

**MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL PARK SERVICE, THE VIRGINIA STATE HISTORIC
PRESERVATION OFFICER,
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE DISPOSITION OF HUMAN REMAINS AND RELATED
RESOURCES AT MANASSAS NATIONAL BATTLEFIELD PARK**

WHEREAS, the National Park Service (NPS) initiated review of a project to replace and install a water line (the Undertaking) on property within Manassas National Battlefield Park (Park) in January 2014, pursuant to the Programmatic Agreement Among the National Park Service (U.S. Department of the Interior), the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers for Compliance with Section 106 of the National Historic Preservation Act (referred to herein as the 2008 Nationwide Programmatic Agreement); and

WHEREAS, upon initial review of previous identification efforts and existing information on historic properties within the project area, the NPS identified one new archeological feature within site 44PW0301, which were the remains of a post-Civil War outbuilding, and approved the replacement and installation of the water line as a streamlined undertaking under the terms of the 2008 Nationwide Programmatic Agreement, with the stipulation that archeological monitoring occur during installation of the water line; and

WHEREAS, during the water line installation in October 2014, the archeologist monitoring the work recovered bone fragments from the project site, suggesting upon later analysis the presence of a limb pit consistent with the use of the site for field hospital activities during the Second Battle of Manassas in 1862, and resulting in the recommendation for further archeological testing to confirm the interpretation and to determine the relationship among the archeological feature, artifacts, and human remains; and

WHEREAS, in October 2015, NPS archeologists and contract archeologists conducted further testing at the site (designated Site 44PW0301) and discovered two nearly intact sets of skeletal remains and multiple remains of amputated limbs; the remains were recovered and transported to the NPS Museum Resource Center in Landover, Maryland; and

WHEREAS, on November 2, 2015, the NPS initiated consultation with the Virginia State Historic Preservation Officer (SHPO) and invited the Council to participate in consultation on December 1, 2015; and the Council advised the NPS to develop and execute a Memorandum of Agreement (MOA), to address the Undertaking's adverse effects to the historic property; and

WHEREAS, in April 2016, the NPS transferred the recovered remains to the National Museum of Natural History (NMNH) for forensic analysis, resulting in findings that the remains were associated with Union casualties from the Second Battle of Manassas; and

WHEREAS, in the spring of 2016, the NPS initiated contact with Army National Military Cemeteries (ANMC), regarding the eligibility of the two Soldiers' remains for interment in Arlington National Cemetery; and

WHEREAS, a previous MOA between the NPS, ANMC, NMNH, SHPO, and the Council was signed and approved in June 2018 to resolve the adverse effects of the unanticipated discovery (referred to herein as the 2018 MOA); and

WHEREAS, the terms of Stipulation I of the 2018 MOA were fulfilled through the transfer of the two sets of skeletal remains from the NPS to the Army on June 19, 2018, and the formal interment of the remains in Arlington National Cemetery on September 6, 2018, and the terms have been accepted by the SHPO; and

WHEREAS, the terms of Stipulation III of the 2018 MOA were fulfilled by the NPS through providing the SHPO with copies of all reports and documentation of the archeological investigations, and updating the archeological site record of 44PW0301 in both the NPS Cultural Resource Information System (NPS-CRIS) and the Virginia SHPO's Virginia Cultural Resources Information System (VCRIS); and

WHEREAS, the terms of Stipulation V of the 2018 MOA were fulfilled through providing training to park superintendents and cultural resources staff in NCR parks in the compliance requirements of Section 106 of the National Historic Preservation Act (NHPA) following to the execution of the 2018 MOA, with NCR led trainings held 2018, 2020, 2021, and 2022; and

WHEREAS, Stipulation IV of the 2018 MOA requires continued consultation to plan, develop, and implement Public Interpretation of the discovery of 44PW0301 and engage consulting parties in development of appropriate interpretive information; and

WHEREAS, Stipulation II of the 2018 MOA required continued consultation to address the disposition of the recovered amputated limbs and the treatment of any *in situ* archeological resources at Site 44PW0301, and a proposed amendment to the 2018 MOA for Stipulation II was developed and discussed by the consulting parties but never agreed upon by all signatories after consulting from 2019 through January 2023; and

WHEREAS, the NPS terminated the 2018 MOA on February 24, 2023, notified the Council and requested Council comment on the termination action, notified all consulting parties of the termination, and notified the Council and the consulting parties of NPS's immediate plans to continue consultation and draft a new MOA (referred to herein as the Agreement) for the resolution of the adverse effects; and

WHEREAS, the NMNH has determined the amputated remains possess significant research potential; and

WHEREAS, the NPS concurs with the NMNH determination regarding the amputated remains, which are archaeological resources under the Archaeological Resources Protection Act and for which the NPS has preservation responsibilities under the National Park Service Organic Act, 54

U.S.C. §§ 100101 et seq., the Archeological and Historic Preservation Act of 1974, 54 U.S.C. § 312504(b), the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa et seq., the National Historic Preservation Act, 54 U.S.C. § 306102, and the NPS Museum Act, 54 U.S.C. §§ 102501-102504; and the NPS, as the federal land manager, has custody over the resources and may loan these resources to a responsible scientific or educational institution for further research and preservation (See generally 16 U.S.C. § 470aa et seq; 54 U.S.C. § 102503(f); 43 C.F.R. § 7.13); and

WHEREAS, excavation of the full archeological feature at Site 44PW0301 will enable the NPS to protect the site and its components from erosion and exposure, and to further learn from, honor and interpret these Soldiers' stories and sacrifices; and

WHEREAS, the NPS has consulted with 15 consulting parties regarding the Undertaking and built upon the consensus from consultation efforts prior to termination of the 2018 MOA in February 2023, the consulting parties listed on this Agreement have been invited to sign as concurring parties.

NOW, THEREFORE, the NPS, the SHPO, and the Council agree that the proposed undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect on historic properties:

STIPULATIONS

The signatory agencies will ensure that the following measures are carried out:

I. Qualifications

All archeological studies, resulting from this Agreement including data recovery plan(s), shall be performed by an archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61) and in accordance with The Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37), the SHPO's Guidelines for Conducting Historic Resources Survey in Virginia (2017), and shall take into account the Council's publication Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (1999; updated July 26, 2002), and Section 106 Archaeology Guidance (June 2007), or subsequent revisions to these documents.

II. Archeological Resources

The NPS shall develop and implement, in consultation with the SHPO, a data recovery plan to guide the recovery of any *in situ* human remains and documentation of the full extent of the burial feature at Site 44PW0301.

A. Following recovery of any *in situ* human remains, in consultation with the consulting parties, the NPS shall coordinate initial research and analysis of the remains in an effort

to identify the remains and to determine whether the remains have any potential for further historical and scientific research.

- B. If, after initial research and analysis, any of the remains are determined to have additional research potential, the NPS shall amend the Outgoing Loan Agreement with the National Museum of Natural History to include these remains under the terms of the Outgoing Loan Agreement.

III. Documentation requirements

The NPS shall provide the SHPO with complete documentation of the archeological investigations at Site 44PW0301 and update the archeological records of the site in both the NPS Cultural Resources Inventory System (CRIS) and the SHPO's Virginia Cultural Resource Information System (VCRIS) to reflect the results of the excavation.

IV. Transfer and Disposition of Amputated Limbs

- A. The NPS shall coordinate with NMNH to determine whether further analysis of the amputated limbs and any recovered *in situ* remains may provide a positive identification of the Soldiers affected.
- B. The NPS shall produce an Outgoing Loan Agreement between the NPS and the National Museum of Natural History. The purpose of the loan will be to provide for curation, storage, integrated historical and scientific research, and interpretation.
- C. The NPS shall coordinate with NMNH to conduct analysis seeking the positive identification of the Soldiers affected. Should identification of the remains be achieved, the NPS shall seek to locate descendants.
- D. The NPS shall treat the remains consistent with its responsibilities under applicable law. Within 10 years from the date of the final signature on this Agreement the NPS shall reevaluate the remains pursuant to 43 CFR §7.33(a)-(g) to determine if the remains are no longer of archeological interest as defined in 43 CFR §7.3(a)(1). If the remains are no longer of archaeological interest, the NPS shall develop a reinterment plan in consultation with consulting parties. If the NPS determines that the remains are still of archeological interest, the NPS shall continue to treat the remains consistent with its responsibilities under applicable law, and shall reevaluate the remains to determine whether they are no longer of archaeological interest every 10 years thereafter until such time as a future reevaluation determines the remains are no longer of archeological interest or reinterment is consistent with applicable law.
- E. When applicable, the NPS shall follow the principles within the ACHP's Policy on Burial Sites, Human Remains, and Funerary Objects, dated March 1, 2023.

V. Public Interpretation

The NPS shall seek funding for the planning, development, and implementation of the interpretation of the discovery at Site 44PW0301, consistent with the National Historic Preservation Act of 1966, the Archeological Resources Protection Act, and National Register Bulletin 29: Guideline for Restricting Information about Historic and Prehistoric Resources.

The NPS shall continue to work with all interested consulting parties to ensure appropriate interpretation of the discovery at Site 44PW0301. All interpretive materials will be designed to protect the location of any archeological resources that might remain *in situ* and may include the following:

- A. Exhibit. The NPS shall consult with interested parties regarding the development of an interpretive exhibit on the limb pit and burial site discovery at the Park, to interpret the effects of battlefield wounds, battlefield surgical activities and procedures, and battlefield burials that could include photographs and three-dimensional modeling.
- B. Interpretive Publication. The NPS shall consult with interested parties to develop an interpretive publication on the limb pit and burial site discovery, providing the historical context of the events associated with the surgical activity and burials on the battlefield following the Second Battle of Manassas and including information on the results of the archeological investigation and the forensic analysis of the human remains recovered from the site.
- C. Digital Content. The NPS shall consult with interested parties to develop updated content for the Park's website, providing a summary of the archeological investigations of the limb pit and burial site and any future updated information that would come from the continued forensic analysis of the human remains.

VI. Monitoring and Reporting

On or before December 31 of each year or until NPS determines that the terms of this Agreement have been fulfilled and so notifies the other consulting parties, the NPS will prepare and provide an annual status report to all parties to this Agreement. Such report shall include a summary of research conducted on the amputated remains previously recovered from Site 44PW0301 since the last reporting date, on-going research, updates on the data recovery process at Site 44PW0301, any proposed scheduling changes, any problems encountered, and any disputes or objections received in the NPS's efforts to carry out the terms of this Agreement.

The NPS shall consider any comments it receives. Based on review of the annual report any party to this Agreement may request that a meeting to facilitate review and comment, to resolve questions or to resolve adverse comments.

Based on this review, the parties to this Agreement will consult to determine whether the Agreement shall continue in force or be amended.

VII. Dispute Resolution

- A. Should any party to this Agreement object to any action carried out or proposed by the NPS with respect to implementation of this Agreement, the NPS shall consult with the objecting party to resolve the objection.
- B. If after initiating such consultation, the NPS determines that the objection cannot be resolved through consultation, the NPS shall forward all documentation relevant to the objection to the Council, including the proposed response to the objection.
- C. Within forty-five (45) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:
 - 1. Advise the NPS that the Council concurs in the proposed response to the objection, whereupon the NPS will respond to the objection accordingly;
 - 2. Provide the NPS with recommendations, which the NPS shall take into account in reaching a final decision regarding its response to the objections; or
 - 3. Notify the NPS that the objection will be referred for Council comment pursuant to Section 110(l) of the National Historic Preservation Act (54 U.S.C. 306114), and 36 C.F.R. § 800.7(c), and proceed to refer the objection for comment. Any Council comment rendered pursuant to this stipulation shall be understood to apply only to the subject of the objection; all other responsibilities of the parties stipulated in the Agreement shall remain unchanged.
- D. Should the Council not exercise one of the above options within forty-five (45) days after receipt of all pertinent documentation, the NPS may assume the Council's concurrence in its proposed response to the objection.
- E. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to this Agreement be raised by a member of the public, the party to this Agreement receiving the objection shall notify the other parties to the Agreement and the NPS will take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to the Agreement to resolve the objection.

VIII. Antideficiency Act

Nothing in this Agreement shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations (31 U.S.C. § 1341(a)(1)).

IX. Compliance with Applicable Laws

This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as (i) in any way impairing the authority of the NPS to

supervise, regulate, and administer its property under applicable laws, regulations, and management plans or policies as they may be modified from time-to-time or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.

X. Amendments

This Agreement may only be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the Council.

XI. Termination

If any signatory to this 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 X, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, the NPS must either (a) execute an Agreement pursuant to 36 C.F.R. § 800.6, or (b) request, take into account, and respond to the comments of the Council under 36 C.F.R. § 800.7. The NPS shall notify the signatories as to the course of action it will pursue.

XII. Duration

This Agreement will continue in full force and effect until ten years after the date of the last signature. At any time in the six-month period prior to such date, the NPS may request the signatory parties to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed with it in writing.

Execution and implementation of this Memorandum of Agreement evidences that the NPS has satisfied its Section 106 responsibilities for all individual actions of this UNDERTAKING.

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

SIGNATORY PAGE

NATIONAL PARK SERVICE

By:  Digitally signed by
KRISTOFER BUTCHER
Date: 2023.08.17
13:47:32 -04'00' Date: 08/17/2023

NAME
Superintendent, Manassas National Battlefield

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

SIGNATORY PAGE

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

Julie V.
By: Langan  Digitally signed by Julie V.
Langan
Date: 2023.08.18
10:12:29 -04'00' Date: _____

Julie V. Langan
State Historic Preservation Officer

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

SIGNATORY PAGE

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: September 19, 2023

Reid Nelson
Executive Director

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

ARCHEOLOGICAL SOCIETY OF VIRGINIA

By:  Date: 1-7-2024

Patrick L. O'Neill
President, ASV
2023-2024

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

BULL RUN CIVIL WAR ROUND TABLE

By: Mark Whiten Date: August 20, 2023

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

MANASSAS BATTLEFIELD TRUST

By:  Date: 12/6/2023

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

MANASSAS MUSEUM

By: Mary H Dellinger Date: 12/11/2023

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

NATIONAL MUSEUM OF NATURAL HISTORY

By: _____ Date: _____

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

PRINCE WILLIAM COUNTY HISTORIC PRESERVATION DIVISION

By:  Date: 12/6/2023

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

PRINCE WILLIAM COUNTY HISTORICAL COMMISSION

By: _____ Date: _____

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

SONS OF UNION VETERANS OF THE CIVIL WAR

By: Roger L. Leturno Date: 12/5/2023

Memorandum of Agreement
Disposition of Human Remains and Related Resources
Manassas National Battlefield Park

CONCURRING PARTY

NATIONAL MUSEUM OF CIVIL WAR MEDICINE

By:  Date: 12/6/23

DAVID PRICE - EXECUTIVE DIRECTOR