

**MEMORANDUM OF AGREEMENT
AMONG THE NATIONAL PARK SERVICE
AND THE MARYLAND STATE HISTORIC PRESERVATION OFFICER
PURSUANT TO 36 CFR § 800.6
REGARDING THE
REHABILITATION OF VARIOUS ROADWAYS AND PARKING AREAS
AT ANTIETAM NATIONAL BATTLEFIELD
WASHINGTON COUNTY, MARYLAND**

WHEREAS, the National Park Service (NPS) in cooperation with the Eastern Federal Lands Highway Division (EFLHD) of the Federal Highway Administration (FHWA) has determined that it is in the interest of the NPS to rehabilitate various roadways and parking areas within the Antietam National Battlefield (ANTI), located in Washington County, Maryland; and

WHEREAS, after a detailed study of various alternatives and measures to avoid and minimize adverse effects on historic properties, the NPS has selected the Action Alternative (Undertaking) for construction, which includes improvements to various roadways, parking areas, sidewalks, and paved trails throughout ANTI; and

WHEREAS, ANTI (WA-II-0477) is listed on the National Register of Historic Places as a historic district and has two periods of historical significance: the period of the battle, and the long period of commemoration that followed it; and

WHEREAS, the NPS and FHWA have determined that elements of the Undertaking will have an adverse effect on the ANTI Historic District and certain contributing resources within the Historic District, including the Pry Farm Lane (Pry House Access Road), Piper Lane, the Maryland Battery A, Light Artillery marker, the New Jersey, Hexamer's Battery marker, and the stone culvert on Richardson Avenue; and

WHEREAS, the NPS and the FHWA have consulted with the Maryland Historical Trust State Historic Preservation Office (MD SHPO) pursuant to 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966 (16 USC 470f); and

WHEREAS, the NPS, the FHWA and the MD SHPO have determined that, for the purposes of compliance with Section 106, the NPS is the lead federal agency for this Undertaking; and

WHEREAS, the FHWA participated in consultation, has responsibilities for implementing stipulations under this Memorandum of Agreement (MOA), and has been invited to be a signatory to this MOA; and

WHEREAS, the NPS and the FHWA provided public notification and opportunities for the public to comment on this project through an Environmental Assessment; and

WHEREAS, the NPS notified the Advisory Council on Historic Preservation (Council) of the Undertaking's adverse effect on historic properties and the Council declined to participate in the consultation; and

WHEREAS, there is no evidence to date that human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony, collectively termed cultural items and defined in the Native American Graves and Repatriation Act (25 U.S.C. 3001) are present in the Undertaking's area of potential effects; and

WHEREAS, the possibility exists that cultural items could inadvertently be discovered during mitigation and construction activities and will be governed by the inadvertent discovery clauses stipulated in this MOA; and

NOW THEREFORE, the NPS, the FHWA, and the MD SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

The NPS and FHWA shall ensure that the following measures are carried out:

I. TREATMENT OF CONTRIBUTING RESOURCES TO THE ANTIETAM NATIONAL BATTLEFIELD (WA-II-0477)

- A. PRY HOUSE ACCESS ROAD AND PIPER LANE:** The FHWA shall consult with the NPS to select the appropriate roadway surfaces for the proposed improvements to these two historic lanes. The FHWA proposes to pave the lanes with a bonded aggregate or asphalt surface within the existing limits of the gravel roadways. The color and texture of the aggregate used to pave the roadways will be selected to blend in with the historic landscape. The FHWA shall provide a sample of the bonded aggregate or abraded asphalt surface to the Superintendent of the Antietam National Battlefield for approval prior to construction. If the NPS does not provide approval for the selected materials, FHWA will not construct the bonded aggregate/abraded asphalt as part of this Undertaking.
- B. MARYLAND BATTERY A, LIGHT ARTILLERY MARKER AND NEW JERSEY, HEXAMER'S BATTERY MARKER:** The NPS and the FHWA shall relocate these existing markers and move them back approximately 8 feet from their existing locations immediately adjacent to the roadway on either side of Mumma Lane at the intersection with Smoketown Road, where they are in danger of being struck by passing vehicles. The NPS and the FHWA will document the existing locations of the markers using GPS, prior to relocation, and exercise caution to ensure that the markers are not inadvertently damaged

during relocation. The NPS shall oversee all foundation and treatment work on the markers and ensure that they are handled in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR 68).

- C. **STONE CULVERT AT RICHARDSON AVENUE:** The FHWA shall consult with the NPS in developing the final plans for the improvements to the stone culvert at Richardson Avenue and ensure that the plans adhere to the Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR 68). The plans shall utilize existing stone to the extent possible and match any new mortar and additional stone, if needed, to the existing structure in color and texture. The weathering steel guard rail posts and steel backed timber rail will be designed to blend into the historic landscape. The FHWA shall submit the final plans to the Superintendent of Antietam National Battlefield for review and approval, prior to construction.
- D. **MODIFICATIONS:** In the event that the NPS and the FHWA must make substantive changes to or are unable to reach concurrence on the agreed-upon treatments and design plans specified in Stipulation I.A through I.C during implementation of the Undertaking, the NPS shall notify and request the comments of the MD SHPO regarding the modifications to the Undertaking.

II. INADVERTENT DISCOVERIES

- A. In the event that previously unidentified archaeological deposits, structures, features, and/or objects are inadvertently discovered during the course of construction activities, all construction activity will cease within 50 feet of the discovery, until such time as the Superintendent of Antietam National Battlefield provides written notice to proceed.
- B. The NPS and the FHWA shall direct notification of such a finding to the Park Cultural Resource Manager, who will contact the Regional Archeologist within 24 hours of the initial discovery.
- C. The NPS and the FHWA shall make reasonable efforts to avoid, minimize, or mitigate any adverse effects to discovered historic properties and shall consult with the MD SHPO regarding the treatment of such resources pursuant to 36 CFR 800.

III. TREATMENT OF HUMAN REMAINS, SACRED OBJECTS, OBJECTS OF CULTURAL PATRIMONY, AND/OR ASSOCIATED FUNERARY OBJECTS

- A. All human remains, sacred objects, objects of cultural patrimony, and/or associated funerary objects will be treated according to the statutes set forth in

the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3002; 104 Stat 3048).

- B. The remains will be treated with respect to the deceased, and shall be protected from the time of discovery from further construction activities. No additional construction activity will be allowed within 50 feet of the discovery, until the Superintendent of Antietam National Battlefield provides written notice to proceed.
- C. All government employees, contractors' employees, and sub-contractors employees shall, upon discovery of human remains, sacred objects, objects of cultural patrimony, and/or associated funerary objects, report such finding to the NPS Cultural Resource Manager immediately.
- D. The NPS and the FHWA shall follow the guidance on the treatment of human remains, funerary objects, and objects of cultural patrimony outlined in Director's Order - #28, *Cultural Resource Management Guidelines* and the NPS *Management Policies* (2006).

IV. CURATION

The NPS and the FHWA will ensure that any artifacts and/or objects recovered during implementation of the Undertaking or from inadvertent discoveries will be catalogued and curated according to the standards set forth in 36 CFR 79 and will remain the property of the federal government.

V. DISPUTE RESOLUTION

Should any signatory to this MOA object within 30 days to actions or plans for review pursuant to this MOA, or dispute the completion of the terms of this agreement, the NPS shall consult with the objecting party to resolve the objections. If the NPS determines that the objection cannot be resolved, the NPS shall forward all documentation relevant to the objection to the Council and request the Council's comments pursuant to 36 CFR 800.7.

Council comments provided in response to such a request shall be taken into account by the NPS in accordance with 36 CFR 800.7(c)(4) with reference only to the subject of the dispute. The NPS's responsibility to carry out all actions under this MOA that are not subjects of the dispute shall remain unchanged.

VI. AMENDMENT

- A. Any party to this MOA may request that it be amended or modified, whereupon the NPS, the FHWA, and the MD SHPO, and when applicable, the Council,

shall consult in accordance with 36 CFR 800.6(c)(7) to consider such revision(s).

- B. Any resulting amendments or addenda shall be developed and executed among the NPS, the FHWA, the MD SHPO, and the Council, when applicable, in the same manner as the original MOA.

VII. TERMINATION

Pursuant to 36 CFR 800.6(c)(8), the NPS, the FHWA, and the MD SHPO may terminate this MOA by providing 30 days notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. If the agreement is not amended, the NPS shall either execute a memorandum of agreement with the signatories to this MOA or request the Council's comments under 36 CFR 800.7(a).

VIII. DURATION

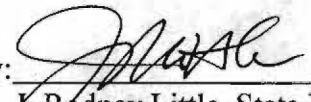
This MOA shall expire if its terms are not carried out within 5 years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Execution of this Memorandum of Agreement between the NPS, the FHWA, and the MD SHPO, and implementation of its terms, provide evidence that the NPS has afforded the MD SHPO an opportunity to comment on the Undertaking and its effects on historic properties and that the NPS has taken into account the effects of the undertaking on historic properties.

NATIONAL PARK SERVICE

By:  Date 1-31-2008
John Howard, Superintendent, Antietam National Battlefield

MARYLAND STATE HISTORIC PRESERVATION OFFICER

By:  Date 3-4-08
J. Rodney Little, State Historic Preservation Officer

*Memorandum of Agreement
Rehabilitation of Roadways and Parking Areas
Antietam National Battlefield
Page 6 of 6*

**FEDERAL HIGHWAY ADMINISTRATION - EASTERN FEDERAL LANDS
HIGHWAY DIVISION**

By: Melisa J. Ridenour Date 11 Mar 08
Melisa Ridenour, Division Engineer, EFLHD