages the Federal park property on either side of the Potomac River within the Project's APE (see [Appendix C](#)), and has jurisdiction over the Potomac River bottom. NPS may consider issuance of a permit for temporary use of land under its administration for construction staging and the exchange of property or transfer of jurisdiction for the permanent use of land which constitutes an Undertaking as defined at 36 CFR § 800.16(y). Therefore, NPS is invited to be an Invited Signatory to this PA pursuant to 36 CFR § 800.6(c)(2); and

WHEREAS, National Capital Planning Commission (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 pursuant to the National Capital Planning Act (40 USC § 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 invited to be an Invited Signatory to this PA pursuant to 36 CFR § 800.6(c)(2); and

WHEREAS, DRPT is a Consulting Party in the Section 106 process pursuant to 36 CFR § 800.3(f)(1) and is the Construction Project Sponsor and will have roles and responsibilities in the implementation of this PA and is invited to be an Invited Signatory to this PA pursuant to 36 CFR § 800.6(c)(2); and

WHEREAS, U.S. Army Corps of Engineers (USACE), acting through its Norfolk and Baltimore Districts, is the Federal agency responsible for permitting under Section 10 of the Rivers and Harbors Act of 1899 and Sections 401 and 404 of the Clean Water Act of 1972 which would constitute an undertaking as defined at 36 CFR § 800.16(y). USACE designated FRA to act as the lead Federal agency to fulfill their collective Section 106 responsibilities pursuant to 36 CFR § 800.2(a)(2) via letters on October 14, 2016 (Norfolk District) and November 15, 2018 (Baltimore District), and is invited to concur with this PA pursuant to 36 CFR § 800.6(c)(3); and

WHEREAS, DDOT, as the Planning Project Sponsor, is a Consulting Party in the Section 106 process pursuant to 36 CFR § 800.2(c)(4). However, DDOT will not have a role or responsibility in implementing the terms of the PA and is invited to concur with this PA pursuant to 36 CFR § 800.6(c)(3); and

WHEREAS, in letters dated March 31, 2017 ([Appendix F](#)), FRA contacted the Catawba Indian Nation, the Delaware Nation, and the Delaware Tribe of Indians (collectively referred to as "Native American tribes" in this PA), 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 Project pursuant to 36 CFR § 800.2(c)(2). FRA invited each of these Native American tribes to be a Consulting Party and they are invited to concur with this PA pursuant to 36 CFR § 800.6(c)(3); and

WHEREAS, the Delaware Nation accepted FRA’s invitation to consult in the Section 106 process by electronic mail on May 11, 2017; the Delaware Tribe of Indians declined to participate on June 15, 2017; and the Catawba Indian Nation declined to participate on July 29, 2019; and

WHEREAS, FRA will notify the Native American tribes in the event that pre-historic resources are discovered through the phased identification and evaluation of archaeological or in a Post Review Discovery; and

WHEREAS, FRA conducted five Section 106 Consulting Party meetings to provide opportunities for the Consulting Parties to comment on the development of the Action Alternatives, delineation of the APE, identification of historic properties, methodology for assessing effects on historic properties, assessment of effects on historic properties, and potential resolution strategies. Summaries of each Consulting Party meeting can be found in Appendix G; and

WHEREAS, FRA made the draft PA available to the public for review and comment by appending it to the Draft EIS, and FRA will consider comments received when finalizing this PA; and

NOW, THEREFORE, FRA, DC SHPO, VDHR, NPS, NCPC, and DRPT (collectively referred to as the Signatories) agree that if the Project is funded by FRA, it will be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties and that these stipulations will govern compliance with Section 106 of the NHPA.

STIPULATIONS

FRA will ensure that the following measures are carried out:

I. GENERAL

A. APPLICABILITY

1. FRA and USACE will use the terms and conditions of this PA to fulfill their Section 106 responsibilities and those of other Federal agencies who designate FRA as the lead Federal agency pursuant to 36 CFR § 800.2(a)(2). Federal agencies that do not designate FRA as the lead Federal agency remain individually responsible for their compliance with Section 106.
2. In the event that a Federal agency or other agency issues federal funding or approvals for the Undertakings associated with the Project and the Project remains unchanged, 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 XII of this PA.
3. This PA only binds FRA if the agency provides financial assistance for construction of the Project and it, therefore, meets the definition of Undertaking found at 36 CFR § 800.16(y)
4. In the event that the Project does not become an FRA Undertaking and FRA withdraws its participation in the PA under Stipulation XII.B, and another Federal agency or other agency continues to have an Undertaking and desires to continue to use this PA to satisfy its responsibilities under Section 106, this PA will be amended in accordance with the terms of Stipulation XII.A and that Federal or other agency will assume lead agency responsibilities for Section 106.

B. TIMEFRAMES 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 PA will be sent by email or other electronic means.

C. ROLES AND RESPONSIBILITIES

1. FRA

- a. Pursuant to 36 CFR §800.2(a)(2), FRA has the primary responsibility to ensure the provisions of this PA are carried out.
- b. FRA is responsible for all government-to-government consultation with federally-recognized Native American tribes.

2. DDOT

- a. Pursuant to 36 CFR §800.2(c)(4), FRA authorized DDOT and authorizes DRPT to initiate consultation and prepare any necessary analyses, documentation, and recommendations on its behalf, but FRA remains legally responsible for all findings and determinations, including determinations of eligibility, findings of effect as well as resolution to objections or dispute resolution.

3. NPS

- a. NPS is responsible for implementing specified mitigation measures in Stipulation III and for any resulting curation of records and other cultural materials pursuant to 36 CFR §79. NPS will determine if these actions amount to undertakings under Section 106 and would be covered by the terms of this PA. Otherwise NPS will undertake the Section 106 review process according to the 2008 *Programmatic Agreement Among the National Park Service (U.S. Department of the Interior), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers for Compliance with Section 106 of the National Historic Preservation Act*.
- b. NPS will provide Signatories with annual updates on the completion of specified mitigation measures pursuant to Stipulation IX.
- 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.

4. DRPT

- a. DRPT will conduct investigations and produce analyses, documentation and recommendations in a timely manner to address archaeological resources within the APE not recorded in the field prior to the Record of Decision.
- b. DRPT will successfully complete any mitigation measures to minimize and resolve adverse effects to historic properties except for those for which NPS is responsible specified in Stipulation III.B.
- c. DRPT is responsible for funding the completion of all investigations and associated documentation, curation, and other mitigation necessitated as a result of adverse effects on historic properties in accordance with the terms prescribed in this PA. This includes those mitigation measures specified in Stipulation III which will be implemented by NPS.
- d. DRPT is responsible for costs incurred during any work stoppages in the event of a Post-Review Discovery.

5. DC SHPO and VDHR

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

6. NCPC and Commission on Fine Arts (CFA)

- a. NCPC and CFA will review Project submittals according to the timeframes defined within this PA, and participate in consultation, as requested by FRA.

II. PERSONNEL QUALIFICATIONS STANDARDS

FRA, NPS, and DRPT will ensure that all historic preservation work performed by the relevant agency pursuant to Stipulations III and IV 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 Professional Standards* (48 Federal Regulation [F.R.] 44738-9).

III. RESOLUTION OF ADVERSE EFFECTS

A. DOCUMENT REVIEW FOR MINIMIZATION AND MITIGATION MEASURES

The Signatories will follow these Document Review procedures when specified in Stipulation III.B for Minimization and Mitigation Measures and IV.C for Archaeology:

1. DRPT will provide draft documentation to FRA for review and approval. FRA will review the draft documentation within thirty (30) calendar days. Following receipt of FRA approval, DRPT will submit the documentation to the Signatories.
2. The Signatories will review the documentation and provide written comments to FRA and the DRPT within thirty (30) calendar days. The Signatories may request a meeting within that review period.

3. DRPT, in consultation with FRA, will ensure that written comments received are considered and incorporated, as appropriate, to the fullest reasonable extent into the documentation.
4. If no Signatory provides written comments within the specified timeframe, DRPT may proceed with the portion of the Project subject to the documentation without taking additional steps to seek comment from the Signatories.
5. If FRA or DRPT receives an objection or extensive revision recommendations to the document, FRA and DRPT will work expeditiously with the Signatories to respond to the objection and/or resolve the dispute. If no agreement is reached within thirty (30) calendar days, FRA may request the ACHP review the dispute in accordance with Stipulation X. FRA will notify the Signatories of FRA's decision.

B. MINIMIZATION AND MITIGATION MEASURES

FRA and DRPT will ensure the following measures to minimize and/or mitigate adverse effects on historic properties are carried out:

1. Design Review: DRPT will design and aesthetically treat any elements of the Project, as illustrated in Appendix A, introduced into NPS-administered properties to be compatible with the character of existing resources and appropriate for the context of Washington DC's Monumental Core
 - a. Minimization: Design review will be executed to minimize potential adverse effects of introducing new features into the historic districts.
 - b. DRPT, in consultation with FRA, will consult with DC SHPO, VDHR, NPS, NCPC and CFA pursuant to Stipulation III.A as engineering and design are progressed including final engineering and design documents. Design Review will address, but is not limited to the following unresolved design elements: a) new railroad bridge design and engineering, including structure type, vertical clearance, visual appearance of the structural system, and alignment; b) aesthetic treatment of new component bridges or other structures introduced into NPS-administered properties; c) landscape design within the limits of disturbance of the Project; d) any additional signage or lighting necessitated by the Project; e) design of the bike-pedestrian crossing and any associated access ramps and trail connections; and f) construction staging and access procedures.
2. Tree Protection Plan: A tree protection plan will be executed by DRPT to determine which vegetation and trees are anticipated to be removed or impacted by the Project.
 - a. Minimization: Where feasible, extant trees and vegetation will be preserved *in situ* and protected during construction. To the extent feasible and appropriate, trees and other vegetation will be introduced to screen new bridge structures and minimize their visual effect.
 - b. The plan will include, at a minimum: documentation of the site's existing conditions; quantification and illustrations of trees and/or areas of trees that will be affected by the Project; specifications for the protection of trees where possible; specifications for the replacement of trees, and their caliper, where necessary; and a landscape plan.

- d. DRPT will complete a draft *Tree Protection Plan* within two (2) years of the execution of this PA. The plan will be reviewed pursuant to Stipulation III.A. Concurrent with the completion of final design, FRA will ensure that DRPT will produce a final *Tree Protection Plan* and distribute the plan electronically to the Signatories for documentation purposes.
 - e. DRPT will execute the *Tree Protection Plan* through the completion of the construction of the Project.
3. *Tree Restoration Plan*: DRPT will contribute a monetary value for the development and implementation of a tree restoration plan as outlined in the *Tree Protection Plan*. The restoration plan will account for the equivalent amount and caliper of affected trees, as well as the work required by NPS to reintroduce new trees to East and West Potomac Parks, GWMP, MVMH, and National Mall historic districts.
- a. NPS will be responsible for identification of appropriate replacement species alternatives where in-kind replacement is not feasible and the location of the individual trees throughout the parks. NPS will also be responsible for invasive species removal, should it be required during planting of replacement trees, and any associated archaeology required during the planting process, utilizing mitigation funding provided by DRPT for such purposes.
 - b. Within one year of the issuance of the *Tree Protection Plan*, NPS will provide DRPT with the *Tree Restoration Plan* and distribute the plan electronically to the Signatories for documentation purposes.
4. *Interpretation Plan*: DRPT will contribute a monetary value to NPS for NPS to use to prepare and implement the interpretation plan. The contribution amount will be agreed upon by NPS and DRPT and be sufficient to fund interpretation of the Long Bridge based on existing documentation. DRPT will ensure the installation of no less than four (4) physical wayside signs associated with the bike-pedestrian crossing. All signage will conform with NPS design standards (*UniGuide: Identification, Wayfinding and Visitor Information for National Parks*). Information posted to the GWMP website will also be incorporated into the interpretation plan. NPS will oversee the development of the information to be included in the wayside signs and the GWMP website. NPS, not DRPT, will submit the *Interpretation Plan* to the Signatories for their approval prior to its completion; review times will follow the outlined schedule in Stipulation III.A.
5. *Viewshed Protection Plan*. DRPT will contribute a monetary value to NPS for NPS to use to prepare and implement a MVMH Viewshed Protection Plan and Inventory and Assessment. DRPT and NPS agree that the contribution will be a value equal to the cost of preparing and implementing the MVMH Viewshed Protection Plan and Inventory and Assessment for the portion of the MVMH from Alexandria to Columbia Island. NPS will oversee the development of the plan prior to the completion of the PE phase and execution of the document will be at the discretion of NPS after the Project construction.
6. *Cultural Landscape Inventory*. DRPT will contribute a monetary value to NPS for NPS to use to prepare Cultural Landscape Inventories for MVMH and East and West Potomac Parks. DRPT and NPS agree that the contribution will be a value equal to the cost of preparing the MVMH Cultural Landscape Inventory for the portion from Alexandria to Columbia Island

and the East and West Potomac Parks Cultural Landscape Inventory for the portion from the Golf Course to the railroad corridor. NPS will oversee the development and execution of the Cultural Landscape Inventories.

7. Construction Management Control Plan:

- a. Minimization: DRPT will minimize temporary construction effects to historic properties from noise and vibration and visual effects using a variety of construction management techniques. Visual effects will be minimized to the extent practicable by providing appropriate screening between construction staging areas and cultural resources, limiting the size of construction staging areas, and/or locating them away from sensitive views and viewsheds.
- b. DRPT will develop and implement a construction noise and vibration control plan to ensure that both noise and vibrations are controlled throughout the estimated five-year construction of the project. The plan will be reviewed pursuant to Stipulation III.A.
- c. DRPT will develop and implement a plan for visual screening of construction areas throughout the estimated five-year construction of the project. The plan will be reviewed pursuant to Stipulation III.A.

IV. ARCHAEOLOGY

For archaeological studies undertaken by DRPT, DRPT will continue identification and evaluation of archaeological historic properties in accordance with 36 CFR § 800.4 and 800.5 and following the findings and recommendations of the *Long Bridge Project Phase IA Archaeological Assessment Report*.

- A. DRPT will ensure additional identification and evaluation of archaeological resources is accomplished in accordance with the relevant performance and reporting standards in Stipulation II, including the DC SHPO *Guidelines for Archaeological Investigations in the District of Columbia*, the VDHR *Guidelines for Conducting Historic Resources Survey in Virginia*, applicable Secretary of the Interior's Standards, and appropriate ACHP guidance.
- B. For archaeological studies undertaken by DRPT, DRPT will ensure payment for a permanent curation or arrange for long-term management and preservation of the archaeological collections, field records, images, digital data, maps, and associated records in accordance with 36 CFR § 79, *Curation of Federally-Owned and Administered Archaeological Collections*, and the relevant DC SHPO and VDHR Guidelines. A digital copy of all field records, reports, and collections data will be supplied to DC SHPO, VDHR, and NPS. All work will conform with *Director's Order #28A: Archaeology*, NPS's management policies, and the resource's archaeology program practices.
- C. If adverse effects to archaeological historic properties are identified, DRPT, in consultation with FRA, will do one of the following:
 1. Propose a minimization and data recovery plan; or
 2. Depending upon the significance of the resource(s) identified, propose a resource-specific Memorandum of Agreement (MOA) to resolve adverse effects. The MOA may address multiple historic properties.

D. Document Review Procedures will be done pursuant to Stipulation III.A

V. POST-REVIEW CHANGES

If DRPT proposes changes to the Project that may result in additional or new effects on historic properties, DRPT will notify FRA, VDHR, DC SHPO, and Signatories of such changes. Before DRPT takes any action that may result in additional or new effects on historic properties, FRA, VDHR, DC SHPO, DRPT, Signatories, and other consulting parties as appropriate, must consult to determine the appropriate course of action. This may include, as appropriate, revision to the APE, assessment of effects to historic properties, or development of additional mitigation measures to resolve adverse effects. The PA would be amended, as necessary, pursuant to Stipulation XII.

VI. POST-REVIEW DISCOVERIES

- A. If newly identified historic properties are discovered during Project construction or unanticipated effects on known historic properties are identified, FRA and DRPT will comply with 36 CFR § 800.13 by consulting with NPS, DC SHPO and/or VDHR and, if applicable, federally recognized Indian 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 NPS, DC SHPO and/or VDHR and, if applicable, federally recognized Indian tribes.
1. DRPT will immediately cease all ground disturbing and/or construction activities within a 50-foot radius of the discovery. DRPT will not resume ground disturbing and/or construction activities until the specified Section 106 process required by this PA is complete.
 2. DRPT will notify FRA of any discovery within forty-eight (48) hours of the discovery. In turn, DRPT and/or FRA, will inform the Signatories of the discovery and their projected path forward to comply with Section 106 within fourteen (14) calendar days and the plan to move forward.
 3. The Signatories will review the documents and provide written comments to FRA and DRPT within seven (7) calendar days or another agreed upon timeframe.
 4. DRPT, in consultation with FRA, will consider the written comments to the fullest reasonable extent. Should DRPT, in consultation with FRA, object to any comments made by the Signatories, DRPT 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, FRA will request the ACHP to review the dispute in accordance with Stipulation X.
 5. If no Signatory provides written comments within the agreed upon timeframe noted above, FRA will assume they have no comments regarding the discovery and their outlined path forward. DRPT may then proceed with the submitted plan.
 6. If DRPT receives any type of objection, DRPT will notify FRA and then work in consultation with FRA to take the appropriate action and notify Signatories of FRA's decision. DRPT may prepare and distribute correspondence on behalf of FRA after coordination.

- B. *Treatment of Human Remains*. In the event that human remains, burials, or funerary objects are discovered during construction of the Project or any action taken pursuant to this PA within the District of Columbia, DRPT 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 FRA, DC SHPO, NPS, and the District Chief Medical Examiner (“CME”) of the discovery under DC Code Section 5-1406 and other applicable laws and regulations. Should the discovery occur in Virginia, the Virginia Antiquities Act, Section 10.0-2305 of the *Code of Virginia* and its implementing regulations, 17 VACS-20, adopted by the Virginia Board of Historic Resources and published in the Virginia Register on July 15, 1991, and the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001) and its implementing regulations, 36 CFR §10, should be followed.
1. If the CME determines that the human remains are not subject to a criminal investigation by Federal or local authorities, FRA will ensure DRPT complies 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. In accordance with the Virginia laws stated above, the local jurisdiction within which the remains are found can obtain a permit from VDHR for the archaeological removal of human remains should removal be necessary.
 3. For actions involving Native American human remains or burials, the appropriate Native American Tribes and the DC SHPO and/or VDHR will be consulted to determine a treatment plan for the avoidance, recovery or reburial of the remains. If the human remains or burials occur on NPS lands, NPS will ensure compliance with applicable laws in accordance with provisions of the Native American Graves Protection and Repatriation Act, as amended (Public Law 101-601, 25 U.S.C. 3001 et seq) and regulations of the Secretary of the Interior at 43 CFR § 10.

VII. CONFIDENTIALITY

- A. If disclosure of location 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 CFR. § 800.11(c), Section 304 of the NHPA, Section 9 of the Archeological Resource Protection Act of 1979, and Executive Order on Sacred Sites 13007 F.R. 61-104 dated May 24, 1996.
- B. For work executed on NPS land, NPS standard policies, Director’s Orders #28 and 28A, along with NPS management policies will be followed. Per 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 ten (10) years from the date of its execution. Six (6) months prior to expiration, FRA and/or DRPT, with FRA's approval, may consult with the Signatories to reconsider the terms of this PA and amend it in accordance with Stipulation XII below.

IX. MONITORING AND REPORTING

DRPT will provide FRA, DC SHPO, VDHR and NPS with a summary report detailing work undertaken pursuant to the PA's terms each year until the PA expires or is terminated. This report will include any scheduling changes proposed, any problems encountered, and any disputes or objections received in DRPT's efforts to carry out the terms of this PA.

For mitigation measures for which NPS is the responsible party for implementation, NPS will provide Signatories with a progress report on the successful implementation of those measures at least annually via NPS' PEPC website (<https://parkplanning.nps.gov/>).

X. DISPUTE RESOLUTION

- A. Should any Signatory to this PA object at any time to any actions proposed or the manner in which the terms of the PA are implemented, FRA will consult with such Signatory to resolve the objection. If FRA determines that such objection cannot be resolved within thirty (30) calendar days, FRA will:
1. Forward all documentation relevant to the dispute, including FRA's proposed resolution, to the ACHP with a copy to the other Signatories to this PA and request that ACHP provide FRA 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, FRA will make a final decision on the dispute and proceed accordingly.
 3. FRA 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 provide the ACHP and Signatories with a copy of such written response.
 4. FRA 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.
- B. Should a Consulting Party or member of the public object to any proposed action(s) or the manner in which the terms of the PA are implemented by submitting its objection to DRPT and/or FRA in writing, DRPT or FRA will notify the other Signatories and FRA will take the objection into consideration. FRA will consult with the objecting party and, if that party so requests, the other Signatories for not more than thirty (30) calendar days. In reaching its decision regarding the objection, FRA will take into consideration any comments from the objecting party and the Signatories. Within fourteen (14) calendar days after closure of the consultation period, FRA will provide the objecting party and the Signatories with its final decision in writing.

XI. ADOPTABILITY

In the event that a Federal agency other than FRA is considering providing financial assistance, permits, licenses, or approvals for the Project, 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 XII.

XII. AMENDMENTS

- A. In the event that the Construction Project Sponsor changes, and FRA is providing financial assistance for construction of the Project, FRA will inform all Signatories and amend this PA as appropriate.
- B. 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 of the Signatories, is filed with the ACHP.

XIII. TERMINATION AND WITHDRAWAL

- A. 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 Stipulation XII 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, FRA must either (a) execute a new PA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR§ 800.7. FRA will notify the Signatories as to the course of action it will pursue.
- B. If FRA determines it does not have an Undertaking relating to this Project, FRA may withdraw from participation in this PA entirely upon 90-days written notification to all Signatories. If another federal agency or other agency does not elect to continue utilizing the PA per Stipulations I.A.4 then the PA is terminated.

XIV. AVAILABILITY OF FUNDS

- A. The obligations of Federal agencies under this PA are pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1), therefore nothing in this PA will be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to involve the United States in any contract or obligation for the further expenditure of money in excess of such appropriations.
- B. DRPT's obligation to expend, pay or reimburse any funds under this PA is subject to the availability of appropriations by the Virginia General Assembly and allocations by the Commonwealth Transportation Board. No funds have been appropriated for the Project to date.

XV. SIGNATURES AND EFFECTIVE DATE

- A. Effective Date. This PA will become effective immediately upon execution by all Signatories.
- B. Counterparts. This PA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

Execution and implementation of this PA evidences that FRA has considered the effects of this Undertaking on historic properties, afforded the ACHP a reasonable opportunity to comment, and satisfied its responsibilities under Section 106 of the NHPA and its implementing regulations.

[Signature Pages Follow]

DRAFT

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
NATIONAL CAPITAL PLANNING COMMISSION, AND
THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

FEDERAL RAILROAD ADMINISTRATION

BY: Marlys Osterhues

Date

Chief, Environmental and Corridor Planning Division

Office of Railroad Policy and Development

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
NATIONAL CAPITAL PLANNING COMMISSION, AND
THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE

BY: David Maloney, State Historic Preservation Officer

Date

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
NATIONAL CAPITAL PLANNING COMMISSION, AND
THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

BY: Julie Langan, State Historic Preservation Officer

Date

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
NATIONAL CAPITAL PLANNING COMMISSION, AND
THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

NATIONAL PARK SERVICE

BY: **TBD**

Date

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
NATIONAL CAPITAL PLANNING COMMISSION, AND
THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

NATIONAL CAPITAL PLANNING COMMISSION

BY: Marcel Acosta, Executive Director

Date

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
NATIONAL CAPITAL PLANNING COMMISSION, AND
THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

BY: **TBD**

Date

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
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THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,
THE NATIONAL PARK SERVICE,
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THE VIRGINIA DEPARTMENT OF RAIL & PUBLIC TRANSPORTATION
REGARDING
THE LONG BRIDGE PROJECT
IN
WASHINGTON, D.C. AND ARLINGTON COUNTY, VIRGINIA**

CONCURRING PARTIES:

DELAWARE NATION

BY: _____ Date _____

VIRGINIA RAILWAY EXPRESS

BY: _____ Date _____

FEDERAL TRANSIT ADMINISTRATION

BY: _____ Date _____

ANC 6D

BY: _____ Date _____

AMTRAK

BY: _____ Date _____

ARCHITECT OF THE CAPITOL

BY: _____ Date _____

ARLINGTON COUNTY HISTORIC PRESERVATION PROGRAM

BY: _____ Date _____

CRYSTAL CITY CIVIC ASSOCIATION

BY: _____ Date _____

CSX TRANSPORTATION

BY: _____ Date _____

DC PRESERVATION LEAGUE

BY: _____ Date _____

PENTAGON RESERVATION

BY: _____ Date _____

SOUTHWEST BID

BY: _____ Date _____

U.S. COMMISSION OF FINE ARTS

BY: _____ Date _____

U.S. GENERAL SERVICES ADMINISTRATION

BY: _____ Date _____

DRAFT

APPENDIX A: ACTION ALTERNATIVES AND BIKE-PEDESTRIAN CROSSING OPTION

Figure 1: Preferred Alternative



Figure 2: Bike-Pedestrian Crossing Option



APPENDIX B: LIST OF CONSULTING PARTIES

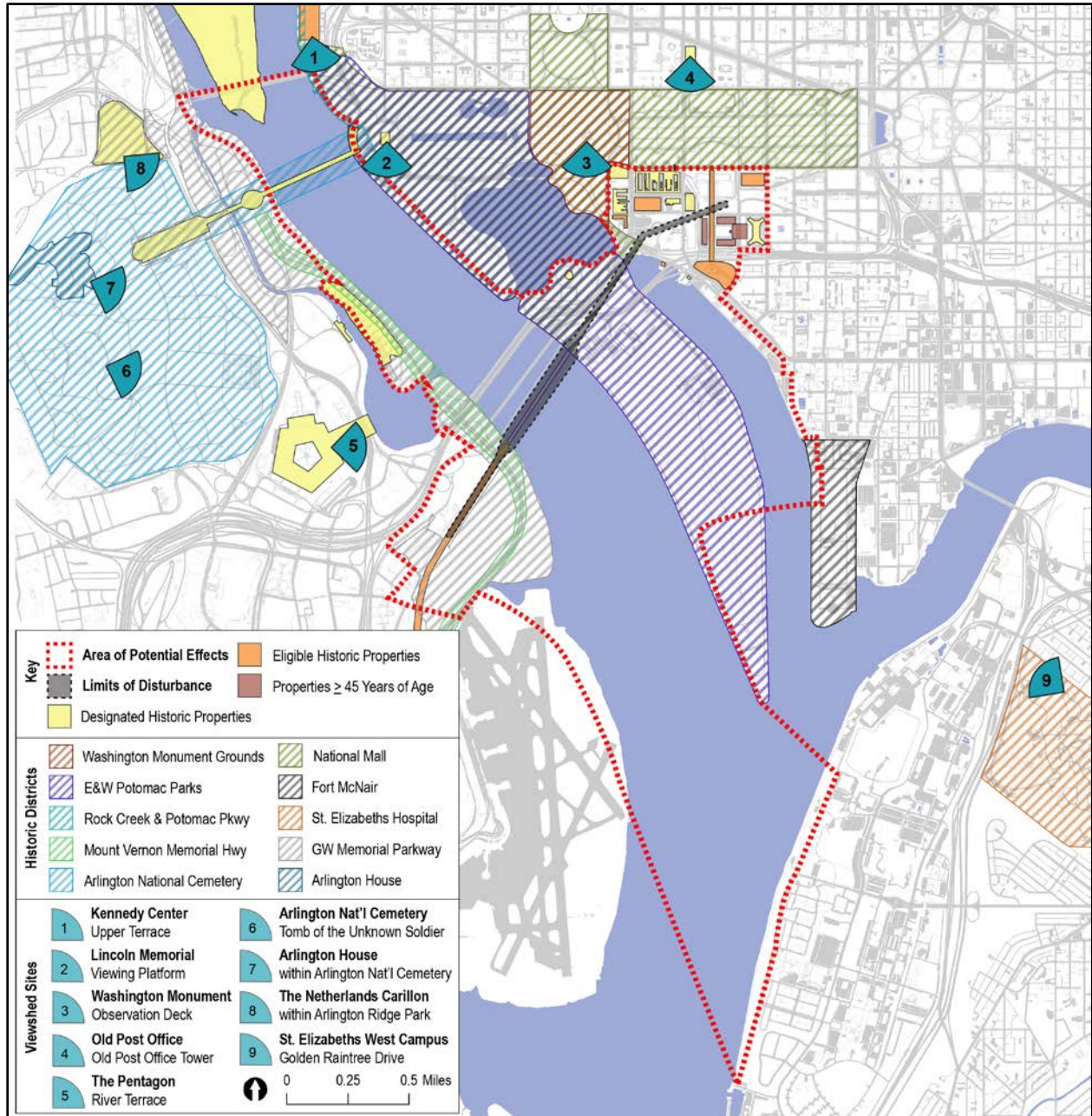
FRA initiated Section 106 consultation with DC SHPO and VDHR on September 22, 2016. FRA and DDOT worked with VDHR and DC SHPO to identify Consulting Parties, who were formally invited to participate in the Section 106 consultation process in March 2017. A list of those parties FRA invited to participate in the consultation process is shown in **Table 1** below.

Table 1: Agencies and Organizations Invited to Participate as Consulting Parties for the Long Bridge Project

Amtrak	National Mall Coalition ¹
Architect of the Capitol	NPS, Captain John Smith Trail ¹
Arlington County Historic Preservation Program	NPS, GWMP
Arlington County Manager ¹	NPS, National Capital Region
Arlington Historical Society ¹	NPS, National Mall & Memorial Parks
Arlington National Cemetery ¹	National Trust for Historic Preservation ¹
Catawba Indian Nation ¹	Pentagon Reservation (Department of Defense)
Committee of 100 on the Federal City ¹	Southwest BID
Crystal City Civic Association	Trust for the National Mall ¹
CSXT	U.S. Army Corps of Engineers, Baltimore District
DC Preservation League	U.S. Army Corps of Engineers, Norfolk District
Delaware Nation	U.S. Commission of Fine Arts
Delaware Tribe of Indians ¹	U.S. General Services Administration, National Capital Region
Federal Transit Administration	Virginia Department of Rail & Public Transportation
Mayor of the District of Columbia ¹	Virginia Railway Express
National Capital Planning Commission	Washington DC Chapter National Railway Historical Society ¹

¹ These organizations did not respond to the Consulting Party invitation or declined to participate as Consulting Parties.

APPENDIX C: AREA OF POTENTIAL EFFECTS AND LIST OF HISTORIC PROPERTIES



The following properties are listed in **Table 2**

Table 2: Identified Historic Properties in APE

#	Name	Location	Designation
1.	National Mall Historic District	Washington, DC	DC Inventory of Historic Sites (DC), National Register of Historic Places (NRHP)
2.	Parkways of the National Capital Region	Washington, DC	Virginia Landmarks Register (VLR), MPD ¹
3.	Rock Creek and Potomac Parkway Historic District	Along the Potomac River and Rock Creek from the Lincoln Memorial to the National Zoo, Washington, DC	DC, NRHP
4.	GWMP ²	Arlington, VA; Washington, DC	VLR, NRHP
5.	Mount Vernon Memorial Highway (MVMH) ³	Arlington, VA; Washington, DC	VLR, NRHP
6.	Plan of the City of Washington	Washington, DC	DC, NRHP
7.	East and West Potomac Parks Historic District	Washington, DC	DC, NRHP
8.	Thomas Jefferson Memorial	East Basin Drive SW, Washington, DC	DC, NRHP
9.	Central Heating Plant	325 13th Street SW, Washington, DC	DC, NRHP
10.	United States Department of Agriculture (USDA) Cotton Annex	300 12th Street SW, Washington, DC	DC, NRHP
11.	HUD Building (Robert C. Weaver Federal Building)	451 7th Street, SW, Washington, DC	DC, NRHP
12.	USDA South Building	1352 C Street SW, Washington, DC	DC, NRHP
13.	Bureau of Engraving and Printing	301 14th Street SW, Washington, DC	DC

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#	Name	Location	Designation
14.	Auditor's Building Complex	14th Street and Independence Avenue SW, Washington, DC	DC, NRHP
15.	Arlington Memorial Bridge (and related features)	Memorial Avenue, Arlington, VA, and Washington, DC	DC, NRHP
16.	Fort Leslie J. McNair Historic District (The Old Arsenal)	4th and P Streets SW, Washington, DC	DC, Determination of Eligibility (DOE)
17.	Titanic Memorial	Water and P Streets SW, Washington, DC	DC, NRHP
18.	Lunch Room Building and Oyster Shucking Shed	1100 Maine Avenue SW, Washington, DC	DC, DOE
19.	Cuban Friendship Urn	Reservation 332, Ohio Drive at 14th Street Bridge SW, Washington, DC	DC, NRHP
20.	Theodore Roosevelt Island National Memorial (Analoostan Island)	Potomac River west of Georgetown Channel	DC, NRHP
21.	Lyndon B. Johnson Memorial Grove	Columbia Island in Lady Bird Johnson Park	DC, NRHP
22.	Lincoln Memorial (Statue of Lincoln) ⁴	West Potomac Park, Washington, DC	DC, NRHP
23.	Washington Monument and Grounds Historic District ⁴	14th Street, between Constitution and Independence Avenues, Washington, DC	DC, NRHP
24.	Arlington House Historic District ⁴	Roughly bound by Sheridan Drive, Ord and Weitzel Drive, Humphrey's Drive and Lee Avenue in Arlington National Cemetery	VLR, NRHP
25.	Arlington National Cemetery Historic District ⁴	One Memorial Avenue, Arlington, VA	NRHP

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#	Name	Location	Designation
26.	St. Elizabeths Hospital Historic District ⁴	2700 Martin Luther King Jr. Avenue SE, Washington, DC	DC, NRHP, National Historic Landmark (NHL)
27.	Netherlands Carillon (within Arlington Ridge Park) ⁴	Northwest corner of N Meade Street and Marwill Drive, Arlington, VA	VLR, NRHP,
28.	Old Post Office ⁴	1100 Pennsylvania Avenue NW, Washington, DC	DC, NRHP
29.	The Pentagon ⁴	US 1, Virginia Route 110, and I-395, Arlington, VA	VLR, NRHP, NHL
30.	Bureau of Engraving and Printing Annex	300 14th Street SW, Washington, DC	DOE
31.	Federal Office Building 10A (Orville Wright Building)	800 Independence Ave SW, Washington, DC	DOE
32.	Benjamin Banneker Park/Overlook; Tenth Street Overlook	Terminus of 10th Street SW, Washington, DC	DOE
33.	Richmond, Fredericksburg and Potomac Railroad Historic District	Along CSXT right-of-way in VA from Arlington County to the City of Richmond, VA	DOE
34.	Washington Marina Building	1300 Maine Avenue SW, Washington, DC	DOE
35.	L'Enfant Promenade	Section of 10th Street SW between Independence Avenue and Banneker Park, Washington, DC	DOE
36.	Lady Bird Johnson Park	GWMP, Washington, DC	DOE
37.	John F. Kennedy Center for the Performing Arts ⁴	2700 F Street NW, Washington, DC	DOE

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#	Name	Location	Designation
38.	Liberty Loan Federal Building	401 14th Street SW, Washington, DC	DOE
39.	Astral Building (North Building, L'Enfant Plaza), 1968	955 L'Enfant Plaza SW, Washington, DC	Potentially eligible
40.	Comsat Building (South Building, L'Enfant Plaza), 1965	950 L'Enfant Plaza SW, Washington, DC	Potentially eligible
41.	Loew's L'Enfant Plaza Hotel (East Building, L'Enfant Plaza), 1971 to 1973	470-490 L'Enfant Plaza SW, Washington, DC	Potentially eligible
42.	USPS Building (West Building, L'Enfant Plaza), 1969 to 1971	475 L'Enfant Plaza SW, Washington, DC	Potentially eligible

¹ ***A Multiple Property Documentation Form is a cover document and not a nomination in its own right but serves as a basis for evaluating the National Register eligibility of related properties. In this instance, the resources within the MPD, GWMP and MVMH, are analyzed within the EIS as individually listed resources.***

² *Within the Long Bridge Project Area, the GWMP is primarily located in Virginia. Segments of the GWMP, such as where it extends along Lady Bird Johnson Park, are located within the District. Outside of the Project area, the GWMP also extends into Maryland.*

³ *The same geographic considerations as described above for the GWMP also apply to the MVMH.*

⁴ *These properties are designated as viewshed locations outside of the APE boundaries.*