



**National Trust for
Historic Preservation**
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**COALITION FOR
SMARTER GROWTH**

February 22, 2013

Mary Ellen N. Hodges
Preservation Program District Coordinator
Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219-1939

Re: Comments on VDOT's "Redline" of 2nd Draft of Programmatic Agreement for the Tri-County Parkway in Prince William and Loudoun Counties, Virginia

Dear Ms. Hodges:

The following comments on the Second Draft Programmatic Agreement (PA) for the Tri-County Parkway (TCP) dated February 7, 2013 are submitted on behalf of the Southern Environmental Law Center, the Piedmont Environmental Council, the Coalition for Smarter Growth, the National Trust for Historic Preservation, and the National Parks Conservation Association.

Because construction of the Tri-County Parkway would require the use of land from a National Park and a National Register Historic District, and because the proposal is interconnected (literally) with the proposed Manassas National Battlefield Bypass and now the proposed final alternative for the Northern Virginia North-South Corridor of Statewide Significance, the Section 106 review of the TCP raises complex and unprecedented issues. Our organizations appreciate the renewed efforts by the Virginia Department of Transportation (VDOT) and the Federal Highway Administration (FHWA) to solicit and consider input from the Consulting Parties on the proposed PA. We found the two Section 106 consulting party meetings that were held earlier this winter to be quite productive, and we appreciated these opportunities to explain our concerns, and to better understand VDOT's perspective on the key historic resource issues that we all agree this PA must address.

The redlined version of the second draft reflects some progress on a number of the historic resource issues. However, **it is evident that some of the most critical mitigation issues remain far from being resolved.** As noted in the draft minutes of the January 3 meeting, the Virginia State Historic Preservation Officer (SHPO) noted that "[t]he mitigation package in the PA has a lot of positives, but it is not quite there yet; we need to settle on the enforcement of deliverables." In particular, the provisions relating to the closure of Route 234 and Pageland Lane continue to raise far more questions than answers, and yet eliminating cut-through traffic from Route 234 is a foundation of the mitigation commitments for the TCP—and one this PA must guarantee.

Although we continue to dispute the need for the TCP (particularly considering the potential availability of less damaging alternatives), and although we remain extremely concerned that the TCP would do more long-term harm than good to the Manassas Battlefield, we offer this set of comments with a sincere desire to ensure an effective and enforceable mitigation package for the severe and undeniable adverse impacts that this project, if built, would have on the Battlefield, the Historic District, and the surrounding area.

Before we focus on the agreement itself, we would like to respond to the statement in your February 11 email indicating that VDOT will consider the nature and extent of comments on its redline of the second draft in deciding whether to hold an additional in-person meeting of consulting parties to discuss the PA. We would like to emphasize at the outset that we view such a meeting as absolutely necessary due to the fact that some of the most critical mitigation issues remain far from being resolved, and we ask that you schedule that meeting to occur as soon as possible. In fact, it seems likely that it will take more than one meeting to settle on the enforceability of a number of the essential mitigation commitments.

Enclosed with this letter is a set of comments and proposed changes to the revised draft of the PA, which will be discussed in more detail below. In an effort to avoid confusion, we “accepted” the track-change comments proposed by VDOT, except in cases where we had a comment relating to VDOT’s change.

Closure of Route 234 to “Through” Traffic

We strongly support the goal of removing commuter traffic from the portions of Route 234 and Route 29 that cut through the Manassas Battlefield, and one of our strongest interests in the Section 106 process is making sure that the commitment to close Route 234 to everyone other than Park visitors, and residents living along the portion of Route 234 located within the Battlefield boundaries (i.e., closing it to “through” traffic) is unassailable. Other Section 106 Signatories and Consulting Parties have also made clear that the plan agreed to for closing Route 234 to through traffic must be “airtight.”¹ Unfortunately, this latest draft of the PA is still quite far from achieving this paramount objective. We have included a number of recommended edits and clarifications, as well as comments, in our redlined version of Stipulation III.G. Our major concerns are described below.

- **The PA Should Decouple the Closure of Sections of Route 234 From Any Conveyance to NPS**

Va. Code Ann. § 33.1-149 is the provision of Virginia law that establishes VDOT’s authority to convey sections of abandoned roads formerly included in the State Highway System. It states that a section of road *shall not* be conveyed “if it is made to appear that such section of road should be left open for the reasonable convenience of [owners of land on which people reside located along the section of road proposed for conveyance] or the public.”

It could prove quite difficult to demonstrate that leaving Route 234 (or sections thereof) open after the TCP is built would not provide “reasonable convenience” to the public generally or to persons living along those sections, particularly if one or both lanes of the TCP are tolled, as appears to be VDOT’s intent based on the proposed final alternative in the North-South Corridor of Statewide Significance

¹ See, e.g., page 11 of the draft minutes of the January 3, 2013 Section 106 Consulting Parties meeting: “Ms. Kilpatrick (SHPO) stated that the closure of Route 234 is ‘THE’ most important mitigation for the project that is proportional to the effects of the Undertaking, and so we must ensure that the closure is accomplished. Mr. Moore agreed that the solution needs to be airtight.”

Master Plan Study. Therefore, it seems problematic to make the closure of any sections of Route 234 to through traffic contingent upon transfer of the road section(s) to NPS.

Further, there appears to be an inherent and unresolvable conflict between federal and Virginia law regarding the means by which the Commonwealth of Virginia may convey property to the Secretary of the Interior in order to effectuate the purposes of the Manassas National Battlefield Park. 16 U.S.C. § 429b-1(a) lays out the permissible means by which the Secretary is authorized to acquire property interests for the Battlefield; it states that “property owned by the Commonwealth of Virginia or by any political subdivision thereof may be acquired **only by donation.**” (Emphasis added.) Yet Va. Code Ann. § 33.1-149 sets forth the means by which Virginia’s Commissioner of Highways may convey abandoned roads (or portions thereof), and it states that a deed conveying abandoned road sections can be executed “either for a consideration or in exchange for other lands....” Significantly, it does not mention donation. Thus, the federal and Virginia provisions seem to present an inherent conflict, since the only permissible means of conveyance set forth in the federal statute is excluded from the Virginia statute, making the conveyance of abandoned road sections from Virginia to NPS for the Battlefield appear to be legally impossible under current law. This is an additional compelling reason to avoid making the closing of Route 234 or any sections thereof explicitly or implicitly contingent upon the closure of Route 29.

The draft PA appears to try to dance around this problem by describing VDOT’s conveyance of the Commonwealth’s property interest in abandoned roadway right of way for Route 234 as occurring “through donation ... as acknowledgement of the land being made available [by NPS] for the land within the boundaries of MNBFP needed by the Commonwealth for the construction of the TCP....” Unfortunately, a *donation* being made “in acknowledgment of land being made available” to the donor is an artificial legal construct that satisfies neither the federal nor the Virginia statutes mentioned above, and such a provision cannot reasonably be relied upon if the goal is to set forth a defensible legal process that will ensure Route 234 is closed to through traffic upon the construction of the TCP.

Fortunately, it is not at all clear that VDOT would need to convey any ownership interest it may have in the property underlying the relevant road sections to NPS before NPS could close those sections. 16 U.S.C. § 429b-1(d) states that the Secretary of the Interior “may not close any State roads within the park unless action permitting the closing of such roads has been taken by appropriate officials of the Commonwealth of Virginia.” The abandonment of a section of Route 234 within the boundaries of the Manassas Battlefield as part of the State Highway System results in that section no longer being a public road (see Va. Code Ann. § 33.1-146), at which time it may be appropriate and acceptable for the Secretary to close it pursuant to 16 U.S.C. § 429b-1(d), regardless of who owns the underlying property interests, provided that persons living along Route 234 may still use the road to access their property. At the very least, there should be no legal obstacle to the Secretary closing Section A of Route 234 immediately upon VDOT’s abandonment of that section, because NPS apparently already owns the underlying property interests along all of Section A. And closing even one section of Route 234 to through traffic would help reduce the volume of traffic on that road, particularly if the section closed also includes the intersection of Route 234 with Route 29.

Therefore, it may not even be necessary to confront the significant problems that could arise with attempts to “convey” the sections of abandoned road to NPS. We urge VDOT, NPS and all other Signatories to consider eliminating Stipulation III.G.3 altogether and structuring the agreement so that the Secretary of the Interior can—and shall—close any road sections to through traffic upon VDOT’s abandonment of them. In other words, the closure of the road sections should be decoupled from conveyance, and should occur instead immediately following abandonment. At a minimum, the PA

should make clear that NPS can—and shall—close Section A of Route 234 to through traffic immediately upon VDOT’s abandonment of that section.

To further facilitate closure of the relevant sections of Route 234 at the time the TCP is opened, clauses should be added to the PA along the lines of what we have proposed as new Stipulations III.G.2.D and III.G.3.B in our coalition’s redline. In those provisions, VDOT, the Commissioner, and NPS would acknowledge that the entry upon the records by the Commissioner of the abandonment of Section A of Route 234, and the execution of the quitclaim deeds for Sections B, C, and D of Route 234, respectively, shall constitute the “action permitting the closing of [those abandoned sections] taken by appropriate officials of the Commonwealth of Virginia” in satisfaction of 16 U.S.C. § 429b-1(d). (Again, we believe that the best option is to consider whether all four sections can be closed to through traffic immediately upon VDOT’s abandonment of them (with Route 234 still open to those who reside on the abandoned portions), but it appears that at least Section A can be closed to through traffic at that point. The provisions we have suggested in our coalition’s redline are structured for the more conservative approach—closing only Section A upon abandonment—but the stronger approach would be to also close the other sections as soon as each of those sections is abandoned.)

- **Prince William County May Have Legal Authority to Take Over Abandoned Sections of Route 234**

Pursuant to Va. Code Ann. 33.1-146, Prince William County arguably possesses the legal authority to take over any portion or portions of Route 234 that VDOT abandons. Once it has taken over any such sections, the County could then decide to keep the roads open to through traffic, despite the intentions of VDOT and NPS set forth in this PA. We recommend including a provision along the lines of what we have inserted as Stipulation III.G.5 in our coalition’s redline in which Prince William County agrees to waive any legal right the County may have to take over the abandoned portion or portions of Route 234 pursuant to Va. Code Ann. § 33.1-146, or any other provision of Virginia law, provided that at least one lane of the TCP is free and available to all drivers. We also recommend including Prince William County as an Invited Signatory to the Section 106 agreement to help effectuate this intent. However, even with such attempted safeguards built into the PA, this issue still raises the potential for significant problems.

- **There is No Commitment from NPS or the Department of Interior to Close the Abandoned Portions of Route 234**

This may have been a simple oversight in the editing process, but conspicuously lacking from the draft PA is any commitment on the part of NPS or the Department of the Interior to close the section or sections of Route 234 through the Manassas Battlefield to through traffic once VDOT has fulfilled its responsibilities under Stipulation III.G. Such a commitment seems entirely appropriate in light of the critical importance of this aspect of the mitigation, and it should be included in the PA. We understand that NPS and VDOT may be considering executing an agreement that would provide additional detail on the planned process for closing Route 234. We believe it is important to include that agreement as an exhibit to this PA, that it be executed simultaneously with the PA, and that consulting parties be provided an opportunity to review and comment on it before it is finalized.

Closure of Pageland Lane to “Through” Traffic

Like the closure of Route 234 to all traffic except Park visitors and residents of Route 234, the closure of Pageland Lane is another extremely complicated issue inextricably tied to the TCP’s impacts and mitigation that is far from resolved. We feel it is important to ensure in the PA that Pageland Lane property owners have reasonable access to and egress from their land. However, if an access road (or roads) serving Pageland Lane residents connects to both Route 234 and Route 29 and is open to the public, we are quite concerned that it could easily become a north-south route for cutting through the Battlefield, undermining any benefit to the Park from closing Route 234 to through traffic. Further, even if such access road did not connect to both Route 234 and Route 29, the road itself could have significant impacts on the Battlefield and the Historic District, and the historic resources contained therein, which must be given full consideration under Section 106, Section 4(f), and the National Environmental Policy Act.

In addition, many of the same concerns and recommendations above with regard to the Stipulations addressing the closure of Route 234 apply also to the closure of Pageland Lane in Stipulation III.D. If the goals of closing Pageland Lane can be accomplished through a combination of: (1) abandonment of all or certain sections of the road; and then (2) closure of the abandoned sections to all traffic except Park visitors and residents of Pageland Lane, then this process should be pursued for Pageland Lane as well as Route 234.

Closure of Route 29 to Through Traffic

As stated in our August 24, 2012 joint comment letter, we continue to feel that a clear commitment to close the portion of Route 29 traversing the Manassas Battlefield to through traffic upon the construction of the Battlefield Bypass should be addressed in this Section 106 PA. VDOT, FHWA, and NPS all clearly see the construction of the full Battlefield Bypass—and not just the portion proposed to be co-located with the TCP—as a key component of the mitigation for the TCP, as evidenced by a number of the proposed mitigation actions included in the draft PA, including the commitments to fund the preliminary engineering and design work for the Battlefield Bypass. Since both the Battlefield Bypass and the eventual closing of Route 29 are integral to mitigating the direct and indirect impacts that the TCP will have on the Battlefield and the Historic District, this PA should include a provision in which VDOT, FHWA, and NPS commit to the closure of Route 29 through the Battlefield to through traffic upon the completion of the Battlefield Bypass.

On a related subject, we also remain very concerned about the level of traffic on Route 29 if the TCP is built and induces new development. Increased traffic volumes may also result from the longer signal times possible with the closure of Route 234 to through traffic. This would undermine the NPS goals for protecting the Park. Because the Battlefield Bypass and the closure of Route 29 are an important part of the mitigation for the TCP, the timing for the permitting and construction of the Battlefield Bypass and the closure of Route 29 all clearly need to be discussed at the next Section 106 meeting.

Width of Right of Way and Design of the TCP

As we stated in our August 24, 2012 comment letter and reiterated during the recent Section 106 meetings, it is imperative that the design for the TCP truly minimize the width of the highway and fully incorporate context-sensitive design features. Although the updated draft shows some movement in the right direction on this critical set of issues, it remains among our coalition's top concerns.

We acknowledge the new language in Stipulation I.B committing VDOT to a right of way no wider than 150 feet within the section of the TCP between I-66 and the northern boundaries of the Battlefield and the Historic District along Pageland Lane, but the numerous exceptions spelled out in Stipulations I.C, I.D, I.E, and I.G could potentially make a right of way of 150 feet or less the exception rather than the rule. The commitment that VDOT, the SHPO, the ACHP and the NPS must come to mutual agreement to go beyond a 150-foot right of way is helpful, but this protection should be strengthened by including the FHWA Eastern Federal Lands Highway Division (EFLHD) among the agencies with whom VDOT must coordinate and mutually agree because of its extensive experience and expertise in designing context-sensitive roads in historically important areas. This suggestion is reflected in the pertinent provisions of our coalition's redline. On a related note, Stipulations I.F and I.G—which relate to construction of new roads to access properties currently accessed by Pageland Lane, and the construction of the crossing of the TCP over Route 29, respectively—should also require that VDOT coordinate and come to mutual agreement with the same agencies, including EFLHD, on the pertinent decisions: the location and design of roads accessing Pageland Lane properties; exceeding the 150-foot right of way for the Route 29 crossing; and the design and appearance of the material used for the crossing, as outlined in our coalition's redline.

However, even with excursions beyond 150 feet requiring the mutual agreement of these agencies with expertise in historic resource mitigation, our concern remains that even a 150-foot right of way is excessive, and fails to minimize harm to the Manassas Battlefield and the Historic District. Two recent road projects at Woodlawn—the widening of Route 1 to six lanes, and the widening and extension of Old Mill Road north through Fort Belvoir (known as Mulligan Road)—are two relevant examples in which the right of way of highways traveling through historically sensitive areas has been reduced below 150 feet. In the case of Route 1, the right-of-way is 148 feet, but includes *six* travel lanes and a median for transit. In the case of Mulligan Road, the typical section for a four-lane expressway through Fort Belvoir is well under 100 feet. Both of these projects were designed under the auspices of the FHWA's Eastern Federal Lands Division, which illustrates why we place such a high priority on their involvement in the design of the TCP.

Certainly each road and historic setting is unique, but these examples strongly indicate that the TCP right of way generally needs to be much narrower than 150 feet in order to demonstrate all possible planning to minimize harm to the Manassas Battlefield and the Historic District. In our previous comments, we recommended that the right of way be no wider than 116 feet. We therefore request that VDOT commit in Stipulation I.B to a right of way of 116 feet rather than 150 feet.

Stipulation I.I states that VDOT commits to using best efforts to explore opportunities to further minimize the highway footprint and will consider reasonable suggestions from the other agencies and Section 106 Consulting Parties. We welcome VDOT's assurances, but we continue to believe that this commitment should be strengthened by including language in the construction contract directing the contractor to seek design waivers and exceptions for the widths of lanes, medians, and shoulders, and requiring VDOT to accommodate those waivers and exceptions to the maximum extent possible. As in our August 24 comments and redline, we again propose that the PA incorporate language from the

recently executed Section 106 agreement for the expressway through the Woodlawn Historic District near Mount Vernon. (See our addition to Stipulation I.I in our coalition's redline.)

As we recommended in our August 24, 2012 comment letter, we believe that in addition to stronger commitments to limit the width of the overall right-of-way and to pursue design waivers and exceptions, the ideal means by which to reduce potential impacts to the Battlefield and the Historic District is to commit in the PA to certain maximum width allowances for various features of the roadway, such as the travel lanes and the shoulders. In our coalition redline, we have again included language we originally suggested for inclusion in our comments on the prior draft PA; this language would set width limits on some of the key design features of the highway.

Regarding limited access control along the TCP, we were surprised and disturbed to see that VDOT has proposed deleting the language identifying the specific points where direct access may be considered north of the Battlefield and the Historic District. It is essential that the PA identify all potential breaks in limited access along the TCP, and a sentence along the lines of what was deleted should be reinserted. However, because we question the need for direct access at Route 620 (Braddock Road), we recommend language in our redline that would make clear that all points of direct access mentioned are merely where direct access could be *considered*. In other words, the intersections mentioned are the only ones at which direct access is even a possibility, but direct access may not necessarily be provided at all of the mentioned intersections.

Finally, although we appreciate the assurances regarding limiting the section of the Tri-County Parkway that would be routed within and adjacent to the Battlefield and the Historic District to a maximum of four lanes, we would like specific language included in the PA explicitly stating the commitment to no more than four lanes in this area also includes any lanes that are part of the proposed Battlefield Bypass. Also, to strengthen this commitment, we believe it is important to include a provision in the PA that requires the preparation of a NEPA Environmental Assessment for any capacity expansion of the TCP or MNBP Bypass on publicly owned right of way in this area, notwithstanding the provisions of Section 1316 of the transportation reauthorization bill, Moving Ahead for Progress in the 21st Century (MAP-21).

Land Preservation

- **The \$3 Million Proposed for Land Preservation is Grossly Inadequate**

As set forth in our August 24, 2012 joint comment letter and the attached land valuation analysis, we continue to feel that the \$3 million proposed for the land preservation fund in Stipulation III.I is grossly inadequate to accomplish the important mitigation purposes for which it is being established. We are disappointed to see in the current draft PA that VDOT has been unable to obtain a commitment to increase the level of mitigation funding. We appreciate VDOT explaining its own land valuation analysis at the November 29, 2012 Section 106 meeting, but we respectfully submit that VDOT's analysis is lacking in numerous respects and should not be relied upon as a basis to determine a reasonable amount of funding necessary for land preservation purposes along this critical portion of the TCP.

Three of the main objectives for the preservation fund are to preclude the widening of the TCP, limit access, and provide a buffer to the Battlefield and the Historic District. Based on an analysis of parcels in the area, achieving these objectives requires consideration of 18 eligible parcels representing approximately 696 acres. As a result, the following points are important considerations:

- Using the disturbed acreage of 30.23 acres as a basis for the funding level fails to consider the objectives of the preservation effort are tied to a 696 acre area.
- Efforts to limit access to the TCP will create additional impacts to the Battlefield and the Historic District from the new access road(s) built to serve properties severed from their existing connection to Pageland Lane. These impacts will occur as a direct result of constructing the TCP and must be mitigated in their own right.
- These objectives may drive up the cost of an easement beyond that typically associated with securing scenic or open-space easements. First, the restrictions that would be necessary to achieve the objectives of the preservation could devalue the property substantially. Also, the restrictive nature of the easement may limit the number of willing participants or force fee-simple purchase as the main tool available to the land conservation organization. For these reasons, the landowners may see this as an opportunity to demand higher prices for either an easement or fee simple purchase.

In identifying the need for \$7 to \$14 million to accomplish at a minimal level the conservation objectives identified in Stipulation III.I, our analysis included recent sales of comparable properties, as well as these insights into barriers such as forced purchase and higher easement values. The land preservation fund clearly needs to be increased to this range if meaningful mitigation via land preservation is to occur in the areas adjacent to the TCP. (In addition to resources within the limited geographic scope set forth in Stipulation III.I.1, our own follow-up conversations have identified broader impacts to the historic resources and needs for greater preservation to mitigate impacts from induced development, as provided for in our expanded preservation plan, discussed below.)

- **The PA Should Clearly Identify The Land Conservation Organization in the PA, and the Advisory Committee Should Consult on Transactions and Terms**

We are concerned that VDOT may have difficulty finding a land conservation organization with which to partner to carry out the important objectives of Stipulation III.I. Leaving the identification of the organization to be determined until after the PA is executed is problematic, particularly in the absence of any “fallback” provision establishing how the land conservation goals will be achieved if no such organization is willing to serve in that role. We believe it would therefore be prudent to identify the land conservation organization in the PA, and to have that organization be an invited signatory to the PA. In addition, we believe the land preservation advisory committee should be included among the groups listed in Stipulation III.I.5.b who consult to determine the specific land transactions that will be pursued and the terms of easements and fee simple transactions.

- **The PA Should Include a Broader Scope for Preservation**

The Manassas National Battlefield Park is an anchor element of a larger rural and historic landscape of national significance that stretches from the Park north and west to as far as Aldie, Virginia in Loudoun County. The proposed Tri-County Parkway, if constructed, would impact the integrity of this rural and historic landscape through direct disturbance of these sites and from the induced development that is characteristic of new highway corridors. The anticipated impact of the TCP requires a robust preservation plan that can reduce the level of these impacts and potentially insulate the Battlefield from unintended consequences of speculative development created by the proposed final alternative for the North-South Corridor of Statewide Significance. To address these unintended consequences effectively, such a plan must be considered on a larger scale than has been proposed thus far in the draft PA.

To initiate the discussion of the area of impact created by the TCP, we have enclosed the document *TCP Broader Preservation Plan* and two associated maps that assist in determining the area and level of preservation necessary to retain the integrity of the resource and reduce impacts that stem from any induced development. Induced development potential is demonstrated in our map entitled, *Tri-County Parkway - Potential for Induced Development*. In addition to the lands identified as part of the Battlefield, the Historic District, and individual historic sites, the area of impact should include areas visible from the Battlefield, since the visitor experience will be directly affected by the induced land use development in those areas. This area is demonstrated in our map entitled, *Manassas Battlefield National Park: Potential Preservation Area*. We have included a new Stipulation in our coalition's redlined PA that acknowledges the benefits of a broader preservation scope and goal, and that provides a framework and potential funding sources to achieve them.

Funding for Preliminary Engineering and Design of the MNBP Bypass

During the January 3 Section 106 meeting, we raised the question of whether it makes sense to invest \$4 million into completing the preliminary engineering and design of the Battlefield Bypass, as currently proposed in Stipulation III.H of VDOT's redline, if there is such a low likelihood of NPS and FHWA obtaining construction funding for the project in the foreseeable future. Based on the estimated 2035 completion date in the National Capital Region's long-range transportation plan, it seems likely that the preliminary engineering and design work could grow stale over the course of 20+ years and need to be substantially redone by the time construction funding is made available.

NPS responded that they believe they can present a much stronger case to Congress for full and immediate construction funding if the preliminary engineering and design work is complete. If that is the reason for this stipulation, we believe it makes sense to include in the PA a commitment from NPS and FHWA to take all possible steps within their authority to make that request and increase the likelihood of its success within a certain amount of time of completing the preliminary engineering and design work. (Specific steps should be identified and committed to in the PA.) If NPS and FHWA do not commit to pursue construction funding vigorously once the engineering and design work is complete, we continue to feel that this \$4 million would provide much greater benefits to the Battlefield if it is added instead to the \$3 million proposed for the land preservation fund in Stipulation III.I.

Meaningful Analysis of Low-Build Avoidance Alternative

We appreciate VDOT's recent commitment to analyze the Coalition's proposed package of improvements referred to as the "low-build" alternative, even as we remain unclear about the extent of that analysis. To again clarify comments we made at the Section 106 meetings, we believe a traffic analysis of the alternative that assesses the extent to which it addresses connectivity, traffic congestion, and safety is one critical component of giving meaningful consideration to this alternative. Just as important, however, is an analysis of its environmental and community impacts, and particularly for the purposes of Section 106, a comparison of its impacts to historic resources to impacts from the other build alternatives included in the Draft EIS for the TCP. As we have previously stated, we believe this type of thorough and objective analysis of this alternative is necessary to ensure compliance not only with Section 106, but also with Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act. In Stipulation III.L in our redline, we have added a provision very similar to a provision we recommended in our redline of the first draft PA.

We have also proposed a relevant addition to the new Stipulation IX. As currently drafted, that stipulation requires VDOT to reassess its efforts to identify historic properties that may be affected if construction of the TCP is not initiated within five years of the date the PA is executed. Because traffic analyses can become stale very quickly, we believe that if construction of the TCP is not initiated within five years of the execution of the PA, it is also appropriate for VDOT to undertake an updated traffic analysis that reassesses the effectiveness of the TCP, as well as the Low-Build alternative, in meeting the project purpose and need and in reducing congestion in the study area in light of updated traffic numbers, traffic models, and actual and planned land use and transportation changes. This updated traffic analysis should be shared with the Consulting Parties and the public.

Significant Overstatements in, and Omissions from, Whereas Clauses

The Whereas clause beginning at line 126 states that Section 2c of Public Law 96-442 "directed the NPS to work with the VDOT to build a road that would allow for the closure of Route 29 and 234 through MNBP." This is a significant overstatement of this law, which contains no such directive to NPS that it work with VDOT to build a road. It simply requires the Secretary of Interior to make land available, subject to revisions, terms, and conditions the Secretary deems appropriate, if the agency that is now VDOT decides to route the Route 234 Bypass in a certain location. In our attached redline, we have proposed that the inaccurate language be deleted.

In the new Whereas clause beginning at line 188, we were surprised to see that the upper end of the estimated ranges of Battlefield and Historic District acreage converted to the TCP are based on a right of way width for the TCP of 200 feet. Including a figure for estimated impacts based on a 200-foot right of way for the entire segment of the road that will be built through the Battlefield and the Historic District undermines the credibility of VDOT's new commitment to limit the right of way to a maximum of 150 feet absent extenuating circumstances. Similarly, it is concerning that the lower ends of the estimated ranges are based on a constant right of way width of 150 feet, when VDOT has indicated it will work to reduce the right of way below 150 feet wherever possible. We understand these are only estimates, but the ranges should be revised downward if VDOT is taking seriously its commitment to build the highway "within a right of way no wider than 150 feet." (Line 305 of VDOT's version of the redlined PA.)

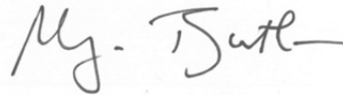
Finally, as we commented at the January 3, 2013 meeting, we believe it is necessary to include a Whereas clause indicating that the TCP is an important part of the proposed final alternative developed in the Master Plan Study of the Northern Virginia North-South Corridor of Statewide Significance. The clear indication that VDOT plans for the TCP to be a key part of a major new tolled highway and freight

corridor linking I-95 with Route 7 is certainly relevant to determining the impacts the TCP will have on the Battlefield, the Historic District, and other important historic and environmental resources along its path, as well as the mitigation that is necessary to avoid or minimize those impacts. We have proposed a new Whereas clause beginning at line 142 of the coalition's redline to provide a brief summary of this relevant and important information.


Conclusion

Thank you for the opportunity to comment on the second draft of the PA. We reiterate our view on the need for an additional in-person meeting of the Section 106 Consulting Parties to discuss the parties' comments on the PA and the major issues that remain unresolved. Our goal is to ensure that the agencies develop and evaluate alternatives and modifications to the project that will avoid, minimize, and mitigate the significant adverse effects of the proposed highway. We look forward to further coordination and consultation on these important issues, and we thank you again for the renewed efforts by VDOT and FHWA to engage with the Consulting Parties on the proposed Tri-County Parkway.

Sincerely,



Morgan Butler, Senior Attorney
Southern Environmental Law Center



Elizabeth S. Merritt, Deputy General Counsel
National Trust for Historic Preservation



Christopher G. Miller, President
Piedmont Environmental Council



Stewart Schwartz, Executive Director
Coalition for Smarter Growth



Joy M. Oakes, Senior Regional Director
National Parks Conservation Association

Enclosures:

1. Coalition's Redline of VDOT's Redline of 2nd Draft Programmatic Agreement
2. Expanded Preservation Plan

cc: Carol Legard, Charlene Vaughn, and Reid Nelson, ACHP
Ed Clark and Tammy Stidham, NPS
Jack Van Dop, FHWA, Eastern Federal Lands Div.
Kathleen Kilpatrick and Marc Holma, Virginia Dep't of Historic Resources
All Consulting Parties