



**National Trust for  
Historic Preservation**  
*Save the past. Enrich the future.*



**COALITION FOR  
SMARTER GROWTH**

August 24, 2012

Mary Ellen N. Hodges  
Preservation Program District Coordinator  
Virginia Department of Transportation  
1401 East Broad Street  
Richmond, VA 23219-1939

**Re: Comments on Draft Programmatic Agreement for the Tri-County Parkway in Prince William and Loudoun Counties, Virginia**

Dear Ms. Hodges:

The following comments on the Draft Programmatic Agreement (PA) for the Tri-County Parkway (TCP) are submitted on behalf of the Southern Environmental Law Center, the Piedmont Environmental Council, the Coalition for Smarter Growth, the National Trust for Historic Preservation, and the National Parks Conservation Association.

Our organizations recognize the irreplaceable value of Manassas National Battlefield Park (Battlefield).<sup>1</sup> We share the important goal of removing commuter traffic from the two highways that currently cross the Battlefield. However, we are committed to ensuring that the chosen solution does not increase the overall impacts to the Battlefield from traffic or simply shift the negative impacts from one area of the Battlefield to another—especially when far less damaging alternatives have not been adequately considered. Similarly, we believe it is critical that the Programmatic Agreement for any new project proposed near the Battlefield incorporate the level of protection and mitigation warranted for a resource of such significance to the history of the Commonwealth and the entire country. We offer the following comments with those objectives in mind.

As an initial matter, we request that the Federal Highway Administration (FHWA) and the Virginia Department of Transportation (VDOT) schedule a meeting of the Section 106 Consulting Parties to discuss the Draft PA prior to developing a final draft of the agreement. As set forth below, there are

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<sup>1</sup> The Manassas National Battlefield commemorates the site of two of the Civil War's most important battles. Fought in July of 1861, the First Battle of Manassas was the first major battle of the war, resulting in more than 4,800 casualties and sending a sobering realization throughout the nation that this war would not be quickly or easily won. The two armies met again on the same ground in August, 1862 – 150 years ago this month – to fight again. One of the largest battles of the war, Second Manassas resulted in more than 18,000 casualties and gave the Confederates the confidence to set their sights on an invasion of the North.

several aspects of the Draft PA that warrant additional consideration, and we have offered several recommendations that should be explored with the entire group.

Overall, while the Draft PA is a positive step towards resolving some of the many problematic issues related to the TCP, it is nonetheless inadequate to protect the Manassas National Battlefield Park, one of the Commonwealth's most sacred Civil War landscapes. As explained in further detail below, the Draft PA fails to include consideration of an alternative package of transportation measures described in our December 6, 2010 Section 106 comment letter, which could potentially accomplish the stated needs of the project while minimizing impacts to the Battlefield and the Historic District. We believe this "low build" alternative represents a potential feasible and prudent alternative that could avoid and minimize the use of historic properties, under Section 4(f) of the Department of Transportation Act. 23 U.S.C. § 138, 49 U.S.C. § 303(c).

Another significant problem with the Draft PA is the attempt to segment consideration of the TCP and the proposed Manassas Battlefield Bypass, when a significant portion of the two projects are co-located, and the Battlefield Bypass is a crucial component of the long-term commitments to minimize and mitigate harm to the Battlefield.

Further, the proposed measures to minimize and mitigate harm in the Draft PA are not commensurate with the magnitude of the adverse effects to the Manassas Battlefield and the Historic District<sup>2</sup> and certainly do not represent "all possible planning to minimize harm," as required by Section 4(f) of the Department of Transportation Act. For example, as discussed in more detail below, the Draft PA does not include sufficient commitments to ensure the closures of Route 234 and Route 29 through the Manassas Battlefield. Nor does the Draft PA include any *specific* commitment to reduce the right-of-way to a width of less than 200 feet within the Battlefield and the Historic District, which is grossly excessive. The vague proffer in Stipulation I.B. to attempt to minimize the width at a later date—"provided the typical section still meets the TCP's purpose and need"—is inadequate. And the \$3 million proffered in Stipulation II.12.a., to protect the historic setting of the Battlefield and the Historic District, is a gesture that we appreciate and support, but the amount of funding allocated will be severely inadequate to accomplish its goal.

These and other deficiencies in the Draft PA must be addressed. Notably, this month marks the 150-year anniversary of the Second Battle of Manassas. In another 150 years, we hope that Americans can look back upon the debates over the proposed TCP and Manassas Battlefield Bypass with thanks for all involved for protecting the important and irreplaceable historic, cultural and scenic values provided by the Manassas National Battlefield and adjacent Historic District. With the application of the proper consultation, mitigation, and transportation strategies recommended in our comments below and in the enclosed "markup" of the Draft PA (Enclosure 1), we can have greater assurance that the Battlefield and the Historic District can be effectively preserved, and commuter traffic can be removed from the Battlefield, all while traffic flow in the region is improved.

## **I. The Draft PA Fails to Properly Consider a Low-Build Alternative.**

As members of this coalition have maintained since our comments on the Draft EISs for the TCP and Battlefield Bypass in 2005, VDOT and FHWA have failed to consider alternatives to the TCP that

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<sup>2</sup> With respect to direct, physical destruction of historic properties, during the November 2010 consultation meeting, the taking of land from within the Manassas Battlefield and the Historic District was estimated at 20 acres. Draft PA, Encl. 2, at p.15 (Minutes from Nov. 5, 2010 meeting, prepared by VDOT). However, our own analysis indicates that the total use of land from within the Battlefield and the Historic District may be much greater than 20 acres. See Enclosure 3.

could achieve the goals of the projects, while minimizing adverse impacts to the Manassas Battlefield and Historic District. As we set forth in our comments on the TCP DEIS and the Battlefield Bypass DEIS, neither of those documents adequately studied alternatives that would employ a mix of strategies to address the purposes of the projects. TCP DEIS Comments at 3-6; Battlefield Bypass DEIS Comments at 4-7. Building on those concerns, we described the specific components of a “low-build” alternative to the TCP in the December 6, 2010 joint comment letter we sent following up on the November 2010 meeting of the Section 106 Consulting Parties.

FHWA and VDOT should, in coordination with the Consulting Parties, study this low-impact, multi-modal avoidance alternative prior to completing the Final EIS for the TCP. The results of the study should be independently reviewed by national transportation planners, engineers and modelers. If the results show that this alternative is feasible and prudent (i.e., addresses connectivity, traffic congestion, and safety while avoiding and minimizing harm to historic resources), then the low-impact, avoidance alternative should be advanced, and the Section 106 process and the focus of the PA should be shifted to the new alternative. In our view, this process is necessary to ensure compliance with Section 4(f) and NEPA, and to achieve the goal of protecting the Manassas Battlefield while improving traffic connectivity in the region. We have proposed a clause in Enclosure 1 that captures this recommendation.

Further, in light of the interconnected nature of the TCP and the Battlefield Bypass (discussed in more detail below), it may be prudent to evaluate instead a broader “low build” alternative that could satisfy the purposes of both projects. This alternative would combine the list of improvements proposed in our December 2010 letter as the “low build” alternative for the TCP along with the various “low build” improvements we have proposed for the Battlefield Bypass (co-location of Route 29 onto Interstate 66; upgrading the existing east-west road at the southern boundary of the Battlefield between the Park Headquarters and Groveton Road; and completing parallel roads along the Route 50 corridor). This comprehensive approach could minimize damage to the Battlefield and Historic District, provide alternatives for the traffic that uses Route 29 and Route 234 through the Battlefield, allow for local traffic movement and accessibility, and address the pressing transportation needs in this area. Indeed, as a result of the economic downturn beginning in 2008, many of the assumptions about traffic growth that were made in the Draft EISs for the two projects are demonstrably over-inflated. An updated study of both projects is further needed because of these changed circumstances.

## **II. The TCP and Battlefield Bypass Evaluations Are Improperly Segmented, and Fail to Consider Cumulative Impacts.**

As the process for the study and construction of the Tri-County Parkway continues, efforts are also being made to advance the Manassas Battlefield Bypass – a road proposal that is literally interconnected with the TCP. The Battlefield Bypass proposal emerged as a result of the Manassas National Battlefield Park Amendments of 1988, which sought to find a way to remove traffic from the Battlefield in order to improve the visitor experience. See Battlefield Bypass DEIS at S-1. As currently proposed, the Battlefield Bypass is planned to run east-west above the northern boundary of the Manassas Battlefield before co-locating with the segment of the TCP between Route 29/Pageland Lane and Route 234 at Catharpin. A Draft EIS for the Battlefield Bypass was published in 2005.

The co-location of the TCP and the Battlefield Bypass along the western boundary of the Manassas Battlefield requires that the cumulative impacts to the Battlefield resulting from the two highway projects be considered together. The Section 106 regulations explicitly require consideration of “cumulative” impacts, 36 C.F.R. § 800.5(a)(1), as does the National Environmental Policy Act, 40 C.F.R. § 1508.7. Unfortunately, the cumulative impacts of these two projects on the Manassas Battlefield, the

Historic District, and the particular resources therein were given scant discussion in the Draft EISs for both projects, and there has been little consideration of the additional impacts the Battlefield Bypass would have on these resources during this Section 106 process for the TCP. As a result, there is inadequate information to properly assess the overall impacts of these projects on the Manassas Battlefield and the Historic District. In order for the competing goals and designs for destructive new highway(s) along the edges of the Manassas Battlefield to be properly assessed, a study that considers the impacts and purposes of both the TCP and the Battlefield Bypass needs to be conducted. To do otherwise would ignore the reality of the combined impact of the TCP and Battlefield Bypass on one of our nation's most hallowed areas.

### **III. The Draft PA's Assurances of Road Transfers, Closures and Traffic Calming Measures are Inadequate.**

The need to relieve traffic pressure on the portions of Route 29 and Route 234 that transect the Manassas Battlefield has long been recognized. VDOT studied the possibility of relocating these roads in the 1970s, and the study reflected in the Battlefield Bypass DEIS was mandated by Congress in 1988. The Draft PA appears to attempt to advance that goal, but the process proposed in the Draft PA for closing Route 234 to commuter traffic is inadequate, and there are no clauses in the Draft PA that relate to the closure of Route 29.

#### A. Closure of VA Route 234 Through the Manassas Battlefield

Regarding the closure of Route 234, the Draft PA would simply require VDOT, upon the execution of the PA, to recommend to the Commonwealth Transportation Board (CTB) that Route 234 be abandoned or discontinued through the Battlefield, and that management or ownership of the right-of-way be turned over to the National Park Service (NPS). However, if the CTB were to vote against abandonment despite the recommendation from VDOT, Route 234 could remain in the possession of the state and open to traffic indefinitely, despite the construction of the TCP. We are also concerned that a new administration in Richmond might change the composition (and votes) of the CTB, which could result in a future reversal of the decision. Further, even if the CTB were to ultimately accept the recommendation, the Draft PA states that closure of Route 234 and transfer of ownership to the NPS would not occur until the TCP is opened. This provides inadequate assurance that the transfer and closure of Route 234 to commuter traffic—which is critical to enhancing the experience of visitors to the Battlefield and improving historic preservation efforts—will be accomplished.

We strongly recommend an approach in which the PA stipulates that the CTB abandonment process and the transfer of the segment of Route 234 to the NPS be complete before commencing construction of the TCP. Specifically, upon the execution of the PA, the Commissioner of Highways should commence the process of abandonment. Upon completion of the abandonment process, the Commissioner of Highways should then convey ownership of the relevant section of Route 234 to the NPS in an executed agreement in which the NPS agrees to keep the relevant section of Route 234 open and operational until the construction of the TCP is complete and opened to traffic. The agreement should also provide that, upon completion and opening of the TCP, the NPS will restrict commuter traffic on the relevant section of Route 234.<sup>3</sup> This approach would better ensure that the transfer to the NPS and ultimate closure of Route 234 through the Battlefield—an integral component of the mitigation for the

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<sup>3</sup> A provision of the NPS/VDOT agreement could also stipulate that ownership of the right-of-way for the transferred portion of Route 234 should revert to VDOT if the TCP is not open to traffic by some future date, such as January 1, 2022.

TCP's impacts on the Battlefield—would actually occur if the TCP is constructed. We have proposed changes to the relevant clause of the Draft PA in Enclosure 1 that flesh out this recommendation.

#### B. Closure of US Route 29 Through the Manassas Battlefield

Similarly, because of the importance of closing Route 29 through the Manassas Battlefield to the mitigation efforts for the TCP and the interrelated Battlefield Bypass, the PA for the TCP should commit FHWA, the NPS, and VDOT to initiating and completing the process for transferring to the NPS the portion of Route 29 that bisects the Battlefield prior to construction of the TCP. Again, the NPS could commit to keeping Route 29 open to through traffic until the Bypass is completed.

#### C. Traffic Calming Measures on Route 29

The Draft PA explicitly acknowledges that construction of the TCP will result in additional traffic through the Manassas Battlefield. (Stipulation II.7.) We agree that traffic calming measures along Route 29 are necessary to reduce the adverse effects of this additional traffic through the Manassas Battlefield brought on by TCP construction. However, because this increase in traffic through the Manassas Battlefield on Route 29 would have detrimental effects on visitors, and on the historical and cultural resources in the Battlefield, specific traffic calming measures that will be used should be identified in advance in a traffic calming plan and be adopted via a separate agreement between the NPS and VDOT prior to the completion of the Final EIS and ROD for the TCP, as set forth in a clause in our Enclosure 1. All Consulting Parties should have an opportunity to comment on the traffic calming plan prior to its adoption. Construction of the traffic calming measures should be completed no later than six (6) months prior to the commencement of construction for the TCP.

#### D. Completion of Studies, Permitting, Engineering and Funding for the Battlefield Bypass

Stipulation II.10 in the Draft PA – *Preliminary Engineering and Design for MNBP Bypass* – proposes a relatively minor funding commitment to advance the planning of the Battlefield Bypass. This funding is apparently being proposed as an indirect method of mitigating the impacts the TCP would have on the Battlefield and Historic District, and it appears to be based on the view, legitimate or not, that construction of both the TCP *and* the Battlefield Bypass is necessary to achieve the goal of closing both Route 234 and Route 29 through the Battlefield to commuter traffic. However, based on agency comments submitted on the DEIS for the Battlefield Bypass, there could be serious objections from other agencies such as the Corps of Engineers which may make it much more difficult to get approval for that proposal.

To ensure that the clauses in the Draft PA regarding the Battlefield Bypass and its advancement do not become false incentives, VDOT, FHWA, and the NPS should ensure, prior to the construction of the TCP, that there is a viable route for the Battlefield Bypass and that it has received all relevant federal permits, including necessary permits for impacts to wetlands and streams. These permits should be granted, and the Battlefield Bypass Final EIS and Record of Decision should be complete, prior to construction of the TCP.

Additionally, the Draft EIS for the Battlefield Bypass was completed by FHWA, in conjunction with the NPS, in 2005. As the agency responsible for the study and design of the Battlefield Bypass to this point, FHWA should remain the lead agency responsible for the procurement and administration of a contract for preliminary engineering and design of the Battlefield Bypass, with cooperative coordination from VDOT and the NPS. FHWA should commit to funding at least fifty (50) percent of the cost of construction of the Battlefield Bypass, and VDOT should commit to funding at least twenty-five (25)

percent of the cost of construction of the Battlefield Bypass over and above the cost of constructing the portion of the Battlefield Bypass proposed to be co-located with the TCP. Enclosure 1 includes language that effectuates these recommendations.

#### **IV. The Draft PA's Proposed Design Specifications for the TCP are Inadequate.**

##### **A. Limiting Road Width to Four Lanes, and Committing to Reduction of the Right-of-Way**

As you know, Section 4(f) of the Department of Transportation Act requires that FHWA and VDOT incorporate into this project “all possible planning to minimize harm” to historic properties. In our view, FHWA and VDOT have not satisfied this requirement. Among other things, they have not made adequate commitments to reducing the width of the right-of-way, which is estimated to be 200 feet wide.

First of all, questions need to be answered about the total number of acres from within the Battlefield and the Historic District that would actually be “used” by the project. Although VDOT has suggested that the total use would be 20 acres or less, our own GIS analysis suggests that the actual acreage used from within the historic areas would be 35 acres. As shown in Enclosure 3, existing Pageland Lane occupies roughly 8.5 acres of the Historic District. A reasonable road design of 116 feet (discussed in more detail below) would use a total of 20.4 acres, or about 12 acres more than existing Pageland Lane. Comparatively, the current proposal for a road design of 200 feet would use an *additional* 14.6 acres from the Battlefield and Historic District – or an overall total of 35 acres – to achieve the same level of service as the road design of 116 feet. This level of destruction is excessive and unnecessary.

To minimize the impacts of the TCP on the Manassas Battlefield and the Historic District, it is essential that the TCP be limited to a maximum of four lanes. This commitment should be included in the PA. Specifically, this section of the road should be designed to parkway standards, reducing the cross section to 116 feet using four 11-foot travel lanes, two three-foot inside shoulders, two 8-foot exterior shoulders, a 20-foot median, a 10-foot ditch on each side, and a 10-foot multiuse trail on one side. The road should have mountable curbs to allow for an additional area for safely removing a vehicle from the through lanes. Further, in order to meet the objective stated in the DEIS of enhancing the experience of visitors to the Battlefield and to improve historic preservation efforts, FHWA and VDOT should incorporate context sensitive solutions into the roadway design to the maximum extent possible. These commitments should be specifically incorporated into the PA, including a diagram of the cross-section for the portion of the project that runs through the Historic District and the Battlefield.

##### **B. Stronger Commitments to the Mitigation of Potential Visual and Noise Effects**

To limit harm to the quality of the visitors' experience at Manassas Battlefield, stronger and more specific commitments should be made in the PA to ensure that potential visual and noise effects of the road are minimized. At a minimum, in addition to the other visual and noise mitigation measures developed pursuant to the pertinent stipulations in the Draft PA, a commitment to using noise-reducing pavement should be made expressly in the PA.

In order to comply with the requirements of Section 4(f), VDOT and FHWA must design the southern section of the TCP to avoid and minimize the use of land from the Battlefield and the Historic District for right-of-way. Building on a clause in the Draft PA, along the relevant section of the TCP, VDOT should be responsible for designing and installing enhancements to the Battlefield and the Historic District for the purpose of minimizing the visual effects of the TCP within the Battlefield, but it should be clear that VDOT shall not acquire this land for right-of-way. VDOT should develop these enhancements in consultation with the NPS in order to achieve mitigation measures in the best interest of the visitors'

experience at the Battlefield. VDOT and FHWA should fund the full cost of designing and installing these enhancements. Please refer to Enclosure 1 for language that incorporates these changes.

#### C. Limitations on Truck Traffic

As stated in our prior Section 106 joint comments, tractor-trailer trucks on the TCP will have negative noise, visual, air quality, and vibration impacts on the Manassas Battlefield and its visitors. Further, neither the TCP DEIS nor the Battlefield Bypass DEIS adequately considered the likelihood of induced truck traffic or the increased visual and noise impacts of induced truck traffic on the Manassas Battlefield. As indicated in our attached markup of the Draft PA, a detailed study of truck traffic is needed, including recommendations for potential measures to discourage truck traffic on the TCP and otherwise minimize the adverse effects of trucks on the Manassas Battlefield and the Historic District.

#### D. Access to Brawner Farm and Stuart's Hill Center

In addition to the significant acreage from the Manassas Battlefield and the Historic District that would be taken for the construction of the TCP, additional lands would be impacted by the necessary replacement of access roads to both the Brawner Farm and to Stuart's Hill Center. These new roads would be constructed through areas of land with tremendous importance to the First and Second Battles of Manassas, and therefore the utmost care and concern should be taken for their plan and placement. Because of the high potential for impacts of these new roads on the historic and archaeological resources of the Battlefield, FHWA, the NPS, and VDOT should complete archeological studies, assess the impacts, and select the alignment for any new access roads before completion of the FEIS and ROD. If archeological studies show that adverse effects to the Battlefield cannot be avoided, FHWA, the NPS, and VDOT should develop an additional treatment plan, in consultation with all Consulting Parties.

#### E. Closure of Pageland Lane

To ensure the proper transfer of Pageland Lane to the NPS in keeping with the overall goals of the TCP and Battlefield Bypass projects, an affirmative vote of the CTB on the abandonment or discontinuance of the relevant section of Pageland Land should be obtained prior to the construction of the TCP. We have added language to this effect to the relevant clause of the Draft PA in Enclosure 1.

### **V. The Preservation Fund is Inadequate to Protect the Historic Setting of the Manassas Battlefield and the Historic District.**

We are concerned that the amount of funding proposed for land preservation within the Draft PA is insufficient to accomplish the stated objectives, and that several factors could further decrease the acreage this funding could be expected to protect in the eligible area. We also seek clarity on the objectives for preservation as it pertains to limiting access, because this could greatly alter the cost for the proposed preservation effort.

As set forth in the analysis and map attached hereto as Enclosure 2, we have researched comparable parcels in the area and have discovered four comparables that give some indication of the value of the land within the eligible area. We have also taken into account the most recent assessed values for the eighteen eligible properties, totaling some 696 acres. However, assessed values are not a reflection of actual values when viewed against recent sales prices, so the comparables provide a better indication of the true cost of purchasing the needed protection in this area. Also, the objectives for preservation may drive up the cost of an easement beyond that typically associated with securing scenic or open-space easements. The restrictions that would be necessary to adequately protect the character and

setting of the Battlefield and the Historic District could devalue the property substantially. The restrictive nature of the easement may also limit the number of willing participants or require fee-simple purchase as the most practical tool available to the land conservation group charged with administering the fund. In addition, owners may see this as an opportunity to demand higher prices for either an easement or fee simple purchase. In short, the objectives for preservation will greatly impact the ability to use easements, the overall cost for preservation, and willingness of the landowners to negotiate a preservation outcome.

Using comparables and assessed values, the total estimated value for the 696 acres of eligible properties is \$13,933,967.10. Small lots with improvements and recent speculative purchases of larger properties in the corridor are largely responsible for this figure. Speculative purchases will likely further inflate the total cost/value moving forward.

In conclusion, it is likely that a combination of preservation for both small and large lots needs to occur in order to adequately protect the character and setting of the Battlefield and the Historic District. It is also likely that speculation will further complicate this effort and will result in higher costs for securing easements (which could be greater than 50 percent the value of the property) and may, as a practical matter, require fee-simple purchase as the main vehicle for preservation of these lands. We believe the PA should address these issues by increasing the funding to a minimum of 50 percent of the total estimated value of the eligible lands. Thus, as indicated in our attached markup of the Draft PA, we recommend that an appropriate range of funding is \$7 million - \$14 million. In the event that preservation goals are hindered by unwilling land owners or can be met with less funding than the amount provided, there is no danger of excess funds being lost. The PA already provides language ensuring the return of unused funds, if any, to the agency. Providing sufficient funding upfront will demonstrate that the Signatories to this agreement are serious about protecting these resources and limiting access points to the TCP in order to maintain the integrity of the Battlefield and the Historic District.

## **VI. The Draft PA Should Not Restrict Opportunities for Participation in Follow-up Consultation Exclusively to Concurring Parties.**

Section 106 requires the agency to consult with all Consulting Parties to “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” 36 C.F.R. § 800.6(a). The PA establishes a process to develop ways to avoid, minimize or mitigate the adverse effects of the TCP, even though the details are left to be determined after the PA is signed. However, the Draft PA would restrict participation in that crucial post-PA consultation process exclusively to those parties who are willing to sign the PA as Concurring Parties. As a matter of national policy, we disagree with the proposal to offer these kinds of special, exclusive privileges as a way to pressure Consulting Parties to endorse a Section 106 agreement.

Because of our concerns about the TCP’s adverse impacts on the Battlefield and the Historic District, many of our groups may not feel comfortable endorsing the final PA as Concurring Parties. However, as groups with experience in the Section 106 review process for other road proposals, and with a keen interest in protecting the character of the setting and the Battlefield landscape at Manassas, we have valuable insight into efforts to avoid, minimize and mitigate the TCP’s impacts on the Battlefield and Historic District. To restrict much of the subsequent planning for the avoidance, minimization and mitigation of adverse effects of the TCP exclusively to “Signatories and Concurring Parties” would restrict our ability to serve this important role. Therefore, in multiple sections throughout our attached markup of the Draft PA, we have changed “Concurring Parties” to “Consulting Parties.” Those sections include:



- I.B – Typical Section
- I.C.1 – Consultation on Further Design
- II.1 – Streetscape Design for the TCP (section II.2 in Enclosure 1)
- II.2 – Minimization of Potential Noise Effects (section II.3 in Enclosure 1)
- II.3 - Minimization of Potential Visual Effects on MNBP (section II.4 in Enclosure 1)
- II.4 – Access to Brawner Farm (section II.6 in Enclosure 1)
- II.5 – Access to Stuart’s Hill Center (section II.7 in Enclosure 1)
- II.7 – Traffic Calming on US 29 (section II.9 in Enclosure 1)
- II.8 – Mitigation of Potential Visual Effects on Putnam-Patton House/Deseret (section II.10 in Enclosure 1)
- III – Identification and Treatment of Archaeological Historic Properties
- IV.C – Post Review Discoveries
- V.C – Treatment of Human Remains<sup>4</sup>
- VII.B-C – Preparation and Review of Plans and Documents
- X – Assignment of Responsibilities
- XI – Monitoring and Reporting
- XII – Dispute Resolution
- XVI – Execution

**VII. The Draft PA Fails to Adequately Provide for the Identification and Treatment of Archaeological Historic Properties.**

Because of the national historic importance of the Manassas Battlefield, the treatment of archaeological historic properties in this PA should be strengthened. Plans for the TCP and the new access roads to Brawner Farm and the Stuart’s Hill Center should be subject to special scrutiny and review to determine potential impacts to archaeological resources. If newly discovered archaeological resources are identified, we believe they are likely to have significance above and beyond merely their potential research value under Criterion (d) of the National Register of Historic Places. If a newly identified historic property will be adversely affected by the TCP or the access roads, then FHWA and VDOT, in consultation with the other Consulting Parties, should do everything possible to avoid the property, rather than merely adopt routine treatment in the form of “data recovery.” VDOT should provide the SHPO and the NPS the opportunity to review and determine whether avoidance should be required.

**VIII. The PA Should Provide Ample Opportunities for Public Input.**

The Manassas Battlefield is a part of the National Park System, and belongs to every American. That fact, combined with the great importance of the First and Second Battles of Manassas to American history, necessitates a high level of responsiveness to public concerns. Therefore, we strongly recommend that the PA include a provision for members of the public to raise objections and concerns about the implementation of the PA stipulations, and provide an administrative mechanism for the

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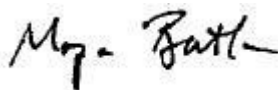
<sup>4</sup> This stipulation includes a prohibition on releasing photos, which we assume the agencies would want to be applicable to all Consulting Parties in any event.

transportation agencies to attempt to resolve any such objections. The Signatories and Consulting Parties should be notified and have the opportunity to review and comment on the proposed resolution of the objection.

**IX. Conclusion.**

For the foregoing reasons, the Draft PA should be amended to reflect: (1) adequate consideration of the Battlefield Bypass along with the TCP, and adequate consideration of a Low-Build Alternative; (2) binding commitments to road transfers, closures, and traffic calming measures within the Manassas Battlefield; (3) binding commitments to substantially reduce the width of the right-of-way for the TCP; (4) substantially increased funding that is adequate to protect the historic setting of the Battlefield and the Historic District; and (5) the opportunity for all Consulting Parties to be involved in follow-up meetings about design review and the development of specific mitigation measures. Thank you for giving us the opportunity to comment on the Draft PA. We reiterate our request for a meeting of all Section 106 Consulting Parties to discuss the Draft PA prior to the development of a final agreement, and we look forward to further coordination and consultation on all of the above-referenced topics.

Sincerely,



Morgan Butler, Senior Attorney  
Southern Environmental Law Center



Christopher G. Miller, President  
Piedmont Environmental Council



Stewart Schwartz, Executive Director  
Coalition for Smarter Growth



Elizabeth S. Merritt, Deputy General Counsel  
National Trust for Historic Preservation



Joy M. Oakes, Senior Regional Director  
National Parks Conservation Association

Enclosures:

1. Draft Programmatic Agreement with Track-Changes and Comments
2. Analysis of real estate values of parcels eligible for protective acquisition (including map)
3. GIS Analysis of total amount of land within Manassas Battlefield and Historic District that would be “used” for the TCP project

cc: Ed Clark, Superintendent, Manassas National Battlefield Park  
Tammy Stidham, National Park Service  
Steve Whitesell, National Park Service  
Mary Ann Naber, Federal Preservation Officer, FHWA  
Jack Van Dop, Eastern Federal Lands Division, FHWA  
Edward Sundra, FHWA  
Carol Legard, Advisory Council on Historic Preservation  
Najah Duvall-Gabriel, Advisory Council on Historic Preservation  
Charlene Vaughn, Advisory Council on Historic Preservation  
Reid Nelson, Advisory Council on Historic Preservation  
Antony Opperman, VDOT  
Nicholas Nies, VDOT  
Kathleen Kilpatrick, Virginia SHPO  
Marc Holma, Va. Dep’t of Historic Resources  
James Lighthizer, President, Civil War Trust

# Enclosure 1

**DRAFT July 10, 2012**  
**PROGRAMMATIC AGREEMENT AMONG**  
**THE FEDERAL HIGHWAY ADMINISTRATION,**  
**THE VIRGINIA STATE HISTORIC PRESERVATION OFFICER,**  
**THE VIRGINIA DEPARTMENT OF TRANSPORTATION, AND**  
**MANASSAS NATIONAL BATTLEFIELD PARK**  
**REGARDING THE TRI-COUNTY PARKWAY,**  
**PRINCE WILLIAM AND LOUDON COUNTIES, VIRGINIA**  
**VDOT Project No.- R000-96A-102, P101 (UPC 52405); DHR File No. 2003-0042**

**WHEREAS,** the Virginia Department of Transportation (VDOT) proposes to construct a highway, the Tri-County Parkway (TCP), on new location from the intersection of Interstate 66 and Route 234 in Prince William County and extending north to Route 50 in Loudoun County -(hereinafter referred to as the Undertaking) (VDOT Project No.- R000-96A-102, P101, UPC 52405; DHR File No. 2003-0042) (Attachment 1); and

**WHEREAS, the VDOT in conjunction with Loudoun County proposes additional connections north to Route 7 using Northstar Boulevard and Belmont Ridge Road; and**

**WHEREAS, the VDOT is also studying a Corridor of Statewide Significance from I-95 to Route 7 which could utilize the corridor proposed for the Tri-County Parkway (TCP); and**

**WHEREAS,** the VDOT anticipates receiving federal financial assistance for the TCP from the Federal Highway Administration (FHWA); and

**WHEREAS,** the FHWA has determined that the provision of financial assistance for the TCP is an undertaking as defined in 36 CFR Part 800.16(y); and

**WHEREAS,** pursuant to Section 10 of the Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. 401 and 403) and Section 404 of the Clean Water Act of 1973 (33 U.S.C. 1344), a Department of the Army permit will likely be required from the Corps of Engineers (Corps), and the Corps has designated the FHWA as the lead federal agency to fulfill federal responsibilities under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f); and

**WHEREAS,-** the FHWA and the VDOT studied a No-build Alternative and three Candidate Build Alternatives for the location of the TCP in a Draft Environmental Impact Statement -approved by the FHWA March 16, 2005, and the Commonwealth Transportation Board (CTB) approved the location of the TCP on Candidate Build Alternative West Two by resolution dated November 17, 2005; and

**WHEREAS,** the FHWA and the National Park Service (NPS) studied a No-build Alternative and Candidate Build Alternatives for the location of the Manassas National Battlefield Park Bypass (MNBP Bypass) in a Draft Environmental Impact Statement approved by the FHWA January 28, 2005, the CTB approved the location of the MNBP Bypass on Candidate Build Alternative D by resolution dated June 15, 2006, and the NPS subsequently developed Modified Candidate Build Alternative D; and

**WHEREAS,** the corridors for the TCP and the MNBP Bypass approved by the CTB overlap in the vicinity of Manassas National Battlefield Park (MNBP) and Manassas Battlefield Historic District (MBHD), from I-66 at US 29 and Pageland Lane to the intersection with Route 234 at Catharpin; and

WHEREAS, until the studies and permitting process are completed for the remainder of the Manassas National Battlefield Bypass, it cannot be known that construction of the MNBP will be granted necessary permits or is prudent and feasible under Section 4(f) of the Department of Transportation Act.

**WHEREAS**, the FHWA has authorized the VDOT to conduct consultation with the Virginia State Historic Preservation Officer (SHPO) for the Undertaking on its behalf pursuant to Section 106 of the NHPA (16 U.S.C. 470), including the initiation of the Section 106 process, identification of historic properties, and assessment of adverse effects; and

**WHEREAS**, the VDOT, in consultation with the SHPO, has defined the Area of Potential Effects (APE) for Candidate Build Alternative West Two (Attachment 2) for the TCP in accordance with 36 CFR 800.4(a)(1). -The APE for direct effects is a 600-foot-wide corridor that includes the proposed highway right of way and any related temporary or permanent easements where direct impacts from construction of the proposed highway may occur. -The APE for indirect effects (visual, auditory) is a 1000-foot-wide corridor plus any above-ground resources adjacent to or visible from the corridor. Secondary effects may occur in proposed intersection areas and on other rural land areas near the corridor, where there is the potential for changes in land use induced by the Undertaking; and

WHEREAS, the VDOT has determined that the TCP will take a total of twenty (20) acres of land from within the MNBP and MBHD; and

WHEREAS, the 2006 National Register form for the MBHD boundary increase states: "The battlefield retains integrity of location, setting, feeling, and association with the historic events that occurred on the property during the Civil War. With reference to the man-made resources, such as the dwellings, military embattlements, and the Unfinished Railroad, Manassas Battlefield has integrity of design, workmanship, and material."; and

WHEREAS, at its broadest conception, the project will convert a portion of relatively intact rural landscape comprising the historic setting of the battlefield properties into a highway, while also introducing into this setting an increase in traffic-generated noise and visual elements that will alter and potentially obscure significant battlefield viewsheds. These direct and indirect effects will result in a diminishment of the integrity of setting, feeling, and association of MNBP and MBHD; and

**WHEREAS**, the VDOT, in consultation with the SHPO, has completed studies to identify any buildings, structures, non-archaeological districts, and objects meeting the criteria for listing on the National Register of Historic Places (NRHP) within the Undertaking's APE (Attachment 3), and has coordinated its findings with the SHPO and other Consulting Parties (Attachment 4); and

**WHEREAS**, the VDOT, in consultation with the SHPO, has initiated the studies necessary to identify within the TCP's APE any archaeological sites or districts meeting the criteria for listing on the NRHP (Attachment 3), and coordinated its findings with the SHPO and other Consulting Parties (Attachment 4); and

**WHEREAS**, the VDOT, in consultation with the SHPO, has determined that the Undertaking will have an adverse effect on historic properties. -Properties potentially affected include (i) the Manassas National Battlefield Park (MNBP) (DHR Inventory No. 076-0271, listed on the NRHP October 1966) and a contributing element, the unfinished Independent Line of the Manassas Gap Railroad

(“Unfinished Railroad”) (44PW0580/44PW0299); (ii) Manassas Battlefield Historic District (MBHD) (076-0271, amended NRHP nomination and boundary expansion January 2006 ) and the contributing elements Pageland I (076-0138), Pageland II (076-0137), the Dunklin Monument (44PW0579), and the “Unfinished Railroad”; and (iii) the Putnam-Patton House/Deseret (076-0179) (see Attachment 5); and

WHEREAS, Pageland I and Pageland II are largely undeveloped properties that preserve a sense of what the landscape would have looked like during the two significant Civil War battles at Manassas; and

WHEREAS, construction of the TCP will result in an increase in through traffic on Route 29 within the MNBP; and

WHEREAS, land development in areas served by the TCP may also be induced by the new highway. Changes particularly might be accelerated at intersection areas, most notably the intersections of the TCP with Sudley Road (Route 234) and Route 29, where a high proportion of agricultural and forested lands exist. The latter intersection would be located just outside the western boundary of MNBP and within the MBHD; and

WHEREAS, the FHWA, with the assistance of VDOT, has consulted with the SHPO to resolve the potential adverse effects of the TCP on historic properties in accordance with Section 106 of the NHPA (16 U.S.C. 470f), and its implementing regulations, 36 CFR Part 800; and

WHEREAS, the Undertaking requires lands from the MNBP and the MBHD, and FHWA’s use of land from the two historic properties is contingent on compliance with Section 4(f) of the Department of Transportation Act, 23 U.S.C. 138 and 49 U.S.C. 303 (Section 4(f)); and

WHEREAS, the FHWA’s acquisition of an easement over federal land within the MNPB will be addressed via a separate legal instrument, in accordance with [insert citation for applicable law or regulation]; and

WHEREAS, pursuant to 36 CFR 800.6(a)(1), the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of the consultation to develop this Programmatic Agreement (Agreement) by letters dated October 11, 2007, and July X, 2012, and the ACHP has chosen/chosen not to participate in consultation as stated in their letters of November 20, 2007, and Month X, 2012, to FHWA; and

WHEREAS, the VDOT has participated in the Section 106 consultation for the Undertaking pursuant to 36 CFR Part 800.2(c)(4), and the FHWA has invited the VDOT to join the FHWA and the SHPO as a Signatory to this Agreement pursuant to 36 CFR Part 800.6(c)(2)(iii); and

WHEREAS, the NPS, the federal Agency with jurisdiction over the MNBP, has participated in the Section 106 consultation for the Undertaking pursuant to 36 CFR Part 800.2(c)(5), and the FHWA has invited the NPS to join the FHWA, the SHPO, and the VDOT as a Signatory to this Agreement pursuant to 36 CFR Part 800.6(c)(2)(iii); and

WHEREAS, Loudoun and Prince William counties have participated in the Section 106 -process for the Undertaking as a Consulting Party pursuant to 36 CFR Part 800.2(c)(3), and the FHWA has

invited each county to concur in this Agreement pursuant to 36 CFR Part 800.6(c)(3); and

**WHEREAS**, the FHWA has provided the Eastern Shawnee Tribe of Oklahoma the opportunity to participate in the Section 106 process for the Undertaking as a Consulting Party pursuant to 36 CFR Part 800.2(c)(2)(ii), and the FHWA has invited the tribe to concur in this Agreement pursuant to 36 CFR Part 800.6(c)(3); and

**WHEREAS**, the FHWA has recognized the American Battlefield Protection Program, the Bull Run Civil War Roundtable, the Civil War Trust, the Coalition for Smarter Growth, the Friends of Manassas National Battlefield Park; the National Trust for Historic Preservation; the Piedmont Environmental Council, the Southern Environmental Law Center, the Sudley Springs Catharpin Civic Association, the Washington Airports Task Force, the National Parks Conservation Association, and property owners John Bradshaw, Keith Webster, Patricia Ferguson, Mary Ann Ghadan, and Shawn Moler as Consulting Parties to the Section 106 process for the Undertaking pursuant to 36 CFR Part 800.2(c)(5), and has invited each of these parties to concur in this Agreement pursuant to 36 CFR Part 800.6(c)(3); and

**WHEREAS**, the terms “Signatory” and “Consulting Party” are used herein as defined in 36 CFR 800.6(c)(1) and 36 CFR 800.2(c), respectively; and the term “Concurring Parties” shall be used herein to mean a Consulting Party who signs this Agreement in concurrence.

**NOW, THEREFORE**, the FHWA, [JACHPI](#), the SHPO, the VDOT, and the NPS agree that this Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties.



## STIPULATIONS

The FHWA, in coordination with VDOT, shall ensure that the following stipulations are carried out:

### I. General Design Parameters of the TCP within Approved Corridor

A. The VDOT shall design the TCP in the vicinity of MNBP and MBHD so that the alignment of the TCP within the 600-foot corridor studied for Candidate Build Alternative West Two coincides with the corridor for Modified Candidate Build Alternative D for the MNBP Bypass (Attachment 6). -South of Route 29, the TCP alignment will run west of the Dunklin Monument and shall avoid direct impacts to this property. -As the TCP proceeds north from Route 29, the alignment will run west of Pageland Lane (Route 705) to a point north of the “Unfinished Railroad,” where the alignment will cross to the east of Pageland Lane onto MNBP property.

B. **Typical Section** – In order to minimize effects on the MNBP and MBHD, the VDOT shall, in consultation with the Signatories and ~~Concurring~~ Consulting Parties to this Agreement, minimize the width of the ~~typical section of the~~ TCP right of way in areas adjacent to MNBP and MBHD ~~provided the typical section still meets.~~ Specifically, the VDOT shall permanently limit the TCP through the TCP’s purpose MNBP and ~~need~~ MBHD to a maximum of four lanes and utilize parkway standards, reducing the cross section to 116 feet using four 11-foot travel lanes, two three-foot inside shoulders, two 8-foot exterior shoulders, a 20-foot median, a 10-foot ditch on each side, and a 10-foot multiuse trail on one side. The road shall have mountable curbs to allow for an additional area for safely removing a vehicle from the through lanes. A diagram of the cross-section through the historic areas is attached as Exhibit XX to this Agreement. The VDOT and FHWA shall also incorporate into the roadway design context sensitive solutions to the maximum extent possible in order to enhance the experience of visitors to the MNBP and to improve historic preservation efforts.

### C. Consultation on Further Design

1. The FHWA and VDOT shall develop the design of the TCP in consultation with the Signatories and ~~Concurring~~ Consulting Parties to this Agreement. - Pursuant to the terms of Stipulation VII.B of this Agreement, the VDOT shall provide the Signatories and ~~Concurring~~ Consulting Parties the opportunity to review and comment on the plans, in relation to the project’s effects on historic properties, at thirty percent (30%) development, sixty percent (60%) development, and at final design prior to the VDOT’s internal design approval. ~~The design of the TCP shall comply with Prince William County’s Comprehensive Plan and must meet applicable American Association of State Highway and Transportation Officials (AASHTO) and VDOT design standards. Within these parameters the~~ VDOT shall incorporate into the design context sensitive solutions that integrate the roadway into its surroundings so that it is compatible with the historic settings of the MNBP and MBHD to the ~~degree prudent and feasible~~ maximum extent possible.

**Comment [J1]:** We strongly object to these provisions, which are formulaic highway standards that are completely inappropriate for a road going through a National Battlefield and Historic District. See language below in Stipulation C.3.

2. The FHWA, VDOT and the NPS shall cooperate in developing and implementing a process for frequent consultation, review, and approval on the design of the portion of the TCP that passes through MNBP.- The FHWA and VDOT shall contact the NPS to initiate development of this process within six (6) months of execution of this Agreement.

~~3. After consideration of all comments received, the VDOT shall make final decisions as outlined under Stipulation I.C. on the design of the Undertaking.~~

3. After consideration of all comments received, the FHWA shall make final decisions, in consultation with NPS, on the design of the Undertaking. FHWA and VDOT shall include a requirement in the project's Request for Proposals, and in the design and construction contract, which directs the contractor to minimize the width of the road and the right-of-way through the Manassas Battlefield and Historic District. In attempting to minimize the width of the road, the contractor shall be directed to seek design waivers and exceptions from VDOT for lane width, length of turning lanes, median and shoulder width, size of gutter pan, signage, and other elements of the standard roadway design that may be required by VDOT, with the ultimate goal of narrowing the width of the road and the right-of-way through the Manassas Battlefield and Historic District. VDOT shall consider all design waivers and exceptions and shall work to accommodate such waivers and exceptions to the maximum extent possible, as provided for in VDOT Instructional and Informational Memorandum: Design Exceptions/Waivers, IIM-LD-227.5 and IIM-S&B-70.3, which recognizes the FHWA publication "Mitigation Strategies for Design Exceptions," as providing mitigation efforts that shall be followed when processing design exceptions. In the event that the waivers or exceptions are not granted, FHWA shall consider other alternatives, including but not limited to, dedicating a portion of the right of way for landscaping and buffering, and for pedestrian use, with the overall goal of minimizing the right-of-way width through the Battlefield and Historic District.

**Comment [J2]:** We strongly object to this language. FHWA is legally responsible under Section 4(f) to defend any decision as to whether the project includes all possible planning to minimize harm. Moreover, since the proposal is to bulldoze four acres of National Park land, FHWA should be the agency making the final decision, in consultation with NPS.

**Comment [J3]:** This provision is modeled after one developed very recently with SHPO for a Section 106 agreement applicable to a six-lane expressway through the Woodlawn Historic District near Mt. Vernon.

## II. Avoidance, Minimization, and Mitigation Measures

The FHWA shall take the following actions to address the adverse effects to historic properties associated with the TCP:

**1. Study a Low-Impact, Avoidance Alternative** – Prior to completion of the Final Environmental Impact Statement for the TCP, the VDOT shall, in coordination with the Consulting Parties, study a low-impact, avoidance alternative as proposed by the Consulting Parties in order to avoid the impacts to the MNBP and MBHD that are likely under the currently proposed highway corridor. The results of that study shall be independently reviewed by national transportation planners, engineers and modelers. If the results of the study show that the alternative addresses connectivity, traffic congestion and safety while avoiding and minimizing harm to historic resources, then the low-impact, avoidance alternative shall be advanced and this Agreement and all auxiliary agreements referred to herein shall be redrafted to reflect the new alternative.

**2. Streetscape Design for the TCP** – The VDOT shall ensure that the streetscape elements of the TCP (to include, but not limited to treatments for pavement, curb, gutter, medians, guardrail, lighting, and signage) are compatible with the historic settings of MNBP and MBHD.- The VDOT shall develop the streetscape design in consultation with the Signatories

and ~~ConcurringConsulting~~ Parties.- Pursuant to the terms of Stipulation VII.B of this Agreement, the VDOT shall provide the Signatories and ~~ConcurringConsulting~~ Parties the opportunity to review and comment on these enhancements in terms of their compatibility with adjacent historic properties.- After consideration of all comments received, the ~~VDOTFHWA~~ shall make final decisions on the design of the streetscape elements.-

**Comment [J4]:** We strongly object to this language. FHWA is legally responsible under Section 4(f) to defend any decision as to whether the project includes all possible planning to minimize harm. FHWA should be the agency making the final decision, in consultation with NPS.

**3. Minimization of Potential Noise Effects** – The VDOT shall incorporate features into the design of the TCP that will minimize potential auditory effects on MNBP and MBHD, ~~including, at a minimum, noise-reducing pavement.~~ The VDOT shall develop these features in consultation with the Signatories and ~~ConcurringConsulting~~ Parties.- Pursuant to the terms of Stipulation VII.B of this Agreement, the VDOT shall provide the Signatories and ~~ConcurringConsulting~~ Parties the opportunity to review and comment on these features. After consideration of all comments received, the VDOT shall determine what type of noise reduction features are appropriate to use with consideration of a proposed measure’s demonstrated effectiveness in reducing traffic noise levels, ability to meet structural and safety requirements, durability, and overall cost effectiveness. ~~The VDOT and FHWA shall fund the full cost of designing and installing the noise-reducing modifications.~~

**4. Minimization of Potential Visual Effects on MNBP** – The VDOT shall design the section of the TCP within or adjacent to MNBP and MBHD ~~to include sufficient right-of-way on the east side to accommodate enhancements so that it minimizes the use of MNBP and MBHD land for right-of-way. Along this section of the TCP, the FHWA and VDOT shall be responsible for designing and installing enhancements to MNBP and MBHD land~~ for the purpose of minimizing the visual effects of the TCP within the viewsheds from MNBP toward areas of MBHD west of Pageland Lane and toward Bull Run Mountain.- The VDOT ~~and the NPS~~ shall develop these enhancements in consultation with the Signatories and ~~ConcurringConsulting~~ Parties.- Pursuant to the terms of Stipulation VII.B of this Agreement, the VDOT, ~~FHWA, and the NPS~~ shall provide the Signatories and ~~ConcurringConsulting~~ Parties the opportunity to review and comment on these enhancements in terms of their compatibility with adjacent historic properties.- After consideration of all comments received, the ~~VDOTNPS and FHWA~~ shall make final decisions on the design of these enhancements. ~~The VDOT and FHWA shall fund the full cost of designing and installing the enhancements.~~

**5. Limitations on Truck Traffic.** ~~Prior to the initiation of construction of the TCP, the VDOT shall conduct a detailed study on the impacts of truck traffic on noise, air quality, vibration, and views within the MNBP. The VDOT shall also disclose, assess and recommend potential measures to discourage truck traffic on the TCP and otherwise minimize the adverse effects of trucks on the MNBP and the MBHD. The Signatories and Consulting Parties shall then have the opportunity to review and comment on the study and its accompanying recommendations.~~

**6. Access to Brawner Farm** – Construction of the TCP will require the VDOT to close the section of Pageland Lane (Route 705) between its intersection with Route 29 and the point north where the TCP will cross Pageland, subject to successful completion of the requirements for the abandonment or discontinuance of secondary roads as defined in Article 10 of Title 33.1 (33.1 -150 et seq.) of the *Code of Virginia*. -The closing of this road section will eliminate existing access to Brawner Farm (076-0168), a significant feature of MNBP, from Pageland Lane.

Prior to the ~~commencement of construction~~ completion of the EIS and ROD for the TCP, the VDOT shall ~~fund, design, and construct the NPS~~ complete archeological studies, assess impacts of a new access road to Brawner Farm from Route 29 to mitigate the effect of the closure of Pageland Lane. ~~The new access road will, and FHWA will design the new access road. The VDOT and FHWA shall also fund and construct this new road. The new access road is proposed to~~ run north from Route 29 along the east side of a hedge row just east of the Swart Cemetery, or follow another alignment mutually agreed upon by the VDOT and ~~MNBP.~~

NPS. If adverse effects cannot be avoided, the NPS, FHWA, and VDOT, in consultation with the Signatories and Consulting Parties to this Agreement, shall develop a treatment plan for the archaeological historic property.

**7. Access to Stuart's Hill Center** – Construction of the TCP on its alignment where it intersects Route 29 will require that the NPS's existing access road to the Stuart's Hill Center off of Pageland Lane (Route 705) to be closed. ~~- Prior to the commencement of construction~~ completion of the Final EIS and ROD for the TCP, the FHWA, VDOT, and NPS shall ~~fund, design, and construct the NPS~~ complete archeological studies, assess impacts of a new access road to Stuart's Hill Center from Route 29 on an alignment mutually agreed upon by the ~~VDOT and NPS.~~ FHWA, VDOT and NPS, and design the new access road. The FHWA and VDOT shall also fund and construct this new road. If adverse effects cannot be avoided, the NPS, FHWA, and VDOT, in consultation with the Signatories and Consulting Parties to this Agreement, shall develop a treatment plan for the archaeological historic property.

**8. Pageland Lane** – After construction of the new access roads to Brawner Farm and the Stuart's Hill Center, and prior to the construction of the TCP, VDOT shall initiate the process for abandonment or discontinuance of secondary roads as defined in Article 10 of Title 33.1 (33.1-150 et seq.) of the *Code of Virginia* for the section of Pageland Lane to be closed as a consequence of the TCP. ~~Closure~~ An affirmative vote of this section of Pageland Lane is contingent the CTB on the successful completion of either the abandonment or discontinuance process. ~~Unless precluded by of the requirements of Article 10 of Title 33.1 (33.1-150 et seq.) of relevant section of Pageland Lane is required prior to the~~ ~~Code~~ construction of ~~Virginia,~~ the TCP. VDOT shall remove the pavement and other modern structures from within the Pageland Lane right of way but shall leave the configuration of the cross-section and profile of the historic road bed intact. ~~The VDOT and the NPS shall then execute an agreement assigning the NPS responsibility for future maintenance of the abandoned or discontinued section of the public road.~~

**9. Traffic Calming on US 29** – ~~Within one (1) year of~~ Prior to the completion of the TCP Final Environmental Impact Statement and FHWA's issuance of a Record of Decision, in partnership with the NPS the VDOT shall formalize with a separate agreement agreed upon traffic calming measures for Route 29 within MNBP. The VDOT shall fund fifty (50) percent of the design and construction of traffic calming measures along US 29. ~~This partnership will be formalized with a separate agreement that will outline the process for working together.~~ Signatories and Consulting Parties shall have an opportunity to comment on the agreement prior to its adoption. Construction of the traffic calming measures shall be completed no later than six (6) months prior to the opening commencement of construction of

the TCP.- The purpose of these traffic calming measures is to minimize the effect of additional traffic through the MNBP brought on by construction of the TCP, reduce traffic speeds, and deter traffic while preserving the historic character of the MNBP. -Traffic calming shall follow the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (1996) ([http://www.nps.gov/history/history/online\\_books/hps/contents.htm](http://www.nps.gov/history/history/online_books/hps/contents.htm)), ([http://www.nps.gov/history/history/online\\_books/hps/contents.htm](http://www.nps.gov/history/history/online_books/hps/contents.htm)), or any revision or replacement to that document, and NPS park standards.- NPS, FHWA, and VDOT shall collaborate on how effectively to ensure that traffic calming is completed to NPS standards and is compatible with the historic character of the Battlefield.

**10. Mitigation of Potential Visual Effects on Putnam-Patton House/Deseret** – In order to avoid direct impacts on the historic property, the VDOT has shifted the corridor for Candidate Build Alternative West Two so that the alignment of the TCP will lie approximately 800 feet west of the Putnam-Patton House/Deseret (DHR Inventory No. 076-0179).

Once preliminary engineering of the highway is sufficiently advanced so that the typical section and elevation of the portion of the TCP in the vicinity of the Putnam-Patton House/Deseret is more clearly understood, the VDOT shall assess the visual effects of the TCP on the property in consultation with the SHPO, other signatory and ~~concurring parties~~ Consulting Parties to this Agreement, and the property owner in accordance with 36 CFR Part 800.5.

If it is determined that the TCP will have an adverse visual effect on the Putnam-Patton House/Deseret, the VDOT shall seek the permission of the owner of the historic property to design and install a landscape plan on the private property that would obscure the view of the highway.

If the owner of the historic property so agrees, the VDOT shall install a planting scheme approved by the SHPO and the property owner.- Pursuant to the terms of Stipulation VII.B of this Agreement, the VDOT shall provide the SHPO and the property owner the opportunity to review and approve the draft landscape plan. -The VDOT shall install the landscape plan prior to the completion of TCP construction, and shall maintain the plantings for an establishment period of one year after installation.

**11. Closure of Route 234 Through MNBP (Restriction of Through Traffic / Access Control)** – Upon execution of this Agreement, the ~~VDOT will recommend to the CTB that Route 234 be abandoned or discontinued and that management or ownership of the Right-of-way be turned over to the NPS, who will~~ Commissioner of Highways shall commence the process of abandonment of a road in the State Highway System, as defined in Article 10 of Title 33.1 (33.1-144 et seq.) of the Code of Virginia, for the portion of Route 234 that runs through MNBP. Upon the successful completion of the abandonment process, the Commissioner shall convey the right-of-way for the abandoned portion of Route 234 to the NPS in an executed agreement in which the NPS agrees to keep the relevant portion of Route 234 open and operational and the VDOT agrees to maintain the portion of the road, until construction of the TCP is complete and the roadway is open to traffic. The agreement shall also provide that, upon completion of the TCP and the opening of the roadway to traffic, the NPS shall restrict through traffic on Route 234 from the southern park boundary just north of

the Northern Virginia Community College and through the Battlefield to the area known as Sudley Springs north of the Battlefield while accommodating park traffic and residents who own properties along the right-of-way. ~~Closure within the area encompassed by MNBP. The agreement shall also provide that, if the TCP is not open to traffic by 01/01/2022, then ownership of the right-of-way for the abandoned portion of Route 234 and shall revert to the VDOT. Construction of the TCP shall be contingent upon transfer of management responsibilities or ownership of the Right-of way to the NPS is contingent on as a result of the successful completion of the process for either the abandonment or discontinuance of a road in the State Highway System as defined Article 10 of Title 33.1 (33.1-144 et seq.) of the Code of Virginia and the construction of the TCP and shall coincide with the opening of the TCP.~~

**12. Completion of the Environmental Impact Study, Record of Decision and Permitting for the Manassas National Battlefield Park Bypass** – Prior to construction of the TCP, the VDOT, the FHWA and the NPS shall ensure that there is a viable route for the MNBP Bypass and that it has received all relevant federal permits, including necessary permits for impacts to wetlands and streams. In order for construction to proceed, these permits shall first be granted and the Final EIS and Record of Decision for the MNBP shall be complete.

**13. Preliminary Engineering and Design for MNBP Bypass** – Upon completion of the Final Environmental Impact Statement and the Record of Decision for the TCP, the ~~VDOT~~FHWA Federal Lands Division shall lead the procurement and administration of a contract for preliminary engineering and design of the MNBP Bypass. - The VDOT shall commit Four million dollars (\$4,000,000.00) to be used for this effort. - The ~~VDOT~~FHWA Federal Lands Division and the NPS shall develop and implement a process for cooperative coordination of the selection of a contractor and review and approval of the design.

**14. Funding for Construction of the MNBP Bypass** – The FHWA shall commit to funding at least fifty (50) percent of the cost of constructing the MNBP Bypass. In addition, the VDOT shall commit to funding at least twenty-five (25) percent of the cost of constructing the MNBP Bypass over and above the cost of constructing the TCP.

**15. Closure of Route 29 through MNBP** – Prior to construction of the TCP, the FHWA, the NPS and the VDOT shall initiate and complete the process for transferring to the NPS the portion of U.S. 29 that bisects the MNBP.

**16. Avoidance or Minimization of Impacts to Archaeological Properties within MNBP** – The ~~FHWA and~~ VDOT shall coordinate with the NPS to develop alignments for the section of the TCP within MNBP and the new access roads to Brawner Farm and the Stuart's Hill Center that either avoid or minimize impacts to the "Unfinished Railroad", the quarry associated with the railroad, and other archaeological properties located within the boundaries of MNBP and considered to contribute to the park's significance. - The ~~FHWA,~~ VDOT and the NPS shall determine the locations of these alignments by mutual agreement.

**17. Preservation of Land Associated with MNBP and MBHD**

**a.** The VDOT shall partner with a land conservation organization, approved by the NPS, and provide ~~Three~~between Seven and Fourteen million dollars (~~\$37,000,000.00~~ -

\$14,000,000 in funds to be used by this organization for the preservation of land located within or immediately adjacent to the NRHP boundaries of MNBP or MBHD along the section of the TCP where it is collocated with the MNBP Bypass (to include any boundary increases to either property approved by the Keeper of the NRHP subsequent to the execution of this Agreement) (Attachment 6).- The purpose of the land preservation fund is to preserve the historic setting of MNBP and MBHD, preclude the widening of the TCP and the addition of access points within the area where the TCP and the MNBP are collocated, and provide a buffer for the MNBP and MBHD and adjacent community from the TCP. All preservation funds shall be expended before construction of the TCP can commence.

**b.** Any identified saving from the- VDOT funds made available for the preliminary engineering and design of the MNBP Bypass shall be added to the land preservation fund.

**c.** Working as the VDOT's agent, the land conservation organization shall use these funds to preserve land held by willing sellers through either fee simple purchase or the purchase of conservation easements.- For the purposes of this Agreement, "preserve" shall mean to maintain in existing condition or maintain in or restore to a condition compatible with the historic setting of MNBP. -The VDOT shall transfer the land preservation funds to its partnering organization no later than thirty (30) days following VDOT's internal approval of a design presented at the Design Public Hearing.

**d.** The VDOT shall require that the land conservation organization it partners with shall:

**i.** Consult closely with the VDOT, NPS, and the SHPO on determining the specific land transactions on which the VDOT's funds will be used, and shall consult with the VDOT, NPS, and the SHPO on the terms of any conservation easements or fee simple transactions that will be purchased with the VDOT's funds prior to executing the transaction.

**ii.** Hold in perpetuity any lands it acquires through fee simple transactions using the VDOT's funds or it shall transfer ownership of these lands to the NPS or to another land trust approved by the SHPO; and hold in perpetuity any conservation easements it acquires using the VDOT's funds or it shall transfer these easements to the NPS or to another land trust approved by the SHPO.

**iii.** Return any unused funds to the VDOT within six (6) ten (10) years of receipt if the organization is unable to expend all of the funds for the purposes defined in Paragraph A of this Stipulation:-

**Comment [J5]:** If our suggestion in clause II.17.a that the preservation funds be expended prior to commencement of construction is not accepted, then more time may be necessary to ensure the most productive expenditure of the preservation funding given the anticipated complexity of the easement purchasing process.

### III. Identification and Treatment of Archaeological Historic Properties

The FHWA, NPS, SHPO, and VDOT shall review the final plans for the TCP, and for the new access roads to Brawner Farm and the Stuart's Hill Center, (hereinafter collectively referred to as "access roads"), and the traffic calming measures to be implemented on Route 29 (described in Stipulations II.4, II.5, and II.7 of this Agreement) to determine if known archaeological resources on or eligible for the NRHP will be impacted by TCP constructionconstruction of the TCP, the access roads, or the traffic calming measures along Route 29 or if construction impacts will otherwise extend beyond the Area of Potential Effects previously surveyed for archaeological resources.- The VDOT Signatories



shall report ~~its~~ these findings to the ~~Signatory and Concurring Consulting~~ Parties, pursuant to the requirements of Stipulation VII.B of this Agreement. - If the FHWA, NPS, SHPO, or VDOT, in consideration of the comments of the ~~Signatories and Concurring Consulting~~ Parties to this Agreement, determines that further efforts to identify, evaluate, or treat archaeological historic properties are necessary to take into account the ~~TCP's effects~~ effects of the TCP, the access roads or the Route 29 traffic calming measures on archaeological resources, the VDOT shall implement these efforts as stipulated below:

1. The VDOT shall complete efforts to identify archaeological historic properties in accordance with 36 CFR Part 800.4(b). -The VDOT shall conduct these identification efforts in a manner consistent with Stipulation VII.A of this Agreement. -In a manner consistent with Stipulation VII.B of this Agreement, the VDOT shall provide the SHPO and the NPS the opportunity to review and approve, and the other Signatories and ~~Concurring Consulting~~ Parties to this Agreement the opportunity to review and comment on a report on its findings.

2. The VDOT shall conduct any further investigations necessary to evaluate the NRHP-eligibility of any resources identified as a result of the activities described in Stipulation III.1 of this Agreement. -These evaluations shall be conducted in accordance with 36 CFR Part 800.4(c), and in a manner consistent with Stipulation VII.A of this Agreement. -In a manner consistent with Stipulation VII.B of this Agreement, the VDOT shall provide the SHPO and the NPS the opportunity to review and approve, and the other Signatories and Consulting Parties to this Agreement the opportunity to review and comment on a report on its findings.

3. If historic properties meeting the criteria for listing on the NRHP are identified as a result of the activities described in Stipulations III.1 and III.2, the VDOT shall assess the effects of the Undertaking on these properties in a manner consistent with 36 CFR 800.5, and submit its findings to the SHPO and the NPS for its review and concurrence, and to the other Signatories and ~~Concurring Consulting~~ Parties to this Agreement for review and comment pursuant to Stipulation VII.B of this Agreement.

4. If the VDOT, in consultation with the Signatories and ~~Concurring Consulting~~ Parties to this Agreement, determines that a historic property will be adversely affected by the TCP or the access roads, the VDOT, in consultation with the FHWA and NPS, shall ~~determine whether avoidance or minimization of adverse effects do everything possible to avoid~~ the property ~~is prudent and feasible.~~ If adverse effects cannot be avoided, the VDOT, in consultation with the Signatories and ~~Concurring Consulting~~ Parties to this Agreement, shall develop a treatment plan for the archaeological historic property. -In a manner consistent with Stipulation VII.B ~~of~~ this Agreement, the VDOT shall provide the FHWA, SHPO and the NPS the opportunity to review and ~~approve, and the~~ determine whether avoidance is required. The other Signatories and ~~Concurring Consulting~~ Parties to this Agreement will have the opportunity to review and comment on ~~a~~ the treatment plan avoidance decision.

5. ~~The~~ In the case of necessary minimization of adverse effects to the property, the VDOT shall ensure that the treatment plan is implemented and that any agreed upon data recovery field operations are complete before ground disturbing activities associated with the TCP are initiated at an affected archaeological historic property. - The VDOT shall notify the SHPO and the NPS once data recovery field operations have been completed so that a site visit may be scheduled, if the SHPO or the NPS find a visit appropriate. -The proposed construction



may proceed following this notification while the technical report is in preparation. -The VDOT shall ensure that the archaeological site form on file in the SHPO's Data Sharing System is updated to reflect the implementation of the treatment plan for each affected site.

#### IV. Post Review Discoveries

A. In the event that a previously unidentified archaeological resource is discovered during ground-disturbing activities associated with the construction of the TCP or access roads, the VDOT, in accordance with Section 107.16(d) of the VDOT's *Road and Bridge Specifications*, shall require the construction contractor to halt immediately all construction work involving subsurface disturbance in the area of the resource and in the surrounding areas where additional subsurface remains can reasonably be expected to occur. Work in all other areas of the TCP may continue.

B. The VDOT shall notify the FHWA, NPS, the SHPO, and the other Signatory and ConcurringConsulting Parties to this Agreement within two (2) working days of the discovery. In the case of prehistoric or historic Native American sites, the VDOT, on behalf of the FHWA, shall also notify appropriate Indian tribes recognized by the Commonwealth of Virginia (hereinafter "Virginia Indian tribes") and any federally recognized Indian tribes with an interest in the area within two (2) working days of the discovery.

C. The VDOT shall ensure that an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 44739) investigates the work site and the resource, and then the VDOT shall forward to the FHWA, the SHPO, appropriate Virginia Indian tribes, any federally recognized Indian tribes with an interest in the area, and the other Signatory and ConcurringConsulting Parties to this Agreement an assessment of the NRHP eligibility of the resource (36 CFR Part 60.4) and proposed treatment actions to resolve any adverse effects on historic properties. The SHPO, appropriate Virginia Indian tribes, federally recognized Indian tribes, and the other Signatory and ConcurringConsulting Parties to this Agreement shall respond within five (5) working days of receipt of the VDOT's assessment of NRHP eligibility of the resource and proposed action plan. - The VDOT, in consultation with the FHWA, shall take into account the recommendations of the SHPO, appropriate Virginia Indian tribes, federally recognized Indian tribes, and the other Signatory and ConcurringConsulting parties to this Agreement regarding NRHP eligibility of the resource and the proposed action plan, and then carry out the appropriate actions.

D. The VDOT shall ensure that construction work within the affected area does not proceed until the appropriate treatment measures are developed and implemented or the determination is made that the located resource is not eligible for inclusion on the NRHP.

#### V. Treatment of Human Remains

A. The VDOT shall treat all human remains and gravesites in a manner consistent with the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>).

B. Human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in a manner consistent with the provisions of the Virginia Antiquities Act, Section 10.1-2305 of the *Code of Virginia* and its implementing

regulations, 17 VAC5-20, 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 Part 10. In accordance with the regulations stated above, the VDOT may obtain a permit from the SHPO for the archaeological removal of human remains should removal be necessary.

C. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, the VDOT, on behalf of the FHWA, shall immediately notify appropriate tribal leaders of Virginia Indian tribes and any federally recognized Indian tribes with an interest in the area. -The VDOT shall determine the treatment of Native American human remains and associated funerary objects in consultation with appropriate tribal leaders of Virginia Indian tribes and any federally recognized Indian tribes with an interest in the area. -The VDOT shall make all reasonable efforts to ensure that the general public is excluded from viewing any Native American gravesites and associated funerary objects. -The Signatories and ~~Concurring~~Consulting Parties to this Agreement shall release no photographs of any Native American gravesites or associated funerary objects to the press or to the general public.

## VI. Professional Qualifications

All archaeological work carried out pursuant to this Agreement shall be conducted by or under the direct supervision of an individual or individuals who meet, at a minimum, the Secretary of the Interior's Professional Qualifications Standards for Archaeology (48 FR 44738-44739, September 29, 1983).

## VII. Preparation and Review of Plans and Documents

A. All archaeological studies, technical reports, and treatment plans prepared pursuant to this Agreement shall be consistent with the federal standards entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716-44742, September 29, 1983), the SHPO's *Guidelines for Conducting Historic Resource Survey in Virginia* (October 2011), and the ACHP's *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999), or subsequent revisions or replacements to these documents.

B. The SHPO and the other Signatory and ~~Concurring~~Consulting Parties to this Agreement agree to provide comments to the ~~FHWA and~~ VDOT on all plans, technical materials, findings, and other documentation arising from this Agreement within thirty (30) calendar days of receipt in Adobe Acrobat (PDF) format. - If no comments are received from the SHPO or other Signatory or ~~Concurring~~Consulting Parties to this Agreement, the ~~FHWA and~~ VDOT may assume that the non-responding party has no comment. - The ~~FHWA and~~ VDOT shall take into consideration all comments received in writing from the SHPO and the other Signatory and ~~Concurring~~Consulting Parties to this Agreement within the thirty (30) calendar day review period.

C. The VDOT shall provide the SHPO three copies [one hard copy and two in Adobe Acrobat format (PDF) on compact disk] of all final reports prepared pursuant to this Agreement. -The VDOT shall also provide any other Signatory or ~~Concurring~~Consulting Party to this Agreement a copy of any final report (in hard copy or Adobe Acrobat format, as requested) if so requested by the party. -Such requests must be received by the VDOT in writing prior to completion of construction of the TCP.

## VIII. Curation Standards

A. Except as described in Paragraph C of this Stipulation, the VDOT shall ensure that all original archaeological records (research notes, field records, maps, drawings, and photographic images) produced in connection with the TCP and all archaeological collections recovered from VDOT highway right of way in association with the TCP are provided to the SHPO for permanent curation. -In exchange for its standard collections management fee as published in the Virginia Department of Historic Resources State Collections Management Standards (June 26, 2009), or subsequent revisions or replacements to that document, the SHPO agrees to maintain such records and collections in accordance with 36 CFR 79, Curation of federally Owned and Administered Archaeological Collections.

B. Except as described in Paragraph C of this Stipulation, the VDOT shall return to an individual property owner any artifact collection that the VDOT has recovered from his or her property, unless the VDOT and the property owner have reached agreement on an alternative arrangement. If the property owner donates the artifact collection to the Virginia Department of Historic Resources (DHR) by executing a donation agreement for the collection with the DHR within ninety (90) days of receipt of written notification from the VDOT of its intent to return the collection to the private property owner, the VDOT shall assume responsibility for payment of DHR's standard collections curation fee for the donated artifact collection.

C. The disposition of original archaeological records (research notes, field records, maps, drawings, and photographic images) and collections produced or recovered in association with archaeological investigations conducted on federal lands shall be governed by the terms of the federal permit issued pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470ee, ff, gg) authorizing the investigations.

## IX. Requirements for Archaeological Investigations on NPS Lands

The VDOT shall obtain all necessary permits required under the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470ee, ff, gg) prior to conducting any archaeological investigations on federal lands managed by the NPS. -Preparation, submittal, and review of VDOT's ARPA permit applications shall be subject to NPS requirements as described in the *NPS Archaeology Guide*. -*Part 1.- Permits for Archaeological Investigations* (<http://www.nps.gov/archeology/npsGuide/permits/overview.htm#permit>), or any subsequent revisions or replacements to this document. -Any archaeological investigations carried out under the terms of an ARPA permit shall meet the requirements of that permit, which may supersede the requirements of Stipulations VI-VIII of this Agreement.

## X. Assignment of Responsibilities

It is permissible for the VDOT to authorize and assign to a Public Private Transportation Act Concessionaire the responsibility to act on the VDOT's behalf in fulfilling any of the requirements of Stipulations I-IX of this Agreement, provided VDOT so notifies the FHWA, the SHPO, the other Signatories, and Concurring Consulting Parties to this Agreement in advance.

## XI. Monitoring and Reporting

Each January 31st following the execution of the Agreement until it expires or is terminated, FHWA, in coordination with the VDOT, and the other Signatories as appropriate, shall provide all Signatories and ~~Concurring~~ Consulting Parties to this Agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the FHWA's efforts to carry out the terms of this Agreement.

## **XII. Dispute Resolution**

### **A. Objection by Signatory or ~~Concurring~~ Consulting Party**

**1.** Should any Signatory or ~~Concurring~~ Consulting Party to this Agreement object in writing to FHWA to any determinations made pursuant to this Agreement or the manner in which the terms of this Agreement are implemented, the FHWA shall first consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved through such consultation, the FHWA shall then consult with all Signatories to this Agreement to resolve the objection. If the FHWA then determines that the objection cannot be resolved through consultation, the FHWA shall forward all documentation relevant to the objection to the ACHP, including the FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the ACHP shall exercise one of the following options:

**a.** Advise the FHWA that the ACHP concurs with the FHWA's proposed response to the objection, whereupon the FHWA will respond to the objection accordingly; or

**b.** Provide the FHWA with recommendations, which the FHWA shall take into account in reaching a final decision regarding its response to the objection; or

**c.** Notify the FHWA that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The FHWA shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4).

**2.** Should the ACHP not exercise one of the above options within thirty (30) calendar days after receipt of all pertinent documentation, the FHWA may assume the ACHP's concurrence in its proposed response to the objection.

**3.** The FHWA shall take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the objection shall remain unchanged.

### **B. Objection from Public**

At any time during the implementation of the measures stipulated in this Agreement, should a member of the public object to the FHWA or the VDOT regarding the manner in which the measures stipulated in this Agreement are being implemented, the FHWA shall notify the Signatories to this Agreement and the Consulting Parties and consult with the objector to solve the objection. The Signatories ~~may and Consulting Parties have the right to~~ request ~~that the FHWA notify the Concurring Parties to this Agreement about~~ and be granted a meeting of all

parties to discuss the objection ~~as well~~ and to review and comment on the manner of addressing the objection.

### **XIII. Amendments**

Any Signatory to this Agreement may propose to the FHWA that the Agreement be amended, whereupon the FHWA shall consult with the other Signatories to consider such an amendment. -36 CFR 800.6(c)(7) shall govern the execution of any such amendment.- This Agreement may be amended when such an amendment is agreed to in writing by all Signatories.

### **XIV. Termination**

**A.** If any Signatory to the Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII, above. -If agreement over an amendment cannot be reached, any Signatory may terminate the MOA thirty (30) days following written notification to the other Signatories of its intent to terminate.

**B.** If the FHWA and the VDOT decide they will not proceed with the TCP, they may so notify the Signatories and the ~~Concurring~~ Consulting Parties to this Agreement in writing and then this Agreement shall become null and void.

**C.** In the event that this Agreement is terminated or rendered null and void, the VDOT shall submit to the SHPO a technical report on the results of any archaeological investigations conducted prior to and including the date of termination, and shall ensure that any associated collections and records recovered are curated in accordance with Stipulation VIII of this Agreement.

**D.** In the event of termination, and prior to work continuing on the Undertaking,- the FHWA shall either (a) execute a Memorandum of Agreement pursuant to 36 CFR 800.6(c)(1) or (b) request the comments of the ACHP under 36 CFR 800.7(a).- The FHWA shall notify the Signatories as to the course of action it will pursue.

**E.** Upon termination of this Agreement, any funds provided by VDOT to third parties and not already used for intended purposes under this Agreement shall be returned to VDOT within ninety (90) days.

### **XV. Duration**

This Agreement shall continue in full force and effect until the Undertaking is complete and the requirements of all Stipulations of this Agreement have been met. -The Undertaking is considered complete only upon agreement by the FHWA, the SHPO, the VDOT, and the NPS. -At any time in the six (6)-month period prior to such date, the VDOT may request that the Signatories consider an extension of this Agreement. -No extension or modification shall be effective unless all Signatories to the Agreement have agreed with it in writing.

### **XVI. Execution**

This Agreement may be executed in counterparts, with a separate page for each Signatory. -Separate pages may also be provided for each ~~Concurring~~ Consulting Party. -The FHWA shall ensure that each Signatory and ~~Concurring~~ Consulting Party is provided with a copy of the fully executed Agreement.

## **XVII. Miscellaneous**

**A. Anti-Deficiency Act – Federal Parties:** -This PA is subject to applicable laws and regulations. As to the Signatories only, fulfillment of this PA and all of the provisions herein are subject, pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341 et seq., to the availability of funds. -This PA is not an obligation of funds in advance of an appropriation of such funds, and it does not constitute authority for the expenditure of funds. -If a Signatory does not have sufficient funds available to fulfill the Stipulations of this PA, such Signatory shall so notify the other Signatories and shall take such actions as are necessary to otherwise comply with 36 C.F.R. Part 800. -GSA, DHS and ACHP shall make reasonable and good faith efforts to seek funding for implementing this PA.

**B. Recitals and Exhibits:** The recitals (Whereas clauses) and exhibits are incorporated herein as a substantive part of this Agreement.

**C. Authority of Signers:** Each Signatory hereto represents that the person or persons executing this PA on behalf of such Signatory has full authority to do so.

## **XVIII. Compliance of Other Agencies with Section 106 for the Undertaking**

A federal agency, other than the original Signatories, that intends to provide funding or approval(s) for the Undertaking may comply with its Section 106 responsibilities for the Undertaking by sending a letter to the original Signatories. -That letter must: (1) be signed by that federal agency's "agency official," as that term is defined in 36 CFR § 800.2(a) and (2) state that the federal agency agrees to the terms of this Agreement. -When the letter is received by the original Signatories, the federal agency will be deemed to be a Signatory of this Agreement.

## **XIX. Signatures**

Execution of this Programmatic Agreement by the FHWA, the SHPO, the VDOT, and the NPS, and its submission to the ACHP in accordance with 36 CFR 800.6(b)(1)(iv) shall, pursuant to 36 CFR 800.6(c), be considered to be an agreement with the ACHP for the purposes of Section 110(~~H~~) of the National Historic Preservation Act (16 U.S.C. ~~470~~-~~470h-2(D)~~). Execution and submission of the Programmatic Agreement, and implementation of its terms, is evidence that the FHWA has afforded the ACHP an opportunity to comment on the proposed Undertaking and its effects on historic properties, and that the FHWA has taken into account the effects of the Undertaking on historic properties.

## **FEDERAL HIGHWAY ADMINISTRATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Irene Rico, Division Administrator  
Virginia Division

## **VIRGINIA STATE HISTORIC PRESERVATION OFFICER**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Kathleen S. Kilpatrick, Director  
Virginia Department of Historic Resources

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Gregory A. Whirley, Sr.  
Commissioner of Highways

**DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Stephen E. Whitesell  
Regional Director

|

[A signature page for each Consulting Party will be added]



# Enclosure 2

### Analysis of the Preservation Fund established in the Draft PA

We are concerned that the funding related to preservation within the Draft Programmatic Agreement is insufficient to accomplish the stated objectives and that several factors would make it more difficult than usual to protect the acreage in the eligible area. We also seek clarity on the objectives for preservation as it pertains to limiting access.

The language of the Draft PA limits the use of the funding (\$3 million dollars) to properties that are along the corridor, within and adjacent to the Manassas National Battlefield Park or the Manassas Battlefield Historic District. In our research, we discovered four comparables that give us some indication of the value of the parcels within the eligible area. We have also taken into account the most recent assessed values for the eighteen eligible properties, totaling some 696 acres. But assessed values are not a reflection of actual values when viewed against recent sales prices. The comparables below demonstrate the challenge of achieving the preservation goals, especially with regard to small parcels with significant improvements. All parcels below are zoned Agricultural (allowing for 1 unit every 10 acres).

1. 7498-96-2370 – 146.02 acres with improvement located within the eligible area  
Last sale: 11/5/2010 - \$2,079,750  
Last Assessment: Land - \$1,378,400 Use Value -\$116,800 Improvement - \$172,900 Total – Use value \$289,700 Assessed market value 1,551,300  
· Sales price included parcel 7498-75-5154 – 0.56 acres
2. 7498-60-2830 – 7.46 acres with improvement – located within the eligible area  
Last Sale: 1/4/2011- \$605,000  
Last Assessment: Land - \$219,700 Improvement - \$272,100 Total - \$491,800
3. 7598-43-4546 – 8.9 acres with improvement within the MBP (not eligible)  
Last Sale: 6/25/2010 \$400,000  
Last Assessment: Land - \$167,700 Improvement - \$90,500 Total - \$258,200
4. 7598-76-9478 – 1 acre with improvement within the MBP (not eligible)  
Last Sale: 6/17/2010 \$170,000  
Last Assessment: Land - \$88,400 Improvement - \$62,300 Total - \$150,700

The first two examples are from within the eligible area. The second two are within the Manassas Battlefield National Park, but in proximity to the eligible area as demonstrated by the provided map.

The main objectives for preservation would be to preclude the widening of the TCP, to limit access, and to provide a buffer between the road and the Battlefield and Historic District. These objectives may drive up the cost of an easement beyond that typically associated with securing scenic or open-space easements. The restrictions that would be necessary to achieve the objectives of the preservation could devalue the property substantially. As well, the restrictive nature of the easement may limit the number of willing participants, or make it necessary to use fee-simple purchase as the main tool available to the nonprofit group in question. Furthermore, property owners may see this as an opportunity to demand higher prices for either an easement or a fee simple purchase. In short, the objectives for preservation will greatly impact the ability to use easements, and will also affect the overall cost for preservation, and the willingness of the

landowners to negotiate a preservation outcome. For these reasons, the organization administering the preservation fund will need to address and resolve the following questions with regard to the objective of limiting access: What is the definition of limiting access? Does it include removal of existing access to small lot single-family homes or removal of the homes entirely? Is the goal only to limit access from new parcels, residences and business that may locate in the eligible area?

For the purpose of this analysis, we have broken the 18 eligible lots into 3 classifications and assigned an estimated value per acre for preservation using fee-simple purchase. It is important to note, these values do not represent the likely additional costs associated with the complications described above (unwillingness of land owner to sell, speculation, objectives – limited access, etc.)

Lot classifications and average price per acre

9 Small lots (10.5 acres or less):

Total acreage – 63.8 acres

Estimated value per acre - \$67,528.73

Total estimated value - \$4,308,332.97

3 Medium lots\* (10.5-15 acres):

Total acreage – 39 acres

Estimated value per acre: \$31,073.17

Total estimated value - \$1,211,853.63

\*Estimate based solely off assessed value

6 Large Lots (40+ acres):

Total acreage – 593 acres

Estimated value per acre -\$14,188.50

Total estimated value - \$8,413,780.5

Total estimated value for the 696 acres of eligible properties: \$13,933,967.10

Half of the parcels in the eligible area are 10.5 acres or less (9 of 18 parcels), but may be no less valuable than larger parcels in meeting the objectives for preservation, especially limiting access and providing a buffer to the Battlefield and the Historic District. It is important to note that the prices for examples two through four (7498-60-2830, 7598-43-4546, and 7598-76-9478) above equal \$1,175,000 yet total less than 17.4 acres. In many cases, the house or improvement may be of greater value than the associated land. If fee-simple purchase were used and focused largely on small parcels, the cost for purchase would average out to \$67,528.73 an acre. Using this figure, less than 45 acres of the eligible 696 acres could be preserved, or less than 6.5 percent of the eligible area.

Large lot values may also be significantly higher than anticipated as announcement of the road appears to be creating competition along the corridor, further reducing the amount of

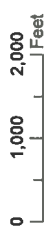
preservation possible. We believe parcel 7498-96-2370 was a speculative purchase made partially in response to the inclusion of this corridor as a Corridor of Statewide Significance (COSS) by the Commonwealth Transportation Board. This may be a demonstration of competition for the corridor that could result in higher land values, and competing interests that undermine the preservation effort within the battlefield area, thus reducing the acreage protected. There are 6 parcels of 40 acres or greater for a total of 592.77 acres. Using the comparable for parcel 7498-96-2370, the average price per acre for large lots is \$14,188.50. If we apply this value per acre to large lots, less than 212 acres of this lot type could be protected using fee-simple purchase, or less than 31 percent of the total eligible acreage.

In conclusion, it is likely that a combination of small and large lots would need to be protected in order to achieve the preservation objectives. It is also likely that speculation and perceived rights will complicate this effort and will result in higher costs for securing easements (which could be greater than 50 percent of the value of the property), and may as a practical matter require fee-simple purchase as the main vehicle for preservation of these lands. It is our belief that the PA should address these issues by increasing the funding to a minimum of 50 percent of the total estimated value of the eligible lands. Therefore, the appropriate range of funding would be \$7 million to \$13 million. (In the event that preservation goals could be met with less funding, there is no danger of excess funds being lost; the PA already provides language ensuring the return of unused funds, if any, to the agency. Providing sufficient funding upfront will demonstrate that the signatories of this agreement are serious about the protection of the resources and limiting access to maintain the integrity of the Battlefield and the Historic District.

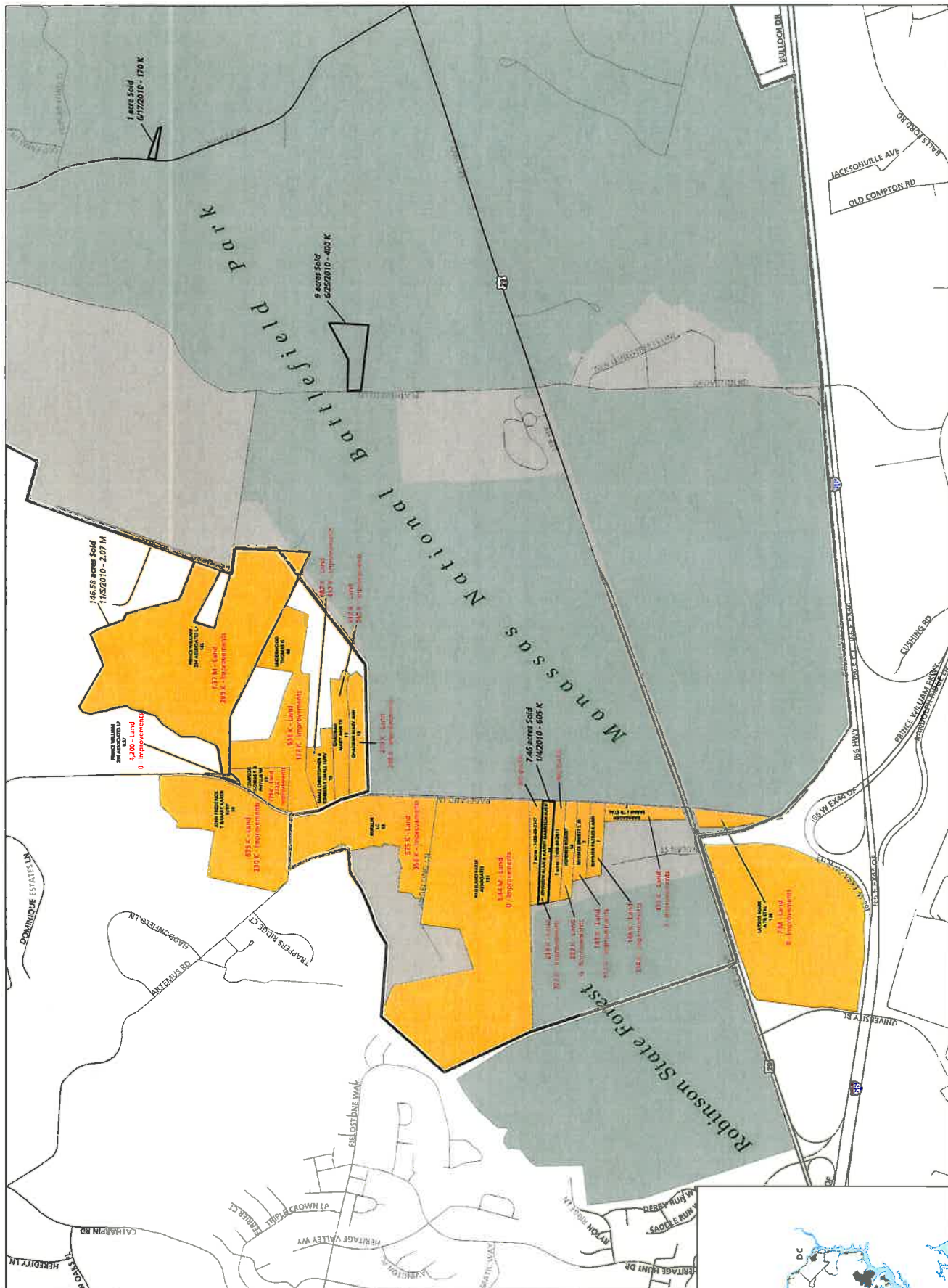
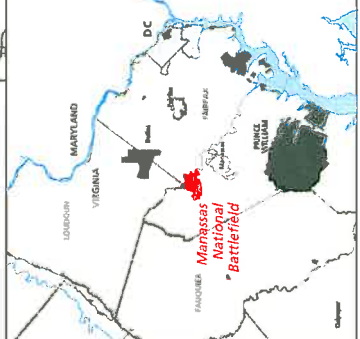
# Manassas National Battlefield Property Eligible for Conservation Fund



- Eligible Parcels
- Comparables
- Historic Districts
- Park Land



Map created by REC for presentative purposes only. Data provided by the Prince William Regional Council, the National Park Service, and the National Historical Landmarks. Although every effort has been made to verify data, no warranty is made or guaranteed. For more information, please visit our website at [www.pwrec.org](http://www.pwrec.org). 02/2012



# Enclosure 3



Manassas National  
Battlefield  
Pageland Lane  
Right of Way



- Existing ROW - 8.5 acres
- 116 ft ROW - 20.4 acres
- 200 ft ROW - 35 acres
- Park Land
- Historic Districts



0 500 1,000  
Feet

Map created by PEC for presentation purposes only. Data source: Prince William County GIS, Prince William County Real Property Assessment Land Rover. Although efforts have been made to verify data, accuracy is not guaranteed. For more information, please visit [www.pecva.org](http://www.pecva.org). 8/8/2012

