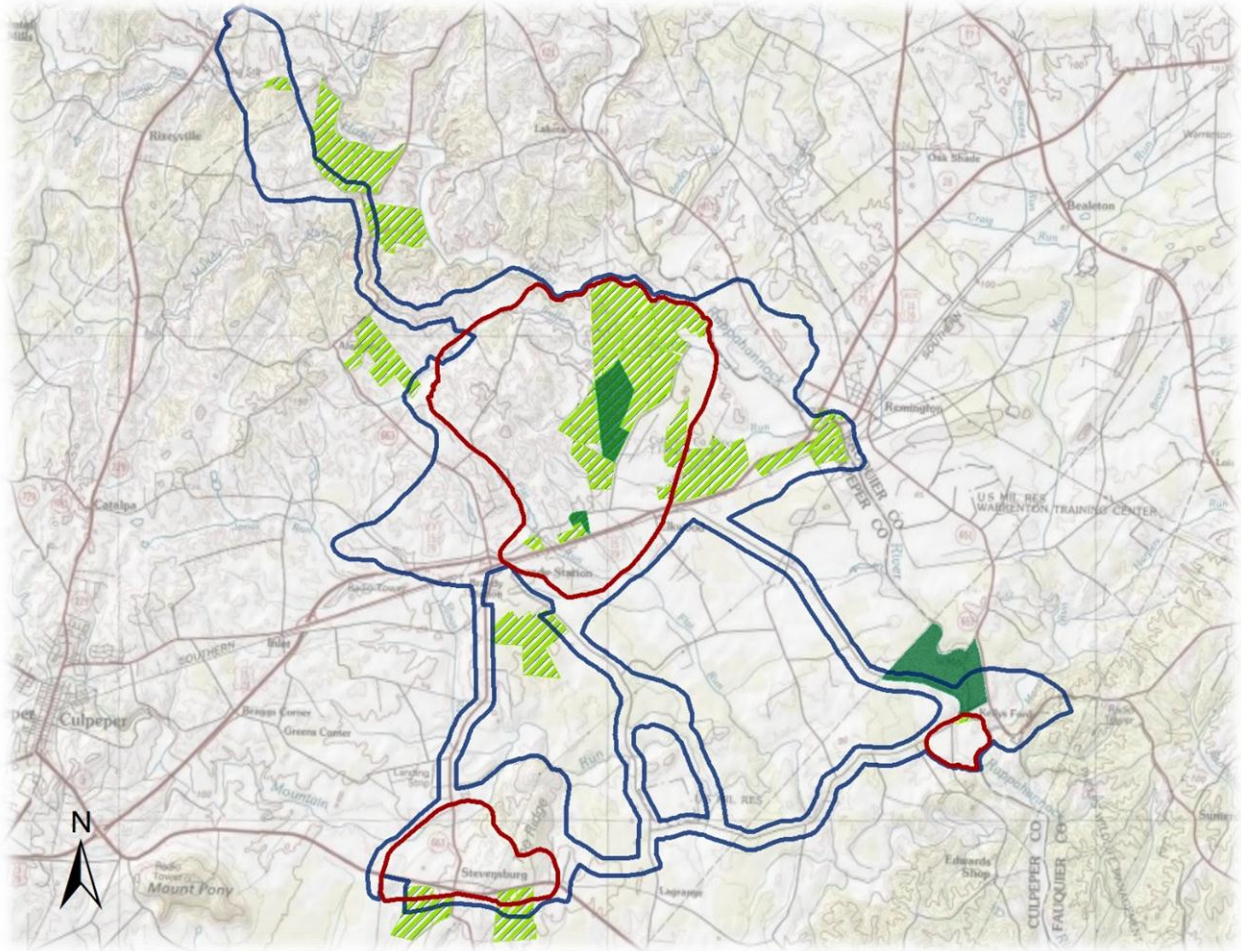


Work Plan & Schedule

Programmatic Agreement Development

American Battlefield Protection Program Grants



Brandy Station, Culpeper County, Virginia. Protected lands diagram, 2012 (NPS, ABPP)

American Battlefield Protection Program
National Park Service
Department of the Interior
July 2015

Table of Contents

Executive Summary

- I. Introduction & Program Description**
 - a. American Battlefield Protection Program Grants Overview**
 - b. Battlefield Planning Grants**
 - c. Battlefield Land Acquisition Grants**
 - d. Need for the Programmatic Agreement**

- II. WORK PLAN**

- III. SCHEDULE**

- IV. Appendix: Interim Programmatic Agreement**

Executive Summary

As required by Stipulation VII. of the “NPS ABPP Battlefield Land Acquisition Grant Program PA for remaining FY14 and New FY15 Funding” interim programmatic agreement (Interim PA), this work plan and schedule has been prepared to guide the preparation and execution of a nationwide Programmatic Agreement for ABPP grant programs. This work plan has been prepared in consultation with the ACHP and the SHPOs.

This document provides essential background on how the ABPP grant programs work, what parties are involved, timelines, staff levels, and existing workloads. The purpose and need for the nationwide PA derives from the cyclical and repetitive nature of these funding activities and the potential for some of the grant-related activities to affect historic properties. While the grants are focused on land preservation and preservation of battlefields and related resources, the program does not have as part of its direct mission, protection of other historic eras and resource types. By applying the Section 106 process, the aim is to avoid grants leading to adverse effects on National Register-eligible properties through careful forethought and professional preservation planning.

There is a clear need to streamline some types of grant related activities, and to minimize additional workload on already over-taxed SHPO, NPS, and other state and local agency offices. Therefore, NPS wishes to enter into a collaborative consultation with interested parties and craft a logical and simplified process for taking into account the effects of the ABPP grant programs on historic properties and for allowing the ACHP a reasonable opportunity to comment on undertakings covered by the agreement.

This work plan was prepared in July 2015 by the American Battlefield Protection Program (ABPP) with guidance from NPS Section 106 Compliance Officer, Jeffrey Durbin. During its preparation, the ABPP consulted with the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Offices (SHPOs) through the National Council of State Historic Preservation Officers (NCSHPO).

I. INTRODUCTION & PROGRAM DESCRIPTION

AMERICAN BATTLEFIELD PROTECTION PROGRAM OVERVIEW

The National Park Service's American Battlefield Protection Program (ABPP) is a national program that encourages, supports, assists, recognizes, and works in partnership with citizens, Federal, State, local, and tribal governments, other public entities, educational institutions, and private nonprofit organizations in identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites on a National, State, and local level. Program Objectives are accomplished through two preservation grant programs (Battlefield Planning Grants and Battlefield Land Acquisition Grants), special studies, and technical assistance. The ABPP was originally authorized by the American Battlefield Protection Program Act of 1996 (P.L. 104-333, 16 USC 469k), reauthorized in 2002, and reauthorized and established in perpetuity in 2009 (PL 111-11, 54 U.S.C. § 308101-3). The Battlefield Planning Grant Program authorization derives from that same authorization. The Battlefield Land Acquisition Grant Program authorization derives from separate legislation. Its most recent reauthorization comes under the National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291) and lasts through Fiscal Year 2021.

The ABPP staff currently consists of five professionals with backgrounds in historic preservation, archeology, and history. Staff manages the grant application process, the review and award process, as well as review of all products of the planning grants (research designs, reports, etc.) and the development of agreements and easements for acquisition grants. In addition they provide expert advice to federal agencies and the Advisory Council on Historic Preservation on federal projects that may adversely affect historic battlefields throughout the country.

BATTLEFIELD PLANNING GRANTS

The ABPP's Battlefield Planning Grant Program promotes the protection and preservation of battlefield lands by funding non-acquisition, non-construction preservation methods such as planning, education, survey and inventory. Once a year, the ABPP invites non-profit groups, academic institutions, and local, regional, state, and tribal governments to submit grant applications for the protection of battlefield sites, and sites associated with battlefields, that are located on American soil and/or within U.S. territorial waters. The purpose of this program is to provide seed money for projects that lead directly to the preservation of battlefield land and/or their associated sites. To maximize effectiveness of battlefield protection efforts, applicant organizations are encouraged to work with partner organizations and Federal, State and local government agencies as early as possible to integrate their efforts into a larger battle site protection strategy.

Since 1990, the ABPP and its partners have helped protect and enhance more than 650 battlefields, from 5 major wars and many Indian conflicts, by providing \$18 million in grants and co-sponsoring 559 projects in 46 states, the District of Columbia, and several territories. The ABPP encourages, but does not require, matching funds or in-kind services for these projects. In FY 2015, approximately \$1.19 million will be awarded.

The Planning Grants program averages approximately 37 applications and 25 awards each year.¹ The states with the most awards are Virginia, New York, and South Carolina with around 10 each in the past 5 years. Virginia has the most at 15 planning grants over that period. New York had 12 grants over the same period.

Battlefield Planning Grants Top Five States for # of Grants

Virginia	(15)
New York	(12)
South Carolina	(9)
Pennsylvania	(8)
Connecticut	(6)

Planning Grants are awarded on an annual cycle, and administered typically over two years. The call for applicants typically is released in October with applications due in mid-January. Awards are announced in early to mid-summer and grant agreements finalized by August 1. Grantees are required to self-report progress on the grant and submit a draft research design, as well as draft products at agreed upon points in the process. ABPP staff reviews work plans or research designs (for archeological projects), as well as all products to ensure they meet professional historic preservation standards.

BATTLEFIELD LAND ACQUISITION GRANTS

The ABPP's Battlefield Land Acquisition Grant Program provides matching grants to assist States and local communities in acquiring significant battlefield lands for permanent protection. Grants are available for the fee simple acquisition of land, or for the acquisition of permanent, protective interests in land (easements), at Civil War Battlefields listed in the Civil War Sites Advisory Commission's (CWSAC) 1993 *Report on the Nation's Civil War Battlefields* and Revolutionary War and War of 1812 Battlefields listed in the ABPP's 2007 *Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States*. Funds may not be used to acquire land or interests in land within the legislative boundary of a National Park Service unit.

¹ Averages calculated over the past 5 years (2010-2015).

Eligible applicants are State and local governments. Private nonprofit organizations seeking to acquire battlefield land with assistance from this program must apply in partnership with the State or local government agency that has jurisdiction over the proposed acquisition parcel. The government agency may then sub grant the Federal funds to the nonprofit organization. As a requirement of the grant, in cases where a local government or a private non-profit organization acquires land or an interest in land with assistance from this program, it must convey an acceptable perpetual protective easement on the land to the State Historic Preservation Office (SHPO) or other agency acceptable to the ABPP and the SHPO. That easement holder then insures the perpetual protection of the conservation, historic, and other land values called out in the legally recorded easement.

This grant program is funded from the Land and Water Conservation Fund (LWCF) in amounts determined by Congressional appropriations each year. As per the Battlefield Land Acquisition Grant Program's authorization (54 U.S.C. § 308103), properties acquired through this grant program are subject to what is commonly known as Section 6(f)(3), the "non-conversion clause" of the Land and Water Conservation Fund Act (54 U.S.C. § 200305(f)(3)). This requires that land acquired with LWCF money through this grant program cannot be converted to uses other than preservation and conservation purposes. In addition, grantees must provide for the appropriate public access to and enjoyment of any lands or interests in lands acquired with assistance from this program, subject to necessary and reasonable measures on the part of the beneficiary to protect the historic features of the land from damage or loss.

All grantees must agree to record with or in the deed and record in the easement (as applicable) the following:

- 1) That the property was acquired with assistance from Federal Land and Water Conservation Act funds pursuant to the American Battlefield Protection Program's current authorizing legislation;
- 2) That the property, therefore, is subject to the provisions of Section 6(f)(3) of the Land and Water Conservation Act;
- 3) That the property, therefore, may never be converted to other than preservation and conservation uses without the written approval of the Secretary of the Interior, acting through the ABPP;
- 4) That in the event of a breach of the requirements of Section 6(f)(3) (unauthorized conversion), the only remedy is immediate compliance with Section 6(f)(3); and
- 5) That grant funds cannot be repaid to the NPS to nullify the requirements of Section 6(f)(3).

Because the Section 6(f)(3) "non-conversion" clause governs the use of the land but is not necessarily sufficient to protect the historic features of the battlefield, the NPS also requires additional legal assurances that the battlefield land will be preserved appropriately. In cases where a State government agency will acquire and manage the property, the State must enter into

a letter of agreement with the NPS. The letter must assert that the State will hold the property forever, allow for public access, maintain and protect the historic features and landscape, restrict development to that needed for interpretation and visitor access, and pursue site development only after appropriate environmental and cultural studies are completed to inform best possibilities for low impact design and construction. If the agency is other than the State Historic Preservation Office, the letter must also state that pre-development site planning (such as surveys to identify significant landscape and historic features, and archeological investigations) and final construction designs are subject to approval by the State Historic Preservation Officer.

The Battlefield Land Acquisition Grant Program has been tremendously successful in promoting local preservation efforts to permanently preserve Civil War battlefield land with a minimum of Federal assistance. ABPP land acquisition grants of approximately \$86 million have leveraged a total of \$110 million in nonfederal funding. To date, the grant program has assisted in the permanent protection of over 24,000 acres at 94 Civil War battlefields in 17 states. These numbers will increase due to the addition of two wars (Revolutionary War and War of 1812) and 243 eligible battlefields now eligible in 2015. In FY 2015, \$8.9 million was appropriated for this program.

The Acquisition Grants program has averaged 35 awards per year over the past six years. The states with the most applicants/awards are Virginia, North Carolina, and Tennessee with over 10 each in the past 4 years. Virginia has by far the most at 59 over that period. The next largest volume was in North Carolina (22 grants over 4 years).

Battlefield Acquisition Grants Top Five States for # of Grants

Virginia	(59)
North Carolina	(22)
Tennessee	(15)
Kentucky	(8)
Pennsylvania	(7)

Acquisition Grants are awarded on rolling basis. Staff reviews applications for Priority I and II battlefields within 30 days, and Priority III and IV battlefields within 120 days. Awards are finalized and announced after the Director of the NPS has approved the grantees. This takes about 3 months for Priority I and II battlefields and up to about 6 months for Priority III and IV battlefields. The awardee cannot proceed with the purchase until ABPP and the government sponsor sign a grant agreement that outlines the terms and conditions of the grant, including the scope of work, documentation required, and how the preservation easement will be recorded.

The applicant establishes a schedule for acquisition which is usually based on a purchase agreement between the land seller and the buyer (the grant applicant). Because these are real

estate transactions, there are typically deadlines after which the purchase agreement will be void. Not meeting those deadlines could cause the buyer (applicant) to lose the opportunity to acquire the land or the easement on the land.

NEED FOR THE PROGRAMMATIC AGREEMENT

ABPP's COMPLIANCE WITH SECTION 106

Both grant programs have become powerful tools in advancing the preservation of our nation's historic battlefields. Nevertheless, *as federal undertakings that may involve activities or lead to activities that have the potential to affect historic properties*, the ABPP grants must comply with Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108), and its implementing regulation, 36 CFR 800, "Protection of Historic Properties."

Previous determinations that the Battlefield Land Acquisition Grant program's easement and Section 6(f)(3) non-conversion clause requirements were sufficient protection for battlefield resources have been found insufficient to comply with Section 106. The ABPP must consider the effects of those proposed actions on non-battle related historic properties as well as battle-related resources.

In order to develop a strategy for ABPP to assist its applicants in the delivery of the BLAG funds and to comply with Section 106 for the Battlefield Land Acquisition Grants (BLAGs), the ABPP, Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO), with the Civil War Trust (CWT) as a Concurring Party, executed an Interim Programmatic Agreement (PA) on May 14, 2015. This Interim PA only applies to remaining FY 14 and new FY 15 funds in 10 specific states where acquisition activities have already started or were about to begin. The interim PA will expire December 31, 2015. The ABPP is committed to executing a Nationwide PA by the end of the calendar year in order to cover Section 106 Reviews for both grant programs.

While many of the activities associated with the ABPP grant programs do not appear to have the potential to affect historic properties (for example: mapping and research projects funded through the Planning Grants), and the funds may not directly go to "bricks-and-mortar" capital projects, other activities such as land acquisition and historic preservation planning may lead to future activities that affect historic properties (both positively and negatively), especially to resources not historically related to the battle or battle period. A programmatic agreement that establishes a process for efficiently completing Section 106 review for those projects with the potential to impact historic properties is highly desired. Some of the goals of this PA are to:

- Provide all consulting parties an acceptable level of confidence that historic properties are being adequately considered in the ABPP/NPS decision to award grants.
- Simplify the process in order to accommodate the limited staff capacity at all levels, include at the ABPP, State Historic Preservation Offices (SHPOs), the Tribal Historic Preservation Offices (THPOs), and Native Hawaiian Organizations (NHOs),
- Allow for a streamlined process that fits within the often constrained timelines associated with grants (especially with the acquisition grants),
- Clearly define the responsibilities of all parties,
- Address repetitive and low-impact potential types of grant activities.

II. WORK PLAN for Developing the Programmatic Agreement

INITIATION PHASE

1. OUTREACH TO LOCATE AND MAKE INITIAL CONTACT WITH CONSULTING PARTIES:

- ACHP – June 3 2015 – initial meeting to discuss the work plan
- NCSHPO – Contact Erik Hein – discuss possibility of convening a SHPO Working Group to consult on PA development (work on list of SHPOs who would be good representatives for the group)
- THPOs – contact Tribal Historic Preservation Officers (THPOs) and determine how they would like to proceed with consultation; discuss opportunities to engage and advise; update the schedule and work plan accordingly
- Tribes – ABPP work with NPS’s Chief of Anthropology to identify tribal contacts; National Association of Tribal Preservation Officers (<http://nathpo.org/wp/>); and other tribal organizations to identify interested Indian tribes
- National Trust for Historic Preservation (NTHP)
- Civil War Trust & other preservation groups with a battlefield focus [Battlefield Planning Grant partners]
- Other consulting parties as they are identified

2. ESTABLISH A PUBLIC NATIONAL PARK SERVICE “PLANNING, ENVIRONMENT AND PUBLIC COMMENT” (PEPC) SITE PAGE:

- Post initial flow chart for process
- Post initial list of consulting parties
- Post background info on program and need for the PA (see Section I of this document.)
- Post stats on past grants and typical protections and impacts to properties (both planning and acquisition grants)

FORMAL CONSULTATION PHASE

3. CONSULTING PARTIES MEETINGS

Convene one or more initial consulting party meetings in person or via webinar to introduce the effort and solicit feedback on a conceptual review process and discuss initial issues. Request Consulting Parties’ assistance in reaching conclusions about what properties may be affected, why they are significant *and to whom*, and how the undertaking (grant funded activities) may adversely affect the characteristics of historic properties.

INVITE:

- State Historic Preservation Officers (SHPOs) via NCSHPO formed working group,
- State easement and grants program coordinators,
- Tribal Historic Preservation Officers (THPOs), [If THPOs indicate they want a separate, parallel consultation, set up meetings/calls for tribal consultation separately; perhaps by region.]
- ACHP,
- Indian tribes,
- Native Hawaiian Organizations,
- Previous grantees,
- preservation organizations,
- local governments,
- National Military Parks, National Battlefield representatives
- Private CRMs that we've worked with

PROPOSED AGENDA:

- Clearly and concisely explain the ABPP and its Section 106 challenges to the consulting parties.
- Why a program PA would be desirable. Explain why the standard Section 106 process is not the most effective fit for its program:
 - BLAG--accelerated grant timeframes within which the standard 106 process cannot be effectively accomplished.
 - Complying with the normal Section 106 process for a large number of similar grant decisions would overwhelm agency staff or other resources and create redundant busywork.
 - Effects on historic properties can't be fully determined prior to approval of grant.
 - In some instances it may be desirable to delegate responsibilities to nonfederal party(ies) as allowed under (800.14(b)(1)(iii).
 - Explain the standard content of a PA and how they are implemented.
 - Solicit ideas, suggestions, and input from consulting parties and the public to inform the drafting process and the development of proposed measures to avoid, minimize, or mitigate the adverse effects.

4. DEVELOPMENT OF PA THROUGH CONSULTATION MEETINGS

- Identify topics or parts of the agreement document to tackle at each meeting:
Possible topics:
 - Planning Grants vs. Acquisition Grants
 - Determine Signatories & Concurring Parties
 - Define categories of activities with low or no potential to affect historic properties and circulate for comment
 - Standard treatments for categories of historic properties, categories of undertakings, or categories of effects
 - Roles & responsibilities of signatories
 - Stipulations & the Review Process
- Set up a series of NCSHPO working group meetings and teleconferences with THPOs, Tribes & NHOs to discuss these topics and get feedback for content/process to outline in the PA.

5. PREPARE DRAFT PROGRAMMATIC AGREEMENT & CIRCULATE FOR COMMENT

- Use ACHP Checklist to build PA:
<http://www.achp.gov/agreementdocguidance.html#ch2-2>
- Post draft to PEPC
- Request comments from Consulting Parties (CPs)
- Request comments from THPOs, Tribes, NHOs, other CPs
- Request Comments from ACHP

6. REVISE BASED ON COMMENTS & SUBMIT FOR FINAL REVIEW BY ACHP

EXECUTION OF AGREEMENT, DISTRIBUTION, & IMPLEMENTATION

7. EXECUTE DOCUMENT

8. ANNOUNCE & DISTRIBUTE

- Post to ABPP & PEPC website
- Incorporate instructions into ABPP Grants manuals/guidelines
- Provide webinar training in new process
- Add to ABPP Battlefield Planning Grant training

V. SCHEDULE

❖ INITIATION PHASE (June – August 2015)

June 3rd – initial meeting with ACHP to discuss work plan

June 30th – initial meeting with NCSHPO to discuss work plan

July 19th – 21st – provide NCSHPO information to be presented as a brief notice at NCSHPO Board meeting

By August 1st – Create Public PEPC page with background information and timeline for consultation

❖ FORMAL CONSULTATION PHASE (August – November 2015)

Mid-to- Late August

1st Consulting Parties Meeting(s) via webinar²

- ABPP: Introduce Grant Program & Need for the PA
- Separate Tribal Meeting – Ask if they would like to consult separately or together.

Mid-September

2nd Consulting Parties Meeting(s) via webinar

End of September

Circulate outlined first draft to consulting parties for comment

Late October

3rd Consulting Parties Meeting(s) via webinar to discuss comments

Early November

Provide update to be presented at NCSHPO Board meeting.

Mid-to-Late November

Circulate 2nd draft to consulting parties for comment

Mid-December

Review comments on 2nd draft due back to NPS

❖ EXECUTION OF AGREEMENT & IMPLEMENTATION (December 2015 – February 2016)

End of December

Final PA ready for execution

² TBD: Each CP meeting may take the form of several webinars/teleconferences split by region or other logical division. Also, there may be a parallel track for THPOs.

By December 30th

- Execution by all signatories & concurring parties; File executed PA with ACHP; Send executed copies to each consulting party

January-February 2016

- Post Final, executed PA to PEPC & ABPP website
- Revise & update ABPP grant & training manuals as appropriate
- Provide webinar training or online training & instructions to applicants
- Add module to ABPP Battlefield Planning Grants training

VI. Appendix

[Executed Interim ABPP Programmatic Agreement]