

Programmatic Agreement
among the
National Park Service,
Fredericksburg and Spotsylvania
National Military Park
the
Shenandoah Valley Battlefields
National Historic District Commission
the
Virginia State Historic Preservation Officer
and the
Advisory Council On Historic Preservation
for the
Shenandoah Valley Battlefields
National Historic District
Implementation Funds
Matching Grant Program

WHEREAS, the Shenandoah Valley Battlefields National Historic District and Commission Act of 1996 (the Act) created, the Shenandoah Valley Battlefields National Historic District (District) in northwestern Virginia comprising Augusta, Clarke, Frederick, Highland, Page, Rockingham, Shenandoah, and Warren counties as well as ten Civil War battlefields and historic transportation routes; and

WHEREAS, the Act also created the Shenandoah Valley Battlefields National Historic District Commission (Commission) to prepare a plan for the future management and administration of the District and to submit the plan to the Secretary of the Interior for approval; and

WHEREAS, the Commission, as called for in the legislation and the plan, will create a new non-profit organization—the Shenandoah Valley Battlefields Foundation (Foundation)—incorporated under the laws of the Commonwealth of Virginia and endorsed by the Secretary of the Interior to succeed the Commission, administer the District, and disburse federal funds to other units of government or other nonprofit organizations to implement the plan as called for in the Act; and

WHEREAS, the National Park Service (NPS) is a principal partner in the project, provides funding and technical assistance to the Commission, and will provide funding and technical assistance to the Foundation to implement the plan; and

WHEREAS, the NPS, as the federal agency responsible for meeting the requirements of Section 106 of the National Historic Preservation Act, authorizes the Foundation to carry out the terms of this Programmatic Agreement in cooperation with Fredericksburg and Spotsylvania National Military Park (FRSP); and

WHEREAS, the NPS has determined that projects to implement the plan may affect properties included in or eligible for inclusion in the National Register, and is entering into this agreement with the Advisory Council on Historic Preservation (Council), the Virginia State Historic Preservation Officer (SHPO), and the Commission to ensure that future actions have appropriate project review and comply with Section 106 of the National Historic Preservation Act (16 U.S.C. 470) and its implementing regulations, "Protection of Historic Properties," (36 CFR Part 800); and,

WHEREAS, the Foundation will require recipients of federally funded grants to cooperate with the FRSP and the SHPO to comply with Section 106 prior to awarding grants, and will not fund projects that do not meet the Secretary of the Interior's Standards for Historic Preservation; and

NOW, THEREFORE, the NPS, the Council, the Commission, and the SHPO agree that the Shenandoah Valley Battlefields Implementation Funds Matching Grant Program shall be administered in accordance with the following stipulations to satisfy the NPS's Section 106 responsibility for all individual undertakings of the program.

STIPULATIONS

The Foundation and the NPS, acting through the FRSP, will ensure that the following measures are carried out:

I. QUALIFIED REPRESENTATIVE

- A. The NPS will provide the Foundation's Section 106 Coordinator with access to the FRSP review team of qualified cultural resource specialists.
- B. The Foundation's Section 106 Coordinator will fill out a Professional Qualifications form, which will be reviewed and approved by the NPS. Evidence of professional certification of the Section 106 Coordinator will be kept on file at the Foundation offices.
- C. Qualified cultural resource specialists team members providing project review may be from the FRSP or the NPS, Northeast Regional Office cultural resource staff.
- D. Should the Foundation not have a Section 106 Coordinator on staff, a NPS preservation professional may coordinate review of projects in accordance with this agreement.

- E. The Superintendent of the FRSP acting as an NPS signatory to this agreement, will insure each undertaking reviewed under this agreement is reviewed by a formally designated set of cultural resource management advisors.

II. EXEMPT ACTIVITIES

- A. If the Foundation's Section 106 Coordinator in consultation with the SHPO and the federal team of advisors, determines that there is an undertaking but that the action meets one of the categories listed below, no further review will be required.
 1. preservation maintenance (housekeeping, routine maintenance, and stabilization)
 2. acquisition of battlefield lands and historic resources for preservation, including additions to existing sites;
 3. rehabilitation and widening of existing trails, walks, paths, and sidewalks within previously disturbed areas;
 4. repaving of existing roads or existing parking areas within previously disturbed areas;
 5. placement, maintenance, or replacement of utility lines, transmission lines, and fences within previously disturbed areas;
 6. rehabilitation work limited to actions for retaining and preserving, protecting and maintaining, and repairing and replacing in kind materials and features, consistent with the Secretary of the Interior's Standards for Rehabilitation and the accompanying guidelines;
 7. health and safety activities such as radon mitigation, and removal of asbestos, lead paint, and buried oil tanks;
 8. installation of fire detection and suppression systems, and security alarm systems, and upgrading of HVAC systems;
 9. erection of signs, wayside exhibits, and memorial plaques;

III. IDENTIFICATION AND EVALUATION

- A. In consultation with the FRSP and the SHPO, the Foundation shall prepare and implement a program to identify and evaluate historic properties within the area of potential effect. The Foundation shall provide both FRSP and the SHPO with copies of this report.
- B. If the SHPO does not object to the recommendations made in the resulting survey report within 30 days of receipt, the Foundation will assume concurrence. If no potentially eligible historic resources are present in the area surveyed, the Permittee may proceed to implement the undertaking upon receipt of written approval from the Foundation.

- C. Prior to affecting any potentially eligible historic resource, the Foundation will develop and implement a testing program of sufficient intensity to provide an evaluation of eligibility for the National Register of Historic Places, in consultation with the FRSP and the SHPO, following the regulations outlined in 36 CFR 800.4 (c).

IV. TREATMENT

- A. If, as a result of the testing program, historic properties are identified that are eligible for the National Register of Historic Places, the Foundation shall develop a treatment plan in consultation with the FRSP and the SHPO. The treatment plan may include, but need not be limited to, any one or more of the following: avoidance, protection in place, stabilization, recordation, data recovery, incorporation into protected areas, curation, publication, public interpretation, repatriation, long term management and co-management. The Foundation shall submit the plan to the SHPO for review and approval prior to implementation. Any comments received within 30 days of SHPO receipt of the plan shall be addressed in the final document.
- B. All archeological data recovery plans prepared under the terms of this agreement shall include the following elements:
- Information on the archeological property or properties where data recovery is to be carried out, and the context in which such properties are eligible for the National Register;
 - Information on any property, properties, or portions of properties that will be destroyed without data recovery;
 - Discussion of the research questions to be addressed through the data recovery, with an explanation/justification of their relevance and importance;
 - Description of the recovery methods to be used, with an explanation of their pertinence to the research questions;
 - Information on arrangements for regular progress reports or meetings to keep the FRSP and the SHPO up to date on the course of the work. The plan will contain the expected timetable for excavation, analysis, and preparation of the final report;
 - Description of the proposed disposition of recovered materials and records, along with evidence of an agreement executed with the FRSP regarding curatorial responsibilities;
 - Proposed methods for disseminating results of the work to the interested public (e.g. slide packet for use in local schools, and exhibit in libraries during Archeology Month, etc.); and

- Proposed method by which any relevant Indian tribes, and other specific groups/interested parties will be kept informed of the work, and if human remains or grave goods are expected to be encountered, information on consultation with the Virginia Council on Indians, the United Indians of Virginia and any other relevant Indian tribe regarding final disposition of the materials.

V. DISCOVERIES

The Foundation shall ensure that construction documents for any undertaking involving ground disturbance arising from this program contain a plan for the treatment of unexpected discoveries, as follows:

- In the event a previously unidentified archeological resource is discovered during ground disturbing activities, all construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface remains can reasonably be expected to occur. An archeologist approved by the FRSP will immediately inspect the work site and determine the area and the nature of the affected archeological property. Construction work may then continue in the project area outside the site area. Within 10 working days of the original notification of discovery, the Foundation in consultation with the FRSP and the SHPO, will determine the National Register eligibility of the resource.
- Work in the affected area shall not proceed until either (a) the development and implementation of appropriate data recovery is completed or (b) the determination is made that the resource is not eligible for inclusion on the National Register.
- If the resource is determined to meet the National Register criteria, the grantee will either avoid the area entirely or follow the conditions and guidelines outlined in The Advisory Council on Historic Preservation's *Recommended Approach to Consultation on Recovery of Significant Information from Archeological Sites*.
- Any human remains encountered during the implementation of this agreement shall be treated in accordance with the "Regulations Governing Permits for the Archeological removal of Human Remains" (VR 390-01-02) found in the Code of Virginia (10.1-2305, et seq., Virginia Antiquities Act).
- The grantee must obtain a permit from the Department of Historic Resources for the removal of human remains in accordance with the regulations stated above. In reviewing a permit involving removal of Native American human remains, the SHPO will notify and consult with the Virginia Council on Indians, the United Indians of Virginia, and other tribal leaders as appropriate.

If previously unidentified historic properties, including archeological sites, are discovered during project construction, that portion of the project will stop immediately. The grantee will immediately contact the Foundation who will immediately contact the SHPO and the FRSP and the requirements of 36 CFR Section 800.11 will be satisfied.

VI. REPORTING AND SEMI-ANNUAL REVIEW

- A. At the request of any party to this agreement, a meeting or meetings will be held to facilitate review and comment, to resolve questions or objections.
- B. The Foundation shall provide the following reports to the Council, SHPO and the FRSP on an annual basis:
 - 1. Documentation of the aforesaid activities undertaken among and between the Foundation and its grantees;
 - 2. A brief project description of each activity undertaken;
 - 3. A listing of projects funded through the Implementation Funds matching grant program that were reviewed for compliance through another agency; including written documentation of compliance and the Foundation's decision that another agency is the lead agency;
- C. The Council, SHPO and the FRSP will review the annual report and provide comments, including indications of where they want further involvement with the grant projects, to the Foundation and/ or its delegates.
- D. Based on this review, the Council, SHPO and the FRSP will determine whether this agreement will continue in force, be amended, or terminated.

VII. AMENDING THIS AGREEMENT

The Management Plan for the District recommends that a new unit of the national park system be created at Cedar Creek battlefield. If such a unit is created, the Programmatic Agreement could be amended and the new NPS unit could assume the duties and responsibilities of the FRSP.

This Programmatic Agreement will be reviewed by the Foundation, the FRSP, and the SHPO for possible modification, termination, or extensions at the end of each federal fiscal year.

VIII. PUBLIC PARTICIPATION

Each year, as the Foundation undertakes new program activities, it will notify the public regarding the Shenandoah Valley Battlefields National Historic District Implementation Funds Matching Grant Program activities. This notification will be done as part of the annual meeting conducted by the Foundation. The public meeting will include a list of projects funded by the Shenandoah Valley Battlefields National Historic District Implementation Funds matching grant program and the Foundation contact name, address and telephone number for those interested in

inspecting the documentation of the Foundation's determination of whether the projects will have an impact on the environment and/ or historic properties.

IX. REVIEW OF PUBLIC OBJECTIONS

At any time during implementation of the measures stipulated in the Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the Foundation and/or the FRSP shall take the objection into account and consult as needed with the objecting party, the FRSP, the SHPO, or the Council to resolve the objection.

X. DISPUTE RESOLUTION

- A. If the SHPO objects within 30 days to any treatment plans or reports provided for review, or to any proposed action, the Foundation shall consult with the FRSP and the SHPO to resolve the objection. If the FRSP determines that the objection cannot be resolved, it shall request the further comments of the Council pursuant to 36 CFR Part 800.7(b). Any Council comment provided in response to such a request will be taken into account by the FRSP and the Foundation in accordance with 36CFR Part 800.7(c)(4) with reference only to the subject of the dispute. The grantee's obligations to carry out all other actions agreed to that are not the subject of the dispute will remain unchanged.
- B. If the SHPO raises an objection concerning a determination of effect by the Foundation, or to the development and implementation of any measure and/or stipulations for treatment of adverse effects to an historic property from the grant, the Foundation will notify the FRSP of the objection, and will initiate consultation with the SHPO, including other consulting parties as appropriate in seeking to resolve the objection, and will ensure that the Grantee will cease construction in the area of concern raised in the objection. The Foundation may request expedited responses during this consultation.
- C. Should any member of the general public object to any actions carried out pursuant to this agreement, the Foundation shall consult with the Grantee, the SHPO, the FRSP, and other consulting parties to resolve the objection.
- D. If the FRSP, in consultation with the SHPO determines that further consultation will not lead to the resolution of the objection, the NPS shall take into account and consult as needed with the SHPO or the Council to resolve the objection.
- E. All final decisions related to any unresolved issue will be in accordance with 36 CFR800.7(c)(4) and documented by the NPS.
- F. Any party to this agreement may terminate it by providing thirty (30) days written notice to each of the other parties provided that the parties will consult during the period prior to termination to reach agreement on amendments and other actions that would avoid termination. In the event of termination, the NPS will comply with 36 CFR 800.3 through 36 CFR 800.13 with regard to the undertaking.

Execution and implementation of this Programmatic Agreement evidences that the NPS has satisfied its Section 106 responsibilities for all individual undertakings of the Shenandoah Valley Battlefields National Historic District Implementation Funds Matching Grant Program.

NATIONAL PARK SERVICE

Marie Rust, Regional Director, Northeast Region

Date

FREDERICKSBURG AND SPOTSYLVANIA NATIONAL MILITARY PARK

Alexander Rives, Superintendent

Date

**SHENANDOAH VALLEY BATTLEFIELDS
NATIONAL HISTORIC DISTRICT COMMISSION**

Carrington Williams, Chairman

Date

VIRGINIA STATE HISTORIC PRESERVATION OFFICE

Cara Metz, Director, Division of Resource Services and Review

Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John Fowler, Executive Director

Date

APPENDIX A

DETERMINATION OF ELIGIBILITY

Property
Address: _____
Municipality or township: _____
County: _____

Please attach front and rear photographs of project, building, structure, or site

National Register Status

Listed Eligible _____ Individually _____ Historic District _____ Not Eligible _____

If not listed, property appears: Eligible _____ Part of potential district _____ Not Eligible _____

Based on
Criteria: _____

Name of Historic District: _____

Architectural Survey

Complete _____ Incomplete _____ Area Not yet Surveyed _____

Property Description

Year of Construction: c: _____ Type of Construction _____

Style/
Design: _____

Significant
Elements: _____

Comments: _____

APPENDIX A (continued)

_____ Preservation Professional recommends additional review by the following CR Specialists:

- _____ Archeologist
- _____ Ethnographer
- _____ Historian
- _____ Architectural Historian
- _____ Historical Architect
- _____ Historical Landscape Architect
- _____ Curator
- _____ Other Advisers

_____ title or area of specialty

_____ Because this is a routing determination and falls within the field of expertise of the Foundation Preservation Professional any additional review by the NPS CR Specialist staff or consultant is at the discretion of the Superintendent.

Determined by:

_____ Date: _____
Preservation Professional, Shenandoah Valley Battlefields Foundation

DETERMINATION OF EFFECT

Site Inspection completed: Yes ____ No ____ Date ____

Description of All Proposed Work

Demolition: Yes ____ Exterior Work: Yes ____ Interior Work: Yes ____
No ____ No ____ No ____

Ground Disturbance: Yes ____ Archeological Site: Yes ____
No ____ No ____

Determination of Effect

No Effect ____ No Adverse Effect ____ Adverse Effect ____

Compliance is: Completed ____ Not Completed ____

Comments:

____ Preservation Professional recommends additional review by the following CR Specialists:

- ____ Archeologist
- ____ Ethnographer
- ____ Historian
- ____ Architectural Historian
- ____ Historical Architect
- ____ Historical Landscape Architect
- ____ Curator
- ____ Other Advisers

_____ title or area of specialty