



Appendix H

Draft Section 106

Programmatic Agreement

The preliminary Draft Section 106 Programmatic Agreement in this appendix will be refined in consultation with the Maryland Historical Trust and other consulting parties.

A preliminary Draft Section 106 Programmatic Agreement for mitigation of adverse effects to historic properties for the Purple Line is included in this FEIS for review in accordance with 36 CFR Part 800.6 and is subject to change based on comments from the public and consulting parties. The preliminary Draft Section 106 Programmatic Agreement is provided in Appendix H of the FEIS. FTA, MTA, and SHPO, in coordination with the consulting parties and invited signatories, will finalize this PA prior to the Record of Decision.

DRAFT

PROGRAMMATIC AGREEMENT

AMONG

**THE FEDERAL TRANSIT ADMINISTRATION,
THE MARYLAND TRANSIT ADMINISTRATION, AND
THE MARYLAND STATE HISTORIC PRESERVATION OFFICER,**

REGARDING

**THE PURPLE LINE PROJECT
FROM BETHESDA, MONTGOMERY COUNTY
TO NEW CARROLLTON, PRINCE GEORGE'S COUNTY, MARYLAND**

WHEREAS, the Purple Line Project (Undertaking) is a planned 16.2-mile light rail transit line to provide faster, more reliable and high capacity transit service for east-west travel between Bethesda, Montgomery County and New Carrollton, Prince George's County in Maryland (**Exhibit A**); and

WHEREAS, because the Federal Transit Administration (FTA) may provide funding to the Maryland Transit Administration (MTA) pursuant to Section 5309, this is a federal undertaking subject to Section 106 of the National Historic Preservation Act of 1966, as amended (codified at 16 USC 470f) and its implementing regulations at 36 CFR part 800, as amended, hereinafter collectively referred to as "Section 106;" and

WHEREAS, the MTA is the Undertaking's project sponsor and the FTA is serving as the Undertaking's lead federal agency pursuant to the National Environmental Policy Act (NEPA, codified as 42 USC 4321 *et seq.*), and is the federal agency responsible for compliance with Section 106); and

WHEREAS, after detailed study of various alternatives and their associated impacts, and consideration of efforts to avoid and minimize certain project impacts, the MTA, through coordination with the FTA, has defined a Preferred Alternative for detailed engineering and construction; and

WHEREAS, the FTA in consultation with the Maryland State Historic Preservation Officer (MD SHPO) has established the Undertaking's Area of Potential Effects (APE) for purposes of the 106 analysis, as defined at 36 CFR 800.16(d), to encompass the geographic areas within which the Undertaking may directly or indirectly cause alterations in the character or use of historic properties, as illustrated in **Exhibit B**, recognizing that the APE may require modification as more detailed engineering for the Undertaking is developed; and

WHEREAS, the FTA, in consultation with the MD SHPO, has identified <<insert corrected number>> historic properties that are eligible for or listed in the National Register of Historic Places (National Register) within the Undertaking's APE, illustrated on **Exhibit B**; and

WHEREAS, the FTA has determined that the Undertaking will have *adverse effects* on the following historic properties listed in or eligible for the National Register: the Metropolitan Branch-B&O Railroad (M: 37-16), Montgomery County; Talbot Avenue Bridge over the B&O Railroad (Bridge M-85; M: 36-30), Montgomery County; and the Falkland Apartments (M: 36-12), Montgomery County; and

WHEREAS, the FTA has determined that the Undertaking's effects on archeological resources cannot be fully determined prior to approval of the Undertaking; and

WHEREAS, it is understood that this PA is based upon review of preliminary engineering, which will be refined the project design advances and reviewed by the signatory parties to this PA and other consulting parties during project design; and

WHEREAS, the FTA, MTA and MD SHPO acknowledge that as a result of modifications or the addition of ancillary actions to the Undertaking, there may be effects on additional previously identified historic properties within the APE or additional cultural resources or archeologically sensitive areas outside the APE; therefore this PA sets forth the measures that will be implemented to identify and consider any further effects to historic properties; and

WHEREAS, the FTA, in coordination with the MTA, has consulted with the MD SHPO, pursuant to the requirements of Section 106; and FTA, MTA and the MD SHPO determined that it is appropriate to enter into this PA, pursuant to 36 CFR 800.14(b); and

WHEREAS, the MTA has participated in consultation, has responsibilities for implementing stipulations under this PA, pursuant to 36 CFR 800.6(c)(2), and has been invited to be a signatory to this PA; and

WHEREAS, the FTA has identified and invited the following parties (herein referred to as "consulting parties") to comment and consult on the Undertaking as part of the Section 106 process: Anacostia Trails Heritage Area, Inc., Columbia Country Club, Falklands Chase, Friends of Sligo Creek, Hawkins Lane Historic District, Heritage Tourism Alliance of Montgomery County, Historic Takoma, Inc., Hyattsville Preservation Association, Inc., Maryland-National Capital Parks and Planning Commission, Montgomery County, Maryland-National Capital Parks and Planning Commission, Prince George's County, Montgomery County Historic Preservation Commission, Montgomery Preservation, Inc., National Institutes of Health, Office of Communications and Public Liaison, North College Park Citizens Association, Old Town College Park Preservation Association, Peerless Rockville Historic Preservation, Ltd., Prince George's County Historical and Cultural Trust, Prince George's County Historical Society, Prince George's Heritage, Inc., Redevelopment Authority of Prince George's County, Riverdale Historical Society, Rockville Historic District Commission, Silver Spring Historical Society, University Hills Civic Association, University of Maryland, Tuscarora Nation, Shawnee Tribe, Saint Regis Mohawk Tribe, Delaware Tribe of Indians, Onondaga Nation, Oneida Indian Nation, Eastern Shawnee Tribe, The Delaware Nation, and Absentee-Shawnee Tribe of Oklahoma; and

WHEREAS, during the implementation of this PA, the FTA, MTA and MD SHPO may identify other relevant parties and invite them to participate as consulting parties in the consultation process specified in this PA; and

WHEREAS, the Project will cross properties under the authority of the National Park Service (NPS) and the National Capital Planning Commission (NCPC), they have been invited to be signatories to this Agreement; and

WHEREAS, the FTA notified the Advisory Council on Historic Preservation (ACHP) of the Undertaking's adverse effect on August 1, 2013, and invited the ACHP to participate in the Section 106 process for the Undertaking; and the ACHP declined in writing on August 14, 2013, to participate in consultation (**Exhibit G**); and

WHEREAS, the FTA and MTA sought and considered the views of the public on this Undertaking through the public involvement process described in the Final Environmental Impact Statement including a website, mass mailings, public workshops, and public comments, resulting in this PA being developed with appropriate public participation during the Section 106 process, and the public shall be duly notified as to the execution and effective dates of this PA through the issuance of the FTA Record of Decision for the Undertaking; and

WHEREAS, the MD SHPO agrees that fulfillment of the terms of the PA will satisfy the responsibilities of MTA and any Maryland state agency under the requirements of the Maryland Historical Trust Act of 1985, as amended (Sections 5A-325 and 5A-326 of the State Finance and Procurement Article, Annotated Code of Maryland), for any components of the Undertaking that require licensing, permitting and/or funding actions from Maryland state agencies;

NOW, THEREFORE, the FTA, MTA, MD SHPO, NPS, and NCPC agree that upon the FTA's decision to proceed with further design and construction of the Undertaking the FTA and MTA shall ensure that the following stipulations are implemented in order to take into account the effects of the Undertaking on historic properties, and that these stipulations shall govern the Undertaking and all its parts until this PA expires or is terminated.

STIPULATIONS

The FTA and MTA shall ensure that the following measures are implemented:

I. PURPOSE

This PA sets forth the process by which the FTA, with the assistance of the MTA, will meet its responsibilities under Section 106 for the Undertaking. The PA establishes procedures for ongoing consultation between the FTA, MTA, MD SHPO, NPS, and NCPC and the consulting parties to consider and resolve the Undertaking's effects on historic properties during the design and construction phases of the Undertaking. The stipulations below set forth measures for treatment of built historic properties, treatment of archeological resources, design review, and specify how the signatory parties and consulting parties will be involved in any review.

II. RESPONSIBILITIES OF THE SIGNATORIES

A. Signatory Parties

The FTA, MTA, MD SHPO, NPS, and NCPC are the signatory parties (herein "signatory parties") to this PA. The signatory parties shall participate in the coordination process as specified in subsequent stipulations of the PA.

B. Federal Transit Administration

The FTA will include the obligations set forth in this PA as part of its Record of Decision and a condition of FTA approval of any grant issued for design and construction of the Undertaking to ensure that these measures will be implemented as part of the compliance with the Section 106 process and the subsequent design, and construction of the Undertaking.

C. Maryland Transit Administration

The MTA shall implement the terms of this PA, where applicable, in conjunction with the ongoing design and construction of the Undertaking.

The MTA shall establish a Cultural Resources Management Team (CRMT) for the design and construction phases of the project to assist the MTA in implementing the provisions of this PA.

1. The CRMT shall be comprised of a team of personnel meeting the qualifications specified in Stipulation III.A and shall ensure that all cultural resources work carried out pursuant to this PA is done in accordance with the relevant documents in Stipulation III.B.
2. The CRMT will be on-site when there is a potential for historic properties (including both built historic properties and archeological resources) to be affected by the construction and will take responsibility to monitor all construction activities that may affect historic and archeological resources.
3. The CRMT will train appropriate members of the on-site contractor staff of the stipulations outlined in this PA and any documents that pertain to the protection of historic resources prior to the commencement of work and at regular intervals not to exceed six months. A requirement to cooperate with the CRMT will be included in all design and construction contracts related to the Undertaking. A copy of this training (presentation and handouts) will be provided to the consulting parties for review and comment prior to implementation.

D. National Park Service

The NPS shall review design plans for the Purple Line that intersect with the Baltimore-Washington Parkway.

E. National Capital Planning Commission

The NCPC shall review design plans for the Purple Line that intersect with historic properties under their authority.

III. PROFESSIONAL STANDARDS

A. Qualifications

The MTA shall ensure that all cultural resources work performed pursuant to this PA is carried out by or under the direct supervision of personnel meeting The Secretary of the Interior's Professional Qualifications Standards (48 FR 44716) (hereinafter cited as "qualifications") with experiences and background in History, Architectural History, Historic Architecture, and Archeology, as appropriate.

B. Standards and Guidelines

The MTA shall ensure that all cultural resources investigations and preservation work executed as part of this PA will be completed according to the following accepted professional standards and guidelines:

1. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716; 1983 and successors);
2. Standards and Guidelines for Archeological Investigations in Maryland (Shaffer and Cole 1994);
3. Collections and Conservation Standards, Technical Update No. 1 of the Standards and Guidelines for Archeological Investigations in Maryland (Maryland Historical Trust 2005);
4. Standards and Guidelines for Architectural and Historical Investigations in Maryland (Maryland Historical Trust 2000);
5. General Guidelines for Compliance-Generated Determinations of Eligibility and Standards and Guidelines for Architectural and Historical Investigations in Maryland (Maryland Historical Trust, 2002);
6. Advisory Council on Historic Preservation – Section 106 Archeology Guidance (ACHP 2007);
 - Recommended Approach for Consultation on Recovery of Significant Information for Archeological Sites, ACHP 2007 (64 FR 27085-27087);
 - Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects (ACHP 2007); and
 - Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68).

C. Curation

All materials and records resulting from archeological investigations conducted for the project will be curated in accordance with 36 CFR 79 at the Maryland Archeological Conservation Laboratory (MAC Lab), unless clear title, Deed of Gift, or federal curation agreement for the collection cannot be obtained. MTA shall consult with the MD SHPO regarding the appropriate disposition of any materials or records not proposed for curation at the MAC Lab.

IV. BUILT HISTORIC PROPERTIES STIPULATIONS

The FTA has determined through the Section 106 process that the Undertaking will have adverse effects on three historic properties due to construction activities and/or the siting of project-related infrastructure. It is possible that additional, previously unidentified historic properties may be identified within the Undertaking's APE in the future or in the area of any new project elements (see Stipulation IV.A) and that these historic properties may be affected by the Undertaking. Accordingly, this PA sets forth the following measures that will be implemented for all built historic properties within the Undertaking's APE to not only resolve any adverse effects, but also to ensure avoidance of adverse effects through sensitive design and positive protections.

A. Identification of Additional Built Historic Properties and Assessment of Project Effects

If additional built historic properties not previously identified in the Section 106 process are identified in the Undertaking's APE during design or construction of the Undertaking, or if new project elements are added to the Undertaking, the MTA will consult with the MD SHPO to evaluate eligibility and effects, if needed, in accordance with the process outlined in Stipulation VIII for ancillary activities and design modifications.

B. Construction Protection Plan

To avoid Undertaking-related construction damage to any known or unknown built historic property as set forth in Stipulation IV.C, the MTA, in consultation with the FTA and the MD SHPO, will develop construction protection plans for built historic properties; these plans will include best practices and contractor requirements that will avoid, minimize, and mitigate adverse effects. Exhibit C provides a list of procedures that will be included in the Construction Protection Plans, which will be developed prior to construction of the project. MTA shall ensure that all historic properties where there is a potential to be affected by construction related activities will be included in a Construction Protection Plan and MTA shall implement such plans in conjunction with construction sequencing.

C. Avoidance and Resolution of Permanent Visual Adverse Effects

As part of the Section 106 process, the FTA and MTA identified 26 historic properties that are eligible for or listed in the National Register within the Undertaking's APE. The FTA and MTA have determined that the Undertaking will have no effect or no adverse effect on 23 of those historic properties, but the Undertaking has the potential to result in permanent visual adverse effects and changes to the historic setting of the following three historic properties: the Metropolitan Branch-B&O Railroad, Montgomery County; Talbot Avenue Bridge over the B&O Railroad, Montgomery County; and the Falkland Apartments, Montgomery County.

Throughout the design process, the FTA and MTA shall monitor the development of project plans to ensure the avoidance, as well as the mitigation, of permanent visual adverse effects to all historic properties within the Undertaking's APE. Context sensitive design specifications developed in accordance with Stipulation IV.D may be utilized to avoid and resolve adverse effects, in consultation with the MD SHPO, NPS, NCPC, and other consulting parties.

D. Guiding Principles of Design

The MTA shall ensure that the designs for new construction, in those areas where elements of the Undertaking will be visible to historic properties located within the APE, are sensitive to and compatible with the historic and architectural qualities of those nearby historic properties. The MTA shall develop designs that are responsive to the recommended approaches to new construction set forth in the *Secretary of the Interiors's Standards for the Treatment of Historic Properties* (36 CFR Part 68).

The MTA will consult with the MD SHPO, NPS, NCPC, and other relevant consulting parties on design specifications to address any permanent Undertaking elements that may affect the historic setting of a built historic property in the Undertaking's APE. Such elements may include, but are not limited to: ventilation facilities, portals, stations, traction power substations, central instrument houses, retaining walls and landscaping. In the review of the proposed designs, the signatory and consulting parties shall consider design components related to compatibility with the historic character of the adjacent historic properties, including but not limited to materials, scale, ornamentation, and massing. Review and comment on such submissions shall be governed by the process and timeframes set forth in Stipulation IX.

E. Design Review

The MTA shall submit pertinent sections of plans (including site plan, elevations, and specifications, where applicable) complete to 60% (semi-final review) and 90% (final review) to the MD SHPO, NPS, and NCPC, and provide opportunities for review and comment from appropriate consulting parties. The purpose of the review is to ensure that the proposed designs are compatible with the approaches to new construction recommended in the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68), in order to avoid, minimize or mitigate any permanent adverse visual effects to historic properties. The MTA shall carefully consider the comments provided by the other signatory and consulting parties and incorporate suggested modifications, as appropriate. Review and comment on such submissions shall follow the process set forth in Stipulation IX. The MTA shall provide opportunities for public input in the design development process by soliciting comments through the established Neighborhood Work Groups and ongoing outreach efforts.

F. Historic American Buildings Survey/Historic American Engineering Record Documentation

1. MTA shall develop a recordation plan to document and photograph the Talbot Avenue Bridge and the Falkland Apartments. The draft recordation plan will be provided to the MD SHPO for review and comment per Stipulation IX.
2. As part of the recordation plan development, the MTA shall consult with National Park Service staff to determine the appropriate repository for this documentation. If NPS does not want to include the documentation in its holdings, MTA shall submit the documentation to the MD SHPO and any other appropriate repository that may be identified in the Interpretation Plan, see Stipulation VI.
3. All work submitted to the National Park Service will adhere to the guidelines set forth in "HABS/HAER Photographs: Specifications and Guidelines" (U.S. Department of the Interior, 2001); "HABS/HAER Standards" (U.S. Department of the Interior, 1990); "HABS Historical Reports" (U.S. Department of the Interior, October 2000); and "Historic American Engineering Record Guidelines for Historical Reports" (U.S. Department of the Interior, 2008, updated 2010).
4. All written, graphic and photographic documentation submitted to the MD SHPO must adhere to the "Standards and Guidelines for Architectural and Historical Investigations in Maryland" (Maryland Historical Trust, 2000) and must include the Maryland Inventory of Historic Properties (MIHP) number associated with the historic property and photographic documentation that complies with current MD SHPO guidelines.
5. The MTA shall ensure that all documentation is completed, submitted and accepted by HABS/HAER and the MD SHPO, as applicable, prior to construction commencing in the vicinity of the historic properties being recorded and/or prior to demolition of the affected historic property. Review and comment of all recordation products shall follow the process set forth in Stipulation IX.

G. Built Historic Properties Web Map Application

MTA shall develop a web map application and database of built historic properties that are located within the project's APE. The application shall enable cultural resources staff to administer, through a secure administrative interface/portal, historic property data and web content such as detailed historic information, geographic location, documentation, and photographs; and to present this information in a web map to signatories, consulting parties, stakeholders, and the public. The web application would be designed for display on the web

browser on a desktop computer and a second version will be implemented for display on mobile devices. MTA will initiate database development prior to construction commencement and maintain the application and content for the duration of this PA.

V. ARCHEOLOGICAL RESOURCES

Because additional areas of ground disturbance may occur outside of the current Limits of Disturbance (LOD), the FTA has determined through the Section 106 process that the Undertaking could have potential adverse effects on archeological historic properties. The FTA elected to complete identification, evaluation, and determination of effects on archeological resources outside the LOD (**Exhibit B**) in phases, pursuant to 36CFR 800.4(b)(2) and 36 CFR 800.5(a)(3), in accordance with the ongoing consultation process specified in this PA.

A report, Phase IB Archeological Survey of Light Rail Alignment Areas Associated with the Purple Line Project, Montgomery and Prince George's Counties, Maryland was prepared by the MTA for the Purple Line Preferred Alternative in support of the 2013 Final Environmental Impact Statement (FEIS). The report provided information on archeological resources within the LOD.

Accordingly, this PA sets forth the following measures that will be implemented to identify, evaluate, and resolve any adverse effects on archeological resources outside the Undertaking's LOD. The MTA shall ensure that all required cultural resources studies are implemented in accordance with the applicable performance standards in Stipulation III and with the following procedures.

A. Identification

The MTA shall complete and report survey efforts to identify resources potentially eligible for inclusion on the National Register that may be impacted by the Undertaking in archeologically sensitive areas not subject to prior archeological identification investigations. MTA shall ensure that the work is accomplished in accordance with the relevant procedures specified in Stipulation VIII and performance standards in Stipulation III.B.

B. Site Evaluations

The MTA will evaluate the National Register eligibility of any archeological site that may be impacted by the Undertaking, pursuant to Stipulation V.A above. The MTA shall complete the investigations in consultation with the MD SHPO and in accordance with 36 CFR 800.4(c) and shall assure that all work adheres to the relevant performance standards in Stipulation III.B of this PA. MTA shall provide the results of any such evaluation efforts to the MD SHPO, FTA, and relevant consulting parties for review and comment. If the MD SHPO does not provide comments within 30 calendar days of receipt, the MTA may assume acceptance of the results.

C. Treatment of National Register Eligible Archeological Sites

1. Consultation to Resolve Adverse Effects

If the MTA and MD SHPO determine that any of the sites evaluated pursuant to Stipulation V.B are eligible for listing in the National Register, the MTA, in coordination with the FTA, shall develop a plan for its avoidance, protection, recovery, or destruction without recovery, and public education/interpretation in consultation with the MD SHPO and relevant consulting parties. The MTA shall submit a treatment plan to the MD SHPO for a 30-day review period. Unless the MD SHPO objects within 30 days after receipt of

the plan, the MTA shall implement it prior to the start of the project ground disturbance activities within or adjacent to the site area.

2. Data Recovery

Should data recovery investigations be selected as the treatment measure, the MTA shall ensure that a data recovery plan is developed in consultation with the MD SHPO, FTA and relevant consulting parties consistent with the performance standards outlined in Stipulation III.B. The plan shall incorporate the provisions discussed in Exhibit F and specify, at a minimum:

- The portions of the property where mitigations shall occur;
- Any portions of the property that will be destroyed without data recovery;
- The research questions to be addressed through data recovery with a description of the relevance and importance;
- The research and field methods to be used, with the explanation of their relevance to the research questions;
- The methods to be used in analysis, data management and dissemination of data including a schedule;
- The proposed disposition of recovered materials and records;
- Proposed methods for involving and informing the public;
- A proposed schedule for the submission of progress reports to the MTA and the MD SHPO; and
- Concepts for a public interpretive component.

The MD SHPO shall review and comment on such plan and will be governed by the process set forth in Stipulation IX. MTA will be responsible for the implementation of such a plan, as appropriate.

The MTA and MD SHPO will meet on-site to evaluate the success of the fieldwork phase of any data recovery program, near the end of the fieldwork effort. The MTA shall submit a management summary to the MD SHPO documenting the completion of fieldwork for 15-day review. Upon receipt of written concurrence from the MD SHPO, the MTA may proceed with the construction activities in the site areas concurrent with the completion of the remaining laboratory, analysis and reporting phases of the data recovery work.

D. Construction Protection Plan for Archeological Resources

1. To avoid Undertaking-related construction damage to any known archeological resources or archeologically sensitive areas, the MTA will develop a Draft Construction Protection Plan (CPP) for Archeological Properties (Exhibit E) located within 90 feet of construction, in consultation with the FTA and MD SHPO.
2. The MTA will refine the CPP prior to construction of the Undertaking and update it as necessary. The MTA will ensure that any archeological property that could be adversely affected by Undertaking construction will be included in a CPP, and the MTA will implement such plans, as appropriate, in conjunction with construction sequencing. The CPP for archeological resources incorporates all activities related to the protection of archeological resources included in the PA.

E. Unanticipated Archeological Discoveries Plan

1. The MTA, in coordination with the FTA, along with the MD SHPO, will implement the Unanticipated Discoveries Plan for non-human archeological resources and human remains, specified in Exhibit F, in the event that any unanticipated archeological resources and/or human remains are encountered during construction of the Undertaking.
2. The FTA and MTA, along with the MD SHPO, acknowledge that extraordinary costs will be incurred if construction were to be halted or delayed once underway. Accordingly, the parties will implement the approved Unanticipated Discoveries Plan expeditiously in circumstances requiring its use.

VI. PUBLIC INTERPRETATION PLAN

MTA shall execute historically themed interpretive work for stations for a consistent system-wide interpretive plan. The interpretive work may include panels, signage, historic images, and associated applications, and the related documentation may be included on the project website. MTA will consult with the signatory and consulting parties to determine the scope and content of interpretive efforts and to identify potential partnering opportunities with participating agencies or organizations. MTA will develop a brief interpretive plan after this consultation and will distribute the plan to consulting parties for review and comment prior to executing the final document. Review of the interpretive plan shall follow the process set forth in Stipulation IX. MTA will complete development of the interpretive plan and coordination with the signatory and consulting parties prior to the commencement of any construction activities. Timeframes for the completion of specific interpretive work will be outlined in the Interpretive Plan.

VII. PROTOCOL FOR WORK IN AREAS POTENTIALLY SENSITIVE FOR HUMAN REMAINS

MTA developed a detailed protocol for work in areas potentially sensitive for human remains, Exhibit F. Should any human remains be encountered during implementation of the PA, FTA, MTA and the MD SHPO shall follow the protocol specified in Exhibit H. Should the Undertaking uncover Native American human remains on federal property, FTA will comply with the requirements of the Native American Graves Repatriation Act (NAGPRA, 25 U.S.C. 3001).

VIII. DESIGN DEVELOPMENT, ALIGNMENT MODIFICATIONS AND ANCILLARY ACTIVITIES

The project may result in unforeseen effects on other historic properties and archeological sites due to changes made during design development, alignment modifications, or as a results of associated ancillary activities including, but not limited to, construction staging areas, stormwater management facilities, wetland mitigation areas, reforestation areas, environmental stewardship activities or other actions. Should such activities be added for which cultural resources studies or assessments have not been completed, the MTA shall ensure that consultation ensues with the MD SHPO and other relevant consulting parties as appropriate, and that all required cultural resources studies are implemented in accordance with the applicable performance standards in Stipulation III and with the following procedures:

A. Identification

The MTA professional cultural resources staff shall review any additions or changes to the project and implement identification investigations as necessary to identify any historic properties that may be impacted by the proposed activity or alignment modification. The

MTA shall provide all completed information to the MD SHPO, FTA, and relevant consulting parties under this PA for review and comment. If the MD SHPO does not provide comments within 30 calendar days of receipt, the MTA may assume the MD SHPO acceptance of the results.

B. Evaluation

The MTA shall evaluate all cultural resources identified in the areas inventoried under Stipulations IV.A, V.A and VIII.A in accordance with 36 CFR 800.4(c) to determine their eligibility for the National Register. The MTA shall provide the results of any such evaluation efforts to the MD SHPO, FTA, and relevant consulting parties for review and comment. If the MD SHPO does not provide comments within 30 calendar days of receipt, the MTA may assume the MD SHPO acceptance of the results.

C. Treatment

Should any property eligible for inclusion in the National Register be identified under Stipulations IV.B, V.B and VIII.B, the MTA shall make a reasonable and good faith effort to avoid adversely impacting the resources by realigning or modifying the Undertaking. If adverse effects are unavoidable, the MTA, FTA, the MD SHPO and relevant consulting parties shall consult in accordance with 36 CFR 800.6 to develop and implement appropriate treatment options. The MTA shall ensure that any resulting cultural resources work is accomplished in accordance with the relevant performance standards in Stipulation III.

IX. DOCUMENT AND DESIGN REVIEW

During the implementation of this PA, the MTA, in coordination with the FTA, shall provide the MD SHPO, NPS, NCPC, and other consulting parties with the opportunity to review and comment on appropriate documents, reports and design plans as specified in the stipulations throughout the PA. In general, review periods will encompass a timeframe not to exceed 30 calendar days from receipt of the item for review, unless otherwise specified in the PA.

The MD SHPO, NPS, and NCPC will provide comments to MTA regarding any plan or document submitted pursuant to this PA, as promptly as possible, but not to exceed 30 calendar days of the receipt of such revisions.

If the MD SHPO, NPS, and NCPC do not submit comments in writing within 30 calendar days of the receipt of any such submissions, MTA may assume MD SHPO acceptance of the submitted document.

If the MD SHPO, NPS, NCPC, or other consulting parties objects within 30 calendar days of the receipt of any submissions, then FTA, MTA, and the MD SHPO will consult expeditiously in an effort to resolve the objection.

If the FTA and MTA cannot resolve MD SHPO, NPS, NCPC, and/or other consulting parties objection, and if further consultation with the MD SHPO, NPS, and NCPC is deemed unproductive by any party, then the parties will adhere to the dispute resolution procedures detailed under Stipulation XI.

The FTA, MTA, MD SHPO, NPS, and NCPC acknowledge that the timeframes set forth in this stipulation will be the maximum allowable under normal circumstances. In exigent circumstances (such as when construction activities have been suspended or delayed pending resolution of the matter), each party agrees to expedite their respective document review and dispute resolution obligations.

X. ONGOING COORDINATION AND OVERSIGHT

A. Ongoing coordination

The MTA and the MD SHPO will regularly consult to review implementation of the terms of this PA. The MTA shall schedule formal coordination meetings and invite the FTA, MD SHPO, NPS, NCPC, and relevant consulting parties, as needed throughout the duration of the PA. At a minimum, the MTA shall hold an annual meeting with the signatory and consulting parties for the duration the PA, as long as the MTA is still actively performing work under the PA stipulations.

B. Annual Report

Commencing from the date that this PA is fully executed, and continuing until the Undertaking is completed or terminated, the MTA shall produce an annual report and submit it to the other signatory and consulting parties. The report will provide information concerning the status of implementing the various stipulations of this PA, identify any problems or unexpected issues encountered during the year, and address any changes the MTA recommends in the implementation of the PA. The MTA shall provide the report via e-mail, the project web site or other agreed-upon methods of distribution.

C. Annual Review of the Programmatic Agreement

The MTA and MD SHPO will review the effectiveness of this PA to determine whether to revise the PA during each annual reporting period. The MTA will recommend any PA revisions that will be amended in accordance with Stipulation XIII below to the FTA, MD SHPO, NPS, and NCPC.

D. Monitoring

The FTA and MD SHPO will monitor activities carried out pursuant to this PA. The MTA will cooperate with the signatory parties in carrying out their monitoring efforts.

XI. DISPUTE RESOLUTION

A. Resolution of Objection by the Signatories

Should the MD SHPO, or any of the signatories to this PA, object in writing within 30 days to any plans or actions proposed pursuant to this PA, the FTA shall consult with the objecting party to resolve the objection. If the FTA determines that such objection cannot be resolved, the FTA will within a 30-day time period:

1. Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to the ACHP. Prior to reaching a final decision on the dispute, the FTA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. The FTA will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the 30-day time period, FTA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FTA shall prepare a written response that takes into

account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.

3. The FTA's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remains unchanged.

B. Resolution of Objections

At any time during the implementation of the measures stipulated in this PA, should an objection pertaining to this agreement or the effect of the Undertaking on historic properties be raised by another consulting party, or a member of the public, the MTA shall notify the parties to this agreement and take the objection into account, in coordination with the FTA, consulting with the objector, and with any of the parties to this agreement, as needed, to resolve the objection.

XII. OTHER

For purposes of notices and consulting pursuant to this PA, the following addresses and contact information should be used for the following agencies:

MTA

John Newton
Maryland Transit Administration
6 St. Paul Street
Baltimore, MD 21202-1614

FTA

Daniel Koenig, Environmental Protection Specialist
Federal Transit Administration, DC Metro Office
1990 K Street NW, Suite 510
Washington, DC 20006

MD SHPO

J. Rodney Little
State Historic Preservation Officer
Maryland Historical Trust
100 Community Place
Crownsville, MD 21032-2023

NPS

David Hayes, Regional Planner & Transportation Liaison
National Park Service
1100 Ohio Drive SW
Washington, DC 20242

NCPC

Michael Weil, Urban Planner
National Capital Planning Commission
401 9th Street NW, Suite 500
Washington, DC 20004

If an emergency situation, that represents an immediate threat to public health, safety, life or property creating the potential to effect a historic property should occur during the duration of this PA, the regulations set forth in 36 CFR 800.12 shall be followed. MTA shall notify FTA and the MD SHPO of the condition which has created the situation and the measures to be taken to respond to the emergency or hazardous condition. FTA and the MD SHPO may submit comments to the MTA within seven days of the notification. If MTA determines that circumstances do not permit seven days for comment, MTA shall notify FTA and MD SHPO and invite any comments in the determined and stated time available. MTA shall consider these comments in developing a response to the treatment of historic properties in relation to the emergency situation.

XIII. AMENDMENTS

This PA may 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 ACHP.

XIV. TERMINATION

If any signatory of this PA determines that its terms will not or cannot be carried out, that party will immediately consult with the other parties to attempt to develop an amendment per Stipulation XIII. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories. If the PA is terminated, MTA and FTA must comply with subpart B of 36 CFR 800 with regard to individual undertakings of the program covered by the PA, pursuant to 36 CFR 800.14(b)(2)(v), prior to work continuing on the Undertaking. MTA and FTA will notify the signatories as to the course of action it will pursue.

XV. DURATION

This PA shall be null and void if its terms are not carried out within ten (10) years from the date of execution, unless the signatory parties agree to amend it in accordance with Stipulation XIII. If the FTA and MTA have not fulfilled the terms of the PA prior to its expiration, the signatory parties shall consult to reconsider the terms of the PA and amend it according to Stipulation XIII or terminate it in accordance with Stipulation XIV.

Execution of the PA by the FTA, MTA, MD SHPO, NPS, and NCPC and implementation of its terms evidence that the FTA has afforded the signatories an opportunity to comment on the Undertaking and its effects on historic properties and that the FTA has taken into account the potential effects of the Undertaking on historic properties.

FEDERAL TRANSIT ADMINISTRATION

By: _____ Date: _____
Brigid Hynes-Cherin
Regional Administrator

MARYLAND TRANSIT ADMINISTRATION

By: _____ Date: _____
Henry M. Kay
Executive Director for Transit Development and Delivery

MARYLAND STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
J. Rodney Little
State Historic Preservation Officer

NATIONAL PARK SERVICE

By: _____ Date: _____
[name]
[title]

NATIONAL CAPITAL PLANNING COMMISSION

By: _____ Date: _____
[name]
[title]

List of Exhibits

- A Project Location Map
- B Historic Properties within the Purple Line Area of Potential Effects (APE)—Prince George's and Montgomery Counties, Maryland
- C Construction Protection Plan for Historic Properties
- D Mitigation, Data Recovery, Curation and Public Interpretation
- E Construction Protection Plan for Archeological Resources
- F Unanticipated Discoveries for Archeological Properties including Human Remains
- G Letter from Advisory Council on Historic Preservation

DRAFT