

APPENDIX B

PROGRAMMATIC AGREEMENT

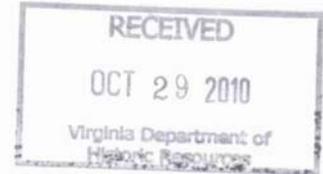
Figure B-1. 2010 Programmatic Agreement

**PROGRAMMATIC AGREEMENT BETWEEN THE NATIONAL PARK SERVICE AND THE
VIRGINIA STATE HISTORIC PRESERVATION OFFICE**

FOR

ROANOKE VALLEY / BLUE RIDGE PARKWAY TRAIL PLAN

October 2010



WHEREAS the Blue Ridge Parkway (BLRI) (P.L. 74-848) is a unit of the National Park Service (NPS) and is charged to meet the directives of the NPS Organic Act of 1916 (P.L. 64-235,39 Stat. 535) to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations,"; and

WHEREAS the BLRI is also charged to meet the directives as a recreational motor road connecting Shenandoah and Great Smoky Mountains National Parks, specifically: "to conserve, interpret, and exhibit the unique natural and cultural resources of the central and southern Appalachian Mountains, as well as provide for leisure motor travel through a variety of environments", approved by an Act of Congress on August 25, 1916 (39 Stat.535); and

WHEREAS the Roanoke Valley Greenways Commission and BLRI signed a General Agreement in 2001 allowing the Commission to assist with trail planning, mapping and rehabilitation under the direction of Parkway staff; and

WHEREAS a planning team was established to determine the feasibility of developing a shared-use trail network, linking BLRI and the Roanoke Valley trail network with the project goal specifically: to expand outdoor recreational opportunities for both residents and visitors to the Roanoke region by providing a network of shared use trails that link downtown Roanoke and surrounding neighborhoods to locally and national significant open space resources; and

WHEREAS the proposed BLRI trails in the Roanoke area were part of the original design of the Parkway, and were intended to follow the Parkway motor road from Stewart's Knob at MP 110.6 to State Route 220 at MP 121.4 with the addition of the Chestnut Ridge Trail loop surrounding the Roanoke Mountain Campground added to complete the trail system when the campground was constructed a few years later; and

WHEREAS in accordance with 36 CFR Part 800.4, the BLRI proposes to phase implementation of trail construction by implementing these actions over a period of one to two years depending upon funding and other factors; and

WHEREAS, the Park Superintendent is the responsible agency official for purposes of compliance with Section 106 of the NHPA as defined in 36 CFR 800.2 and is accountable for full performance of Section 106 compliance through the NPS Management Policies, and procedures for performance and program evaluation; and

WHEREAS the BLRI has determined that these undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the

Virginia State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800. 14(a) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA; 16 U.S.C. 470); and

WHEREAS, the BLRI has invited the participation of the Advisory Council on Historic Preservation (ACHP) in this consultation, and the ACHP has declined to participate; and

WHEREAS, the BLRI has invited the participation of the Tuscarora Nation, Eastern Shawnee Tribe of Oklahoma, Absentee Tribe of Oklahoma, Catawba Indian Nation, United Keetoowah Band of Cherokee Indians, Cherokee Nation, Eastern Band of Cherokee Indians, and the Shawnee Tribe in this consultation and none of the Tribes chose to participate; and

WHEREAS the 2008 Programmatic Agreement (2008 PA) executed by the NPS, the ACHP, and The National Conference of State Historic Preservation Officers (NCSHPO) encourages the development of park and project specific programmatic agreements that may be independent of or supplemental to the 2008 Programmatic Agreement .

NOW, THEREFORE, the BLRI and the SHPO agree to proceed with the undertaking provided that the BLRI shall ensure that the following stipulations are implemented and that these stipulations shall govern the Project and all of its parts as long as this agreement remains in force.

Stipulations

The BLRI will ensure that the following measures are carried out:

I. Consultation

BLRI shall consult with the SHPO in carrying out the terms of this agreement. Such consultation may include but not be limited to:

- Written correspondence
- Conference calls
- Face-to-face meetings
- Field visits.

II. Planning and Compliance Preparation

A. BLRI

1. Consistent with the provisions of the 2008 PA, the BLRI will prepare assessments of effect for the actions in consultation with the appropriate cultural resource advisors in the fields of archeology, history, historic landscape architecture, and historic architecture who meet the professional qualifications set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

2. Actions that meet the criteria for streamlined review as specified in Stipulation III.C of the 2008 PA will require no further review by the SHPO. For actions that do not meet the criteria for streamlined review, the BLRI will submit the assessment of affect and all necessary supporting documentation to the SHPO for review and comment.

B. Identification, Evaluation and Treatment of Archaeological Sites

1. If the BLRI determines in consultation with the SHPO that further efforts are needed to identify archeological sites, the BLRI shall develop an archeological testing program in consultation with the SHPO of sufficient intensity to support evaluation of the sites' eligibility for listing in the National Register of Historic Places following the regulations outlined in 36 CFR Part 800.4(c).
2. If as a result of the testing program, archeological sites are identified that are eligible for the NRHP, the BLRI shall in consultation with the SHPO develop a plan for each site for the avoidance and protection or for recovery of information or destruction without data recovery. The plan shall be submitted to the SHPO for review and approval prior to implementation of the plan.
3. All data recovery plans prepared under the terms of this PA shall include the following elements:
 - a) Information including; site maps, boundaries, nature, and time period of 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;
 - b) Information on any property, properties, or portions of properties that will be destroyed without data recovery and the context in which such properties are eligible for the National Register;
 - c) Discussion of the research questions to be addressed through the data recovery with an explanation/ justification of their relevance and importance;
 - d) Description of the recovery methods to be used, with an explanation of their pertinence to the research questions;
 - e) Information on any regular progress reports or meetings to keep the NPS and the SHPO up to date on the course of the work. The plan should contain the expected timetable for excavation, analysis and preparation of the final report.

C. Review of Documentation

The BLRI shall submit two copies of the draft of all technical reports bound in a spiral binding and on acid free paper to the SHPO for review and comment. The BLRI shall ensure that all comments received within thirty (30) days of report receipt shall be addressed in the final technical reports. Two copies of all final technical reports and one electronic copy in Adobe® Portable Document Format (.pdf) shall be provided to the SHPO.

D. Curation

Curation of all archeological materials and appropriate field and research notes, maps, drawings and photographic records collected as part of this PA will be cared for in accordance with the requirements of 36 CFR Part 79, *Curation of Federally Owned and Administered Archeological Collections* and the *National Park Service Museum Handbook*.

E. Professional Qualifications

All archeological work will be conducted by or under the direct supervision of a qualified archeologist who meets, at a minimum, the qualifications set forth in the Secretary of the Interior's *Professional Qualifications Standards* (48 FR 44738-9).

F. Reporting Standard

All archeological studies, resulting from this PA, including data recovery plans, shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 4434-37), the Director's Order 28, Technical Guidelines, and the SHPO's *Guidelines for Conducting Cultural Resource Survey in Virginia: Additional Guidance for the Implementation of the Federal Standards Entitled Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44742, September 29, 1983) rev. 2003, and shall take into account the ACHP's *Section 106 Archaeology Guidance* (June 2007) and *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999; updated 2002) or subsequent revision or replacements thereof.

III. Project Coordination and Implementation

The BLRI will coordinate the Section 106 review activities of all federal agencies or other partners using federal funding or permits that participate in the actions associated with the BLRI on NPS property

IV. Report Requirements

The BLRI shall ensure that decisions regarding the dissemination of information generated as a result of carrying out the terms of this agreement are made in accordance with Section 304 of the NHPA and the National Register Bulletin 29, entitled *Guidelines for Restricting Information About Historic and Prehistoric Resources* (February 15, 2000). When the information in question has been developed in the course of an agency's compliance with Section 106 or 110(f), the Secretary shall consult with the ACHP in reaching

determinations under subsections (a) and (b).

V. Monitoring of Performance under the Agreement

The SHPO may monitor activities carried out pursuant to this PA, and the ACHP may review such activities if so requested. The BLRI will cooperate with the SHPO in carrying out their monitoring and review responsibilities.

VI. Post Review Discoveries

- A. In the event that a previously unidentified archeological resource is discovered during ground disturbing activities, the BLRI shall immediately notify the SHPO. All construction work involving subsurface disturbance will be halted in the area of the resource and in the surrounding area where further subsurface resources can reasonably be expected to occur. The BLRI and the SHPO, or an archeologist approved by them, immediately will inspect the work site and determine the area and the nature of the affected archeological property. With SHPO concurrence, construction work may then continue in those portions of the project area where archeological resources will not be impacted. The BLRI in consultation with the SHPO will determine the National Register eligibility of the resource.
- B. If the resource is determined to meet National Register Criteria (36 CFR Part 60.6), the NPS will ensure compliance with Section 800.13 of the ACHP's regulations. Work in the affected area shall not proceed until either (a) the development or implementation of appropriate data recovery or other recommended mitigation procedures, or (b) the determination is made that the located resources are not eligible for inclusion on the National Register.
- C. Treatment of any inadvertent discoveries that might be subject to the provisions of the Native American Grave Protection and Repatriation Act (NAGPRA) is not a part of this PA and will be governed by NAGPRA.

VII. Dispute Resolution

- A. Should either party to this PA object to any action carried out or proposed under the terms of this PA, the parties will consult to resolve the objection.
- B. If after such consultation the dispute cannot be resolved, Section X, "Dispute Resolution" of the 2008 PA shall govern.
- C. 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 this agreement and the BLRI will take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this agreement to resolve the objection.

VIII. Amending the Agreement

Any party to this PA may propose that the PA be amended, whereupon the parties to this PA will consider such an amendment. Both signatories to the PA must agree to the proposed amendment in accordance with 800.5(e) (5). The amendment will be effective on the date it is signed by both of the signatories and filed with the ACHP.

IX. Terminating the Agreement

- A. If the BLRI determines that it cannot implement the terms of this PA, or if the SHPO determines that the agreement is not being properly implemented, the BLRI or the SHPO may propose to the other party that it be terminated.
- B. Termination shall include the submission of any outstanding technical reports on any work done up to and including the date of termination.
- C. A party proposing to terminate this agreement shall so notify all parties to the agreement, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.
- D. Should such consultation fail and the agreement be terminated, the BLRI will comply with the 2008 PA and 36 CFR Part 800.3 through Part 800.6 with regard to individual actions covered by this PA.

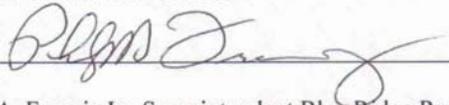
X. Duration of the Agreement

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

Signatures

NATIONAL PARK SERVICE

By: _____



Date: _____

10/25/10

Phillip A. Francis Jr., Superintendent Blue Ridge Parkway

VIRGINIA STATE HISTORIC PRESERVATION OFFICER

By: _____



Date: _____

11/8/10

Kathleen S. Kilpatrick Director, Department of Historic Resources

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