MEMORANDUM OF AGREEMENT AMONG

THE NATIONAL PARK SERVICE THE VIETNAM VETERANS MEMORIAL FUND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION THE NATIONAL CAPITAL PLANNING COMMISSION AND

THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER REGARDING

CONSTRUCTION OF THE VIETNAM VETERANS MEMORIAL CENTER

WHEREAS, the National Park Service (NPS) expects to issue a permit to authorize the Vietnam Veterans Memorial Fund (VVMF) to construct a visitor center on the site bounded by Henry Bacon Drive, Constitution Avenue, 23rd Street and Lincoln Memorial Circle, NW near the Vietnam Veterans Memorial (undertaking), pursuant to Public Law 108-126, 117 Stat. 1348 (Nov. 17, 2003), Title I – Vietnam Veterans Memorial Visitor Center (Memorial Center); and

WHEREAS, the Memorial Center will consist of an underground facility to interpret the Vietnam War and Vietnam Veterans Memorial; and

WHEREAS, Public Law 108-126 requires the VVMF in designing and constructing the proposed Memorial Center to comply with the Commemorative Works Act (40 U.S.C. Chapter 89) (CWA), with the exception of three provisions: final approval shall not be withheld; no additional legislative approval is required for the location, and the size of the Memorial Center shall be limited to the minimum necessary; and

WHEREAS, pursuant to the CWA, the National Capital Planning Commission (NCPC) and the U.S. Commission of Fine Arts (CFA) are required to review and approve the design of the Memorial Center; and

WHEREAS, NCPC's approval of the design of the Memorial Center is an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800; and

WHEREAS, pursuant to 36 CFR 800.2(a)(2), NCPC designated NPS lead agency to act on its behalf, fulfilling its responsibilities under Section 106 of the NHPA; and

WHEREAS, the NPS initiated the Section 106 process by writing the District of Columbia State Historic Preservation Officer (SHPO) on February 17, 2005, and by providing a copy of the letter to the Advisory Council on Historic Preservation (ACHP); and

WHEREAS, the NPS hosted six Section 106 consulting party meetings, which continued into Spring 2012; and

WHEREAS, the NPS conducted an Environmental Assessment (EA) on the Memorial Center site, the first of two EAs prepared pursuant to the National Environmental Policy Act (NEPA), and conducted a second EA on the Memorial Center design as it was under development; and

WHEREAS, in May 2006, the NPS released for public comment an environmental assessment (Site Selection EA) pursuant to NEPA, which analyzed the potential environmental impacts of the preferred site; and

WHEREAS, NCPC adopted the Site Selection EA, as amended by NCPC's comments of June 23, 2006, and issued a Finding of No Significant Impact pursuant to NEPA on July 27, 2006 for the preferred site, finding that with the specified mitigation measures identified in the FONSI, which included design guidelines developed jointly by NCPC staff and CFA staff listed in Attachment A, no significant impact on the human environment would occur; and

WHEREAS, the NPS and the VVMF proposed design guidelines related to access, natural lighting, ventilation, and other building code requirements for an underground facility, which were subsequently superseded by other design guidelines that were mutually agreed upon by NCPC and CFA in July-August 2006, to reduce the otherwise significant impacts of the undertaking; and

WHEREAS, the NPS and VVMF adopted the NCPC and CFA design guidelines in addition to the mitigation actions proposed in the site selection EA and issued a Finding of No Significant Impact (FONSI) on November 1, 2007; and

WHEREAS, the CFA and NCPC recommended that the NPS begin Section 106 consultation early in the design development phase of the Memorial Center as a condition of the approval of the site; and

WHEREAS, the NPS, in consultation with the SHPO, defined the undertaking's Area of Potential Effect (APE) as illustrated in Attachment B; and

WHEREAS, the NPS determined that the undertaking will have an adverse effect on the L'Enfant Plan of the City of Washington, the East and West Potomac Historic District, and the Lincoln Memorial and Grounds, which are listed on the National Register of Historic Places (National Register); and

WHEREAS, on August 24, 2007, the NPS notified the ACHP of the adverse effect and on September 10, 2007 the ACHP elected to participate in the consultation; and

WHEREAS, the NPS has also consulted with the parties identified in Attachment C regarding the effects of the undertaking on historic properties; and

WHEREAS, the VVMF, as the Congressionally-authorized sponsor of the Memorial Center, participated in the consultation to develop appropriate mitigation for the undertaking; and

WHEREAS, in November 2010, the NPS completed its National Mall Plan/Environmental Impact Statement, a long-term plan for the rehabilitation, restoration, and management of areas including the East and West Potomac Parks Historic District, which incorporate the Lincoln Memorial, the World War II Memorial, the Vietnam Veterans Memorial, other memorials and features, and acknowledges the Memorial Center proposal; and

WHEREAS, the NPS issued a determination of effects letter for the Memorial Center on February 17, 2012, that concluded that the design respects the open space and visual sightlines, and will be landscaped in a manner harmonious with the site of the Vietnam Veterans Memorial, but would have an adverse effect on historic properties resulting from alterations of the site's existing grass panel, and from interior and exterior night lighting; and

WHEREAS, a great deal of effort, as demonstrated through the years of extensive consultation and agency and commission action, has gone into making the Memorial Center as minimally visible as possible; and

WHEREAS, the NPS has invited the VVMF and NCPC to sign this Memorandum of Agreement (Agreement) as Invited Signatories;

NOW, THEREFORE, the NPS, the VVMF, the ACHP, the NCPC and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

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

MITIGATION

I. Night Lighting. The night lighting of the Memorial Center shall not exceed the minimum levels required by building code and lighting safety standards so that the Memorial Center's night lighting does not affect the visual prominence of the Lincoln Memorial or the night lighting hierarchy of the other monuments and memorials, the museums, and other prominent features on the National Mall. The lighting plan component of the

current Memorial Center design (Attachment D), dated April 2012, has been designed in deference to the surrounding context and will continue to be developed to respect the hierarchy of lighting in Washington in the final design. Additional consultation on night lighting under Section 106 of the NHPA will follow the process outlined in Stipulation V, and final lighting plans will be submitted to CFA and NCPC for review and approval.

- II. Museum Collection Management. The NPS will consult with the VVMF and others on the design of exhibits and the exhibition of objects from the NPS Vietnam Veterans Memorial Museum Collection for display in the Memorial Center according to NPS Standards for Museum Collection Management. As soon as possible, but no later than three months from the last signature of the last Signatory to this Agreement, the VVMF will provide funds to NPS in an amount of approximately \$45,000 to update the Scope of Collections Statement and Collections Management Plan.
- Landscape Rehabilitation. The most recent landscape design for the Memorial Center, III. dated February 2012 (Attachment E), shall be revised by the NPS and the VVMF in accordance with the recommendations of the 1999 Lincoln Memorial Cultural. Landscape Report (http://www.nps.gov/nationalmallplan/History.html), which provides the analysis and evaluation of the series of plans designed to implement the landscape concepts proposed by the McMillan Plan and for the development of the Lincoln Memorial and Grounds. Landscape design for the Memorial Center will minimize the addition of non-historic plant material (including trees, shrubs, and ground cover) and incorporate American elm trees, as needed, in the concentric rows of elms planted around Lincoln Circle and in the rows of adjacent street trees. The NPS and the VVMF shall develop the final landscape design and submit it to the SHPO, the CFA and the NCPC for review and comment. Additional consultation on the landscape treatment under Section 106 of the NHPA will follow the process outlined in Stipulation V and the final landscape design will be submitted to CFA and NCPC for review and approval. Landscape rehabilitation will reestablish, on two sides of Lincoln Circle (north and south), the intent of the original implemented historic planting plan for the Lincoln Memorial and Grounds. The fully approved grounds rehabilitation plans will be funded and implemented by the VVMF by the end of construction of the Memorial Center so that they are completed by the opening.
- IV. Documentation. The VVMF will provide funds to the NPS in an amount of approximately \$100,000 to update documentation of the Lincoln Memorial and Grounds as described in the 1999 Cultural Landscape Report. NPS shall update the documentation in coordination with the SHPO. Funds will be provided for (a) a Cultural Landscape Inventory within one year of the issuance of the construction permit for the Center; and (b) an updated National Register nomination for the Lincoln Memorial and Grounds within one year of the opening of the Memorial Center.

- V. Additional Design Consultation. After the preliminary design of the Memorial Center is approved by the NCPC, consultation on the Memorial Center design will continue with the Signatories, Invited Signatories, and Consulting Parties regarding design refinements and other measures that could further avoid, minimize or mitigate adverse effects on historic properties. Issues identified for additional consultation include, but are not limited to: (a) further refinement of the skylights and courtyard openings to the grass panel; (b) further refinements of the landscape treatment of the site, including trees to reflect the historic planting plans included in the 1999 Lincoln Memorial and Grounds Cultural Landscape Report; (c) night lighting of the Memorial Center; and (d) changes made to the design in response to, or required by, NCPC's preliminary design approval. Following this consultation, the NPS will inform the Signatories, Invited Signatories, and the Consulting Parties on the outcome, via electronic media.
- VI. Final Design. Following the consultation as outlined in Stipulation V, but prior to the VVMF's submission of the final design documentation through the NPS to the NCPC or the CFA, whichever is first, the VVMF shall provide the proposed final design documentation to the NPS for consideration and consultation. The determinations of effect related to any changes made to the April 2012 plans to be considered as part of the NCPC and CFA review and approval process will be made through the following steps:
 - a. The NPS shall review the final design documentation focusing on any proposed changes from the April 2012 plans and make a determination as to whether the final design may result in new adverse effects that have not already been resolved and/or the intensification of known adverse effects to historic properties.
 - b. The NPS shall forward, via electronic media, its determination as described in section VI.a of this Agreement, and the VVMF's final design documentation to the Signatories and Invited Signatories for a 14-day review and comment period. NPS will also post its determination and the final design documentation at that time on NPS' Planning, Environment & Public Comment (PEPC) website to notify Consulting Parties and the public so that they may review and comment.
 - c. If the NPS determines that no new adverse effects may result or no known adverse effects to historic properties would be intensified, and no Signatories, Invited Signatories, Consulting Parties or the public objects within the 14-day review period, the NPS shall submit the final design documentation to NCPC and CFA for their approvals.
 - d. If the NPS determines that no new adverse effects may result or no known adverse effects to historic properties would be intensified and a Signatory or Invited Signatory objects in writing within the 14-day review period, the NPS

shall notify the Signatories and Invited Signatories to consult with the objecting party to seek ways to resolve the objection. If the NPS determines that the objection cannot be resolved, the NPS shall follow the procedures in the Dispute Resolution clause of this Agreement.

- e. If the NPS determines that no new adverse effects may result or no known adverse effects to historic properties would be intensified and a Consulting Party or the public objects in writing within the 14-day review period, the NPS shall consider the objection and notify the Signatories and Invited Signatories, and submit the written objection(s) and any NPS position on the objection, with the final design documentation being submitted to NCPC and CFA for their approvals.
- f. If the NPS determines that a new adverse effect may result or a known adverse effect to a historic property would be intensified, the NPS shall request that the VVMF revise the final design documentation to avoid, minimize, or mitigate the new or intensified adverse effect, and to submit a revised final design documentation package for review by NPS. After VVMF has considered the NPS request and carried out its decision, if NPS determines that unavoidable adverse effects to historic properties may result or be intensified, NPS shall consult with the Signatories and Invited Signatories to determine whether the final design documentation warrants an Amendment to this Agreement to identify additional measures that will be carried out to avoid, minimize or mitigate any new or intensified adverse effects.
- g. If the Agreement is amended, NPS will notify the Consulting Parties, the public, and NCPC and CFA and provide or post the Amendment on PEPC. Otherwise, NPS shall submit the final design documentation to NCPC and CFA for their approvals.

DEFERRED CONSULTATION

VII. After the Memorial Center is constructed and opened to the public, but before the expiration of this Agreement, the NPS will consider potential refinements to the site plan, such as a mid-block pedestrian crossing of screening the kiosk. The Signatories agree that vegetation planted between the concession kiosk and the Memorial Center would not be appropriate because it could compromise the integrity of the historic landscape plan. The determinations of effect related to any potential refinements made to the final, constructed design will be made through the process outlined in Stipulation VI, Final Design.

ARCHEOLOGY

- VIII. Unanticipated Discoveries. The NPS will include provisions to this effect in the construction permit for the treatment of unanticipated archeological discoveries, including human remains, during excavation, construction, or other ground-disturbing activity resulting from construction of the Memorial Center. The Project Area is contained within the area labeled "Primary Area of Potential Effects" in Attachment A.
 - a. In the event that a previously unidentified archeological resource is discovered during activities in the Project Site, the VVMF will immediately halt all ground-disturbing activities in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur.
 - b. The VVMF will notify the Superintendent, National Mall and Memorial Parks, the NPS Regional Archeologist, and the SHPO via email and by telephone immediately upon discovery of previously unidentified archeological resource. The NPS and the SHPO will visit the site within 48 hours of such notification, inspect the work site, and determine the nature and extent of the affected archeological property and establish a resource area. Construction may then continue in the project area outside the newly established boundaries of the resource area.
 - c. Within 3 working days of the original notification of discovery, the NPS, in consultation with the SHPO, will determine the National Register eligibility of the resource.
 - d. The NPS, in consultation with the SHPO, will ensure compliance with 36 CFR 800.13. Work in the resource area shall not proceed until either: (a) the development and implementation of an appropriate data recovery or other recommended mitigation procedures; or (b) the determination is made that the located archeological remains are not eligible for inclusion on the National Register.
 - e. The VVMF shall be responsible for funding and performing the preparation for curation of materials and records resulting from data recovery in accordance with the stipulations of an Archeological Resource Protection Act (ARPA) permit, issued by the NPS, and in accordance with 36 CFR Part 79. All associated reports will meet contemporary professional standards, according to the *Department of the Interior's Format Standards for Final Reports of Data Recovery Programs* (42 FR 5377-79), and also meet the standards as set out in *Guidelines for Archaeological Investigations in the District of Columbia* (1998, as amended). All collections materials and records will be curated at the NPS Museum Resource Center in Landover, MD.

f. The VVMF shall immediately notify the US Park Police (USPP), Superintendent, National Mall and Memorial Parks, and the NPS Regional Archeologist if human remains are discovered during construction and shall ensure that all ground-disturbing activities in the immediate area of the discovery ceases immediately and stays halted in accordance with the protocols established by the USPP and the District of Columbia Metropolitan Police Department. The NPS shall also ensure that the Secretary of the Interior's guidelines on human remains are followed. If the remains are assumed to be Native American, the Native American Graves Protection and Repatriation Act of 1990 through the implementing regulations at 43 CFR Part 10 will govern the NPS procedures and outcomes.

ADMINISTRATION

- IX. Updates. The NPS will update the Signatories, Invited Signatories, the Consulting Parties, and the public on an annual basis, at minimum, via the PEPC website on the undertaking and the actions taken to implement the terms of this Agreement valid for a period of five years from the date of execution of this Agreement.
- X. Duration. This Agreement will be valid for a period of five years from the date of execution by the last Signatory.
- XI. Dispute Resolution. Should any Signatory or Invited Signatory object in writing to the NPS regarding any action carried out in accordance with this Agreement, the Signatories and Invited Signatories shall consult to resolve the objection. Should the Signatories and Invited Signatories be unable to resolve the disagreement, the NPS shall forward its background information on the dispute as well as NPS's proposed resolution of the dispute to the ACHP. Within 45 days after receipt of all pertinent documentation, the ACHP shall provide the NPS with written recommendations, which the NPS shall take into account in reaching a final decision regarding the dispute, or notify the NPS that it shall comment pursuant to 36 CFR 800.7(c) and then proceed to comment. The NPS shall take the ACHP comments into account, in accordance with 36 CFR 800.7(c) (4). Any ACHP recommendation or comment shall be understood to pertain only to the subject matter of the dispute; the NPS's responsibility to carry out all actions under this Agreement that are not subjects of the dispute shall remain unchanged.
- XII. Amendments. This Agreement may be amended when an amendment is agreed to in writing by all Signatories and the Invited Signatories. The amendment will be effective on the date of the last signature.
- XIII. Termination. If any Signatory or Invited Signatory to this Agreement determines that the terms of the Agreement cannot be or are not being carried out, that party shall so notify the other Signatories and Invited Signatories in writing and consult with them to seek

resolution or amendment of the Agreement. If within sixty (60) days a resolution or amendment cannot be reached, any Signatory or Invited Signatory may terminate the Agreement upon written notification to the other Signatories and Invited Signatories. Once the Agreement is terminated, and prior to work continuing on the Undertaking, the NPS must either execute a new Agreement or request, take into account, and respond to the comments of the ACHP per 36 CFR 800.7. The NPS will notify the Signatories and Invited Signatories as to the course of action it will pursue.

XIV. Anti-Deficiency Act. The obligations of federal agencies under this Agreement are pursuant to 31 U.S.C. 1341(a) (1), therefore nothing in this Agreement shall 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.

Execution of this MOA by the NPS, the ACHP and the SHPO and implementation of its terms evidence that the NPS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

ATTACHMENT A: Design Principles

ATTACHMENT B: Area of Potential Effects ATTACHMENT C: List of Consulting Parties

ATTACHMENT D: April 2012 Memorial Center Design ATTACHMENT E: February 2012 Landscape Design

SIGNATORIES FOLLOW ON SEPARATE PAGES

SIGNATORY

MEMORANDUM OF AGREEMENT CONSTRUCTION OF THE VIETNAM VETERANS MEMORIAL CENTER

Stephen E. Whitesell

Regional Director, National Capital Region, National Park Service

Date

SIGNATORY

MEMORANDUM OF AGREEMENT
CONSTRUCTION OF THE VIETNAM VETERANS MEMORIAL CENTER

David Maloney

District of Columbia State Historic Preservation Officer

SIGNATORY

MEMORANDUM OF AGREEMENT CONSTRUCTION OF THE VIETNAM VETERANS MEMORIAL CENTER

John Fowler

Executive Director, Advisory Council on Historic Preservation

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INVITED SIGNATORY

MEMORANDUM OF AGREEMENT
CONSTRUCTION OF THE VIETNAM VETERANS MEMORIAL CENTER

Dan Reese

Chief Operating Officer, Vietnam Veterans Memorial Fund

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INVITED SIGNATORY

MEMORANDUM OF AGREEMENT CONSTRUCTION OF THE VIETNAM VETERANS MEMORIAL CENTER

Marcel Acosta

Executive Director, National Capital Planning Commission

Date

ATTACHMENT A: Design Principles

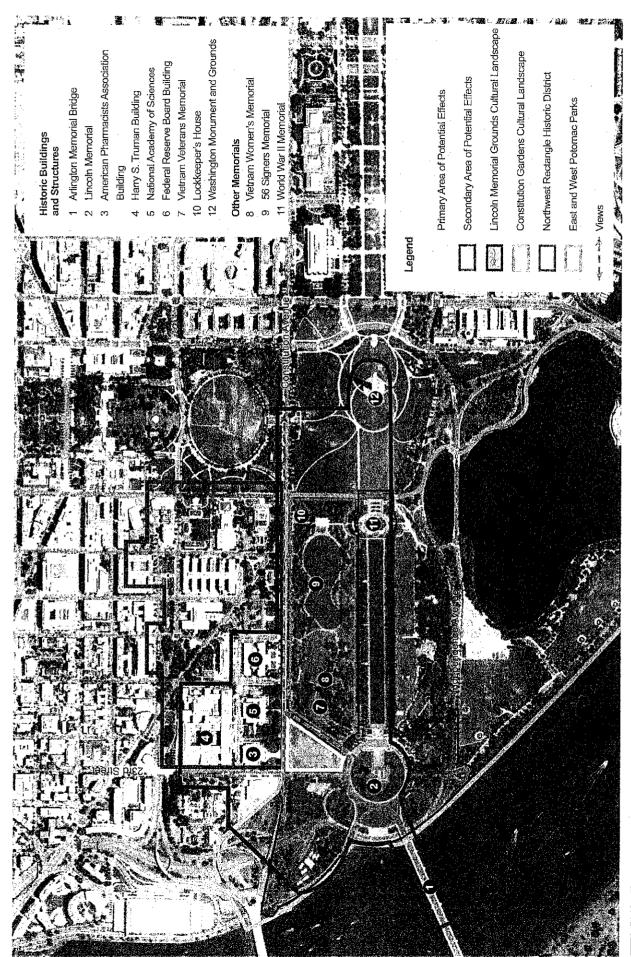
- 1. The Visitor Center will be constructed underground as required by the authorizing legislation for the project with no portion of the building or related building elements visible from any portion of the Lincoln Memorial steps and podium, from Constitution Avenue, and from within the axial viewsheds of 23rd Street, NW and Henry Bacon Drive, NW.
- 2. The Visitor Center's entrance will be only minimally visible from the Vietnam Veterans Memorial to satisfy the project's purpose and need, but in accordance with the authorizing legislation will not interfere with or encroach upon the Vietnam Veterans Memorial.
- 3. To maintain the character of the historic landscape, the Visitor Center's design concept will be based on maintaining the existing grade, and any new slopes will be gradual. The project will raise the existing site grade only to allow for an accessible entry ramp.
- 4. The Visitor Center will be designed such that light emanating from the Center's interior will not be visible from any portion of the Lincoln Memorial, from Constitution Avenue, and from the Vietnam Veterans Memorial so as not to interfere with or encroach upon the Lincoln Memorial or the Vietnam Veterans Memorial.
- 5. The Visitor Center will not intrude into the landscape. No protrusions, such as skylights, monitors, light wells, or sunken areaways, will be visible from the sidewalk surrounding the site.
- 6. The Visitor Center's site lighting for public safety will not interfere with or encroach upon views to and from the Lincoln Memorial and the Vietnam Veterans Memorial.
- 7. The Visitor Center's design will provide only the paved area necessary for visitors to enter and exit the building and will also provide service access. The design will not include additional
 - 8. The project will not include new vehicle parking areas.

paved area for gathering space or queuing.

- 9. The Visitor Center will have a single entrance for both visitors and service.
- 10. The Visitor Center's associated pedestrian street crossing points will be designed to address traffic impacts effectively and to protect pedestrian safety.

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- 11. The Visitor Center will be constructed only on the portion of the site that lies outside of the critical root zone of existing elm trees. The applicant will develop a tree protection plan to protect and preserve the trees both during and after construction in accordance with standard design and construction procedures.
- 12. The project will place new landscaping on the site in accordance with the National Park Service's Cultural Landscape Report for the Lincoln Memorial referenced in the Environmental Assessment and will maintain the open grass panel on the site surrounded at the site's perimeter by elm trees.
- 13. The Visitor Center design will not impede the use of the site for multi-purpose recreation on the site.
- 14. The Visitor Center will be designed without guardrails or perimeter security elements.



ATTACHMENT B: Vietnam Veterans Memorial Education Center Area of Potential Effects

ATTACHMENT C: List of Consulting Parties

Vietnam Veterans Memorial Fund

National Park Service

National Capital Planning Commission

District of Columbia Office of Historic Preservation

Advisory Council on Historic Preservation

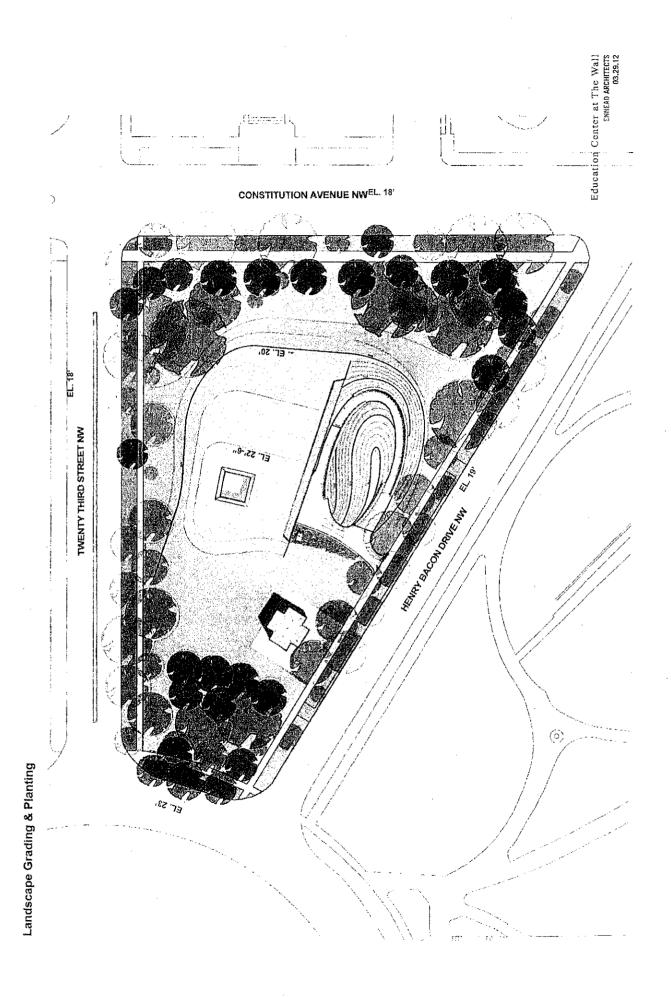
Commission of Fine Arts

National Trust For Historic Preservation

National Coalition to Save Our Mall

Equal Honor for All

Vietnam Veterans Memorial Volunteers



Education Center at The Wall Education Center at The Wall 05.03.12