

**APPENDIX C**

**SECTION 106**

**PROGRAMMATIC AGREEMENT (PA)**



## **PROGRAMMATIC AGREEMENT**

**Among the**  
**FEDERAL HIGHWAY ADMINISTRATION,**  
**MARYLAND TRANSPORTATION AUTHORITY,**  
**VIRGINIA DEPARTMENT OF TRANSPORTATION,**  
**MARYLAND STATE HISTORIC PRESERVATION OFFICER,**  
**and**  
**VIRGINIA STATE HISTORIC PRESERVATION OFFICER**

**Regarding the**  
**US 301 OVER POTOMAC RIVER**  
**GOVERNOR HARRY W. NICE MEMORIAL BRIDGE IMPROVEMENT PROJECT in**  
**CHARLES COUNTY, MARYLAND AND KING GEORGE COUNTY, VIRGINIA**

**WHEREAS**, the Maryland Transportation Authority (**MDTA**), in cooperation with the Virginia Department of Transportation (**VDOT**) and Federal Highway Administration (**FHWA**), proposes to construct a new bridge and approach roadways that would carry US 301 over the Potomac River and replace the existing Governor Harry W. Nice Memorial Bridge (**Nice Bridge**) (MDTA Project No. NB543-000-006), herein referred to as the Project; and

**WHEREAS**, federal funding administered through the FHWA has been identified by MDTA as a potential funding source for the Project, and FHWA is functioning as the lead federal agency; and

**WHEREAS**, FHWA has determined the provision of federal financial assistance for the Project would be an undertaking as defined in 36 CFR Part 800.16(y) which is subject to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

**WHEREAS**, the FHWA DelMar Division is the lead FHWA office for the Project and is responsible for ensuring the stipulations are carried out, and

**WHEREAS**, pursuant to Section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 and 403) and the General Bridge Act of 1946, a Coast Guard Bridge Permit will likely be required from the U.S. Coast Guard for this Project, and pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 and 403) and Section 404 of the Clean Water Act of 1973 (33 U.S.C. 1344), a Department of the Army permit will likely be required from the U.S. Army Corps of Engineers (**Corps**) for this Project. Therefore, FHWA has assumed the role as lead federal agency to fulfill federal responsibilities under Section 106 of the National Historic Preservation Act (16 U.S.C. 470); and

**WHEREAS**, this Project is located in both Maryland and Virginia, and therefore involves agencies, organizations, and members of the public in both states; and

**WHEREAS**, FHWA has authorized MDTA to conduct consultation with the Maryland State Historic Preservation Officer (**MD SHPO**) and Virginia State Historic Preservation Officer (**VA SHPO**) for the Project on its behalf pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), including the initiation of the Section 106 process, identification of historic properties, and assessment of adverse effects; and

**WHEREAS**, following consideration of the Environmental Assessment/Draft Section 4(f) Evaluation completed for the Project in July 2009, and comments from the public, elected officials, environmental agencies, and affected property owners received on the document and other information presented at public hearings in September 2009, MDTA identified Modified Alternate 7 as the Project's Preferred Alternate, which would construct a new four-lane bridge, with a bicycle/pedestrian lane, north of the existing Nice Bridge, as shown in **Attachment A**; and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the MD SHPO and VA SHPO, has defined the Project's preliminary Area of Potential Effects (**APE**) for historic architecture to include areas subject to direct impacts as well as geographic areas within the viewshed of the Project (see **Attachment B**); and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the MD SHPO and VA SHPO, completed Maryland's *Historic Resources Survey and Determination of Eligibility Report* (October 2008) and the *Virginia Historic Resources Survey and Identification Report* (October 2008) to identify and evaluate all architectural historic properties within the Project's preliminary APE in Maryland and Virginia; and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the MD SHPO, has determined that four Maryland architectural properties located within the preliminary APE are eligible for listing on the National Register of Historic Places (**NRHP**): Governor Harry W. Nice Memorial Bridge (including the Potomac River Bridge Administration Building) (CH-376), Marshall's Rest (CH-140), Ravens Crest (CH-164), and Pasquahanza (CH-32); and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the VA SHPO, has determined that one Virginia architectural property located within the preliminary APE is eligible for listing on the NRHP: Naval Surface Warfare Center, Dahlgren Laboratory (consisting of four separate historic districts) (048-0104); and

**WHEREAS**, as part of the Preferred Alternate, the existing Nice Bridge and the associated Potomac River Bridge Administration Building (**Administration Building**) would be removed, thus likely constituting an adverse effect (36 CFR Part 800.5); and

**WHEREAS**, MDTA, in cooperation with FHWA, does not expect any other architectural historic properties within the preliminary APE would have their character defining features diminished by the Project; and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the MD SHPO and VA SHPO, established a preliminary archaeological APE (see **Attachment B**); and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the MD SHPO and VA SHPO, completed Phase IA and IB terrestrial archaeological studies for Maryland and Virginia [*Maryland Archeological Phase IA Memorandum* (October, 2008), *Virginia Archeological Phase IA Memorandum* (October, 2008), *Phase IB Archeological Investigations in Maryland for the Governor Harry W. Nice Bridge Improvement Project* (February, 2010), and *Phase IB Archeological Investigations in Virginia for the Governor Harry W. Nice Bridge Improvement Project* (February, 2010)] using the preliminary archaeological APE; and

**WHEREAS**, underwater archeological investigations have not yet been conducted within part of the preliminary APE; and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the MD SHPO, has determined that the Nice Bridge Shell Midden Site (18CH0797) in Maryland may be eligible for inclusion on the NRHP under Criterion D; and

**WHEREAS**, MDTA, in cooperation with FHWA and in consultation with the VA SHPO, has determined that the Barnesfield Plantation Site (44KG0171) in Virginia may be eligible for inclusion on the NRHP under Criterion D; and

**WHEREAS**, MDTA, in cooperation with FHWA, has phased the final identification, evaluation, and determination of effects on terrestrial and underwater archeological resources pursuant to 36 CFR Part 800.4(b)(2) and 36 CFR Part 800.5(a)(3) pending the completion and results of ongoing archeological identification and evaluation studies conducted pursuant to this Programmatic Agreement (**PA**); and

**WHEREAS**, the Project's APE has not yet been finalized because of the potential expansion of the Project area due to factors such as construction staging areas, dredge material dewatering and disposal sites, barge berthing area, temporary construction haul roads, utility relocation, and mitigation sites. These expanded limits cannot be determined by MDTA until the bridge type is selected and additional areas of impact are incorporated into the bridge design. Therefore, although preliminary cultural resources studies were done, all investigations have not yet been completed for the Nice Bridge and effects on historic properties cannot be fully finalized prior to approval of this undertaking; and

**WHEREAS**, because the Project design and construction will take place at an unspecified future date, the Project's APE is not yet finalized, and MDTA has not completed the studies necessary to identify all potential properties meeting the criteria for listing on the NRHP, MDTA has elected to comply with Section 106 of the National Historic Preservation Act through execution and implementation of this PA pursuant to 36 CFR Part 800.14(b)(1)(ii); and

**WHEREAS**, FHWA notified the Advisory Council on Historic Preservation (**ACHP**) of the Project's potential adverse effect on historic properties and its intent to use a PA for this Project pursuant to 36 CFR Part 800.14(b)(1)(ii), and ACHP has chosen not to participate in the consultation by letter dated January 6, 2011; and

**WHEREAS**, MDTA, participating in the consultation pursuant to 36 CFR Part 800.2(c)(4), has responsibility for implementing the stipulations under this PA, and FHWA has invited MDTA to be a signatory to this PA pursuant to 36 CFR Part 800.6(c)(2)(iii); and

**WHEREAS**, VDOT has participated in this consultation pursuant to 36 CFR Part 800.2(c)(4), and FHWA has invited VDOT to be a signatory to this PA pursuant to 36 CFR Part 800.6(c)(2)(iii); and

**WHEREAS**, FHWA and MDTA invited the following eighteen federally recognized tribes to participate as consulting parties: Absentee-Shawnee Tribe of Indians of Oklahoma, Catawba Indian Nation, Cayuga Nation of New York, Cherokee Nation, Delaware Nation, Eastern Band of the Cherokee Indians, Eastern Shawnee Tribe, Oneida Indian Nation, Oneida Tribe of Indians of Wisconsin, Onondaga Indian Nation, Saint Regis Mohawk Tribe, Seneca-Cayunga Tribe of Oklahoma, Seneca Nation of Indians, Shawnee Tribe, Stockbridge Munsee Community of Wisconsin, Tonawanda Band of Seneca, Tuscarora Nation, and United Keetoowah Band of Cherokee Indians. Of these tribes only the Oneida Indian Nation responded. The tribe requested the opportunity to review the results of any additional cultural resources studies for this project, and to be notified in the event of the inadvertent discovery of human remains or if native cultural materials are encountered during any later phases of the Project; and

**WHEREAS**, FHWA and MDTA invited both the Maryland Commission on Indian Affairs (MCIA) and Virginia Council on Indians (VCI) to participate as consulting parties. MCIA and VCI requested to participate as a consulting party, and FHWA and MDTA have invited MCIA and VCI to concur with this PA pursuant to 36 CFR Part 800.14(b)(2)(i); and

**WHEREAS**, FHWA and MDTA invited the following tribal organizations to participate as consulting parties: three bands of the Piscataway tribe in Southern Maryland (i.e., Piscataway Indian Nation, Inc., Piscataway-Conoy Confederacy and Subtribes, Inc., and the Cedarville Band of Piscataway Indians). None of these tribal organizations responded or requested to participate as consulting parties;

**WHEREAS**, FHWA and MDTA have consulted with the following seven Section 106 consulting parties, pursuant to 36 CFR Part 800.2(c)(5): Charles County Government, Planning and Growth Management; The Northern Neck of Virginia Historical Society; MCIA; Town of Colonial Beach; Mr. Joseph Knott; Mr. Jerry Volman; and Mr. David Rose regarding the effects of the Project on historic properties and have invited these other consulting parties to concur with this PA pursuant to 36 CFR Part 800.6(c)(3); and

**WHEREAS**, MDTA, in cooperation with FHWA, has afforded the public an opportunity to comment on the effect of the Project on historic properties. A series of Public Workshops and Hearings were held from 2007 through 2009 where the public commented on historic properties:

- Public Workshop, May 31, 2007 in Newburg, Maryland
- Public Workshop, June 7, 2007 in Dahlgren, Virginia
- Public Hearing, September 17, 2009 in Newburg Maryland
- Public Hearing, September 24, 2009 in Dahlgren, Virginia; and

**WHEREAS**, throughout the Project planning and consultation process, FHWA and MDTA, in consultation with the MD SHPO, VA SHPO and other consulting parties, have considered alternatives that avoid or minimize the adverse effects that the Project will have on historic properties; and

**WHEREAS**, the MD SHPO agrees that fulfillment of the terms of this PA will satisfy the responsibilities of MDTA and any Maryland state agency under the requirements of the Maryland State historic preservation law (§§ 5A-325 and 5A-326 of the State Finance and Procurement Article, Annotated Code of Maryland) for any components of the Project that require licensing, permitting, and/or funding actions from Maryland state agencies;

**NOW, THEREFORE**, the signatories (FHWA-DelMar Division, FHWA-Virginia Division, MDTA, VDOT, MD SHPO, and VA SHPO) agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

## STIPULATIONS

FHWA shall ensure that the following measures are carried out:

### **I. Roles and Responsibilities**

- A. The signatories and other consulting parties to this PA shall have the opportunity to review materials and issues resulting from the stipulations in this PA that are relevant to their state of interest. This means that the MD SHPO shall only be responsible for review and comment of materials and issues affecting historic properties in Maryland, while the VA SHPO shall only be responsible for review and comment of materials and issues affecting historic properties in Virginia. It is assumed that MDTA and VDOT shall only review materials and issues located within their respective rights-of-way or proposed rights-of-way.
- B. Regarding issues related to prehistoric and historic Native American sites in Maryland, MDTA shall submit its findings to the MCIA, and for prehistoric and historic Native American sites in Virginia, MDTA shall submit its findings to VCI, for their respective review and comment.
- C. Only the signatories have active roles in Stipulations XV-XVII (Amendments, Termination, and Duration).
- D. Excluding Stipulations XII and XIII (Post-Review Discoveries and Treatment of Human Remains) and the administrative stipulations, MDTA shall provide a draft of products prepared pursuant to this PA to the signatories and other consulting parties for review and comment. The consulting parties shall have thirty calendar days upon receipt of complete information to review and comment on the products provided. MDTA shall address those comments received within the thirty day review period prior to developing the final product. MDTA may assume that the parties not responding within the thirty day review period have no comment.

### **II. Treatment of the Governor Harry W. Nice Memorial Bridge**

#### **A. Documentation and Photographic Records**

1. Prior to removal of the Nice Bridge and Administration Building, MDTA shall develop a recordation plan to document and photograph the historic property. The draft recordation plan will be provided to the MD SHPO for review and comment per Stipulation I.D.
2. As part of the recordation plan development, the MDTA shall contact the National Park Service (NPS) Northeast Region Historic American Engineering Record (HAER) office to determine what level and kind of recordation is required for the property. Unless otherwise agreed to by NPS and the MD SHPO, the MDTA shall ensure that all documentation is completed and accepted by HABS/HAER and that copies of this documentation are provided to the MD SHPO and appropriate local archives designated by the MD SHPO prior to demolition.
3. All written, graphic and photographic documentation submitted to the MD SHPO must include the Maryland Inventory of Historic Properties (MIHP) number



associated with the documented resources. All photographic documentation in the HAER submittal to the MD SHPO must be prepared in accordance with current MD SHPO guidelines. The photographs shall depict significant aspects of the Nice Bridge and the Administration Building, as well as their historic settings. Appropriate historic photographs and original plans of the Nice Bridge and Administration Building shall be included in the photographic documentation, should they be available. The images shall be suitable for use in public presentations and/or exhibits.

4. In developing the documentation and photographic recordation, MDTA will make a comprehensive effort to research the Nice Bridge, including the Administration Building, at repositories such as MDTA, MD SHPO, Historical Society of Charles County, Maryland Historical Society, Maryland State Archives, Maryland State Highway Administration, and local libraries.
5. Draft products, such as a copy of the written history and scanned copies of the photographic documentation, shall be reviewed by all relevant parties per Stipulation I.D.
6. The MDTA shall ensure that the documentation is accepted by MD SHPO prior to demolition. If the MD SHPO does not provide comments on the recordation package within thirty (30) calendar days of receipt, the MDTA may assume that the MD SHPO has no comments on the submittal.

B. Interpretive Signage

1. Using the information obtained from the documentation in Stipulation II.A.3, as well as any additional research conducted at the repositories described under Stipulation II.A.4, MDTA shall mount interpretive signage in public locations adjacent to and/or on the new Nice Bridge. Signage would mainly be located along the bicycle/pedestrian lane, mounted at regular intervals on the bridge, as well as at the bridge approaches. MDTA would be responsible for the installation and maintenance of the signage. In consultation with the MD SHPO, VA SHPO, and other consulting parties, MDTA shall carefully evaluate public interpretation options and select those that are reasonable, have a good opportunity to reach a broad range of the public, and correlate with other aspects of the Project, such as the bicycle/pedestrian lane.
2. The interpretive signage shall provide such information as a brief history of the Nice Bridge and Administration Building, the reasons for the bridge's replacement, the bridge's engineering features and characteristics, the role the bridge played in the development of the area, and the historic properties surrounding it.
3. The interpretive signage shall include historic and contemporary mounted photographs of the Nice Bridge and Administration Building, accompanied by relevant narrative, plans, and maps.
4. Draft products such as signage text, scanned copies of photographs and maps, and layout and design shall be reviewed per Stipulation I.D.

5. The signs shall be erected within one year of completion of construction of the undertaking.

C. Interpretive Displays

1. Using the information obtained from the documentation in Stipulation II.A.3, as well as any additional research conducted at the repositories described under Stipulation II.A.4, MDTA shall create an interpretive display that illustrates the history of the Nice Bridge, to be installed in an interior public space near the Project area. In consultation with the MD SHPO, VA SHPO, and other consulting parties, MDTA shall carefully evaluate public interpretation options and select those that are reasonable, have a good opportunity to reach a broad range of the public, and correlate with other aspects of the Project, such as the bicycle/pedestrian lane.
2. The interpretive displays shall provide such information as a history of the Nice Bridge and Administration Building, the bridge's engineering features and characteristics, the role it played in the development of the area, and the reasons for its replacement.
3. The interpretive displays shall include historic and contemporary mounted photographs of the Nice Bridge and Administration Building, accompanied by relevant narrative, plans, and maps.
4. Draft products such as display text, scanned copies of photographs and maps, and layout and design shall be reviewed per Stipulation I.D.
5. The displays shall be erected within one year of completion of construction of the undertaking.

D. Electronic Informational Site

1. MDTA shall establish and maintain an electronic informational site which describes the history of the Nice Bridge and Administration Building. The site would be made broadly available to the public.
2. The site would provide public access to material such as written and photographic documentation resulting from Stipulation II.A.3; additional historic and current photographs, plans, and maps obtained through research at repositories such as those identified in Stipulation II.A.4; and information about the signage and interpretive displays associated with Nice Bridge.
3. Draft products such as an outline of the content, and layout and design shall be reviewed per Stipulation I.D.
4. The electronic informational site shall be established and operational within one year after construction of the undertaking is completed.

**III. Expansion of APE and Additional Identification of Historic Properties**

- A. MDTA shall establish the expanded limits of the APE, in accordance with 36 CFR Part 800.4(a)(1), during the design of the Preferred Alternate. The expanded APE shall include, but may not be limited to, construction staging areas, dredge material

dewatering and disposal sites, barge berthing area, temporary construction haul roads, utility relocation, and mitigation sites.

- B. Pursuant to 36 CFR Part 800.4(a), MDTA shall assess the architectural and archeological potential of the expanded APE, in consultation with the MD SHPO and/or VA SHPO, and other consulting parties to determine the level of survey effort warranted for the expanded APE, and shall obtain MD SHPO and VA SHPO concurrence on that effort.

C. Architectural Potential of the Expanded APE

1. Within the potential architectural expanded APE, MDTA shall consult with the MD SHPO and/or VA SHPO, and other consulting parties to identify and evaluate historic buildings, structures, and/or districts for the NRHP in the newly affected areas, and assess the effects of the Project on any newly identified historic properties, in accordance with 36 CFR Part 800.4(c) and 36 CFR Part 800.5. MDTA shall seek ways to avoid or minimize adverse effects in the design of the Project.
2. When these additional adverse effects cannot be avoided in the design, MDTA shall apply the mitigation measure described in Stipulation II.A (Documentation and Photographic Records) to these historic properties, and if appropriate incorporate them into Stipulation II.B-D (Interpretive Signage, Interpretive Displays, and Electronic Information Site) of this PA. In addition, should the adverse effect be indirect, for example visual, atmospheric, or audible, then mitigation options may include, but are not limited to, screening, earth berming, landscaping, fencing, or other appropriate barriers. To the degree practicable, FHWA and MDTA shall ensure that any mitigation elements installed are complementary to the surrounding element and/or natural vegetation, without introducing additional visual effects to historic properties.

D. Archaeological Potential of the Expanded APE

1. For any archeological investigations conducted on state-owned or state-controlled lands and waters in Maryland, MDTA shall obtain a permit from the MD SHPO, pursuant to State Finance and Procurement §§ 5A-341 and 5A342 of the Annotated Code of Maryland, as appropriate. For any archeological investigations conducted in Virginia within VDOT right-of-way or other state controlled land, MDTA shall obtain a permit from the VA SHPO pursuant to the Virginia Antiquities Act § 10.1-2300 of the *Code of Virginia*.

Due to the presence of the Naval Surface Warfare Center in Dahlgren, Virginia, and prior to the implementation of any archeological survey, a survey for Munitions and Explosives of Concern (MEC) shall be undertaken within the expanded APE. The survey should employ the required equipment to make a determination of whether or not there are MEC's within the expanded APE and how these may affect future investigations.

2. MDTA shall ensure that Phase IB archeological investigations of the expanded APE are conducted in accordance with 36 CFR Part 800.4(b). The survey shall be

conducted in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-23) and shall take into account the NPS publication, *The Archaeological Survey: Methods and Uses* (1978: GPO Stock #024-016-00091), MHT *Standards and Guidelines for Archeological Investigations in Maryland* (1994), and Virginia Department of Historic Resources' (VDHR) *Guidelines for Archeological Investigation in Virginia* (2009), as appropriate, or any replacements or subsequent revisions to these documents.

3. Any archaeological sites identified within the expanded APE shall be evaluated in accordance with 36 CFR Part 800.4(c). If there is the potential for the sites to be eligible for the NRHP, additional background research and archaeological testing, consistent with a Phase II archaeological investigation, shall be conducted to determine the boundary and eligibility of the archaeological resources. If no archaeological resources have the potential to be eligible, MDTA shall provide the other consulting parties with a copy of the report for their review and comment per Stipulation I.D.
4. MDTA shall follow Stipulation VI of this PA if, as a result of Phase II investigations, the MDTA in consultation with the MD SHPO and/or VA SHPO, and the other consulting parties, determines that the archaeological resources are eligible and will be affected by the Project.
5. If the MDTA, in consultation with the MD SHPO and/or VA SHPO and other consulting parties, determine(s) that an archaeological site eligible for the NRHP will be adversely affected by the Project, MDTA shall follow Stipulation VII of this PA.

#### **IV. Nice Bridge Shell Midden Site and Barnesfield Plantation Site**

- A. Prior to the construction of the Preferred Alternative, MDTA shall ensure that a Phase II archaeological investigation is conducted for the Nice Bridge Shell Midden Site (18CH0797) and the Barnesfield Plantation Site (44KG0171) in accordance with 36 CFR Part 800.4(c). The survey shall be conducted in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-23), and shall take into account the NPS publication, *The Archaeological Survey: Methods and Uses* (1978: GPO Stock #024-016-00091), MHT's *Standards and Guidelines for Archeological Investigations in Maryland* (1994), and VDHR's *Guidelines for Archeological Investigation in Virginia* (2009), as appropriate, or any replacements or subsequent revisions to these documents.
- B. MDTA shall follow Stipulation VI of this PA if, as a result of Phase II investigations, the MDTA in consultation with the MD SHPO and/or VA SHPO and the other consulting parties determines that the archaeological resources are eligible and will be affected by the Project.
- C. If the MDTA, in consultation with the MD SHPO and/or VA SHPO and other consulting parties, determine(s) that an archaeological site eligible for the NRHP will be adversely affected by the Project, MDTA shall follow Stipulation VII of this PA.

## **V. Underwater Archaeological Resources**

- A. The *Maryland Archaeological Phase IA Memorandum* sensitivity assessment determined that the potential for both prehistoric and historic resources exists within the Potomac River Channel. Prior to the implementation of the Preferred Alternate, MDTA shall ensure that a Phase IB underwater archaeological survey of the Potomac River within the APE where disturbance will occur is conducted in accordance with 36 CFR Part 800.4(b). MDTA shall consult with the MD SHPO regarding the level of effort for the survey. The survey shall be conducted in a manner consistent with the *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-23) and shall take into account the NPS publication, *The Archaeological Survey: Methods and Uses* (1978: GPO Stock #024-016-00091), and MHT's *Standards and Guidelines for Archeological Investigations in Maryland* (1994), as appropriate, or any replacements or subsequent revisions to these documents.
- B. Given the high potential for MEC in the Potomac River, the survey shall employ the required equipment to make a determination of whether or not there are MEC's within the area of the underwater archaeological survey.
- C. Any underwater archaeological resources identified within the APE where disturbance will occur shall be evaluated in accordance with 36 CFR Part 800.4(c), and in consultation with the MD SHPO and the other consulting parties. The methods follow those presented in Stipulation III.D.3 and III.D.4.
- D. MDTA shall follow Stipulation VI of this PA if, as a result of Phase II investigations, the MDTA in consultation with the MD SHPO and the other consulting parties determines that the underwater archaeological resources are eligible and will be affected by the Project.
- E. If the MDTA, in consultation with the MD SHPO and other consulting parties, determine(s) that an underwater archaeological site eligible for the NRHP will be adversely affected by the Project, MDTA shall follow Stipulation VII of this PA.

## **VI. Assessment of Adverse Effects on Archaeological Sites Determined Eligible for Listing on the NRHP**

In accordance with 36 CFR Part 800.5, MDTA shall assess the adverse effects of the undertaking on any archaeological sites determined eligible for listing on the NRHP as a result of the processes described in Stipulations III to V of this PA. MDTA shall submit its findings to the other consulting parties for their review and comment per Stipulation I.D. For prehistoric and historic Native American sites, MDTA shall also submit its findings to the MCIA and/or VCI for their review and comment.

## **VII. Treatment of Archaeological Sites Determined Eligible for Listing on the NRHP**

- A. If MDTA, in consultation with the signatories and other consulting parties, determines that an archaeological site eligible for the NRHP will be adversely affected by the Project, MDTA, in consultation with FHWA, shall determine whether avoidance or minimization of adverse effects to the property is appropriate. If adverse effects cannot be avoided, MDTA, in consultation with the signatories and

- other consulting parties, shall develop a treatment plan for the archaeological historic property. MDTA shall also consult with the MCIA and/or VCI on the development of any treatment plan for a prehistoric or historic Native American archaeological site adversely affected by the Project.
- B. MDTA shall submit all treatment plans to the signatories and other consulting parties for review and comment per Stipulation I.D. For prehistoric and historic Native American sites, MDTA shall also submit its findings to MCIA and/or VCI for their review and comment.
- C. Any treatment plan MDTA develops for an archaeology property under the terms of this Stipulation shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation*, *ACHP's Treatment of Archaeological Properties: A Handbook*, *ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (1999), *MHT's Standards and Guidelines for Archeological Investigations in Maryland* (1994), *VDHR's Guidelines for Archaeological Investigations in Virginia* (July 2009), and the *VDHR's Guidelines for Conducting Cultural Resources Survey in Virginia* (January, 2003), as appropriate, or any replacements or subsequent revisions to these documents.

The treatment plan shall include, at a minimum:

1. Information on the portion of the property where data recovery or controlled site burial, as appropriate, is to be carried out, and the context in which the property is eligible for the NRHP;
2. The results of the previous research relevant to the Project;
3. Research problems or questions to be addressed, with an explanation of their relevance and importance;
4. The field and laboratory analysis methods to be used, with a justification of their cost-effectiveness and how they apply to this particular property and the research needs;
5. The methods to be used in artifact, data, and other records management;
6. Explicit provisions for disseminating in a timely manner the research findings to professional peers, and to MCIA and/or VCI in the case of prehistoric or historic Native American archaeological sites;
7. Arrangements for presenting to the public the research findings, focusing particularly on the community or communities that may have interests in the results;
8. The curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR Part 79, *Curation of Federally-Owned and Administered Archaeological Collections*; and
9. Procedures for evaluating and treating discoveries of unexpected remains during the course of the Project, including necessary consultation with other parties.

- D. MDTA, in cooperation with FHWA, shall ensure the treatment plan is implemented and that any agreed upon data recovery field operations are complete before ground disturbing activities associated with the Project are initiated at the affected archaeological historic property.

MDTA and the MD SHPO and/or VA SHPO may, as necessary, meet on-site to evaluate the success of the fieldwork phase of any data recovery program, near the end of the fieldwork efforts. MDTA shall submit a management summary to the MD SHPO and/or VA SHPO documenting the completion of fieldwork for a fifteen day review. Upon receipt of the written concurrence from the MD SHPO and/or VA SHPO, MDTA may proceed with construction activities in the site areas concurrently with completion of the remaining laboratory analyses, and reporting phases of the data recovery work.

MDTA shall notify the other consulting parties once data recovery field operations have been completed. The proposed Project construction may proceed following this notification while the technical report is in preparation. MDTA shall ensure that the archaeological site form on file in the MD SHPO's Inventory of Historic Properties and/or VA SHPO's Data Sharing System (**DSS**) is updated to reflect the implementation of the treatment plan for each affected site.

### **VIII. Curation Standards**

- A. MDTA shall ensure that all materials and records resulting from cultural resources investigations conducted in Maryland for the Project will be curated in accordance with 36 CFR 79 at the MD SHPO's Maryland Archeological Conservation Laboratory, unless clear title or Deed of Gift to the collection cannot be obtained.
- B. MDTA shall ensure that all original archaeological records (research notes, field records, maps, drawings, and photographic records) produced in connection with this Project and all archaeological collections recovered from VDOT right-of-way in association with the Project are provided to the VA SHPO for permanent curation. In exchange for its standard collections management fee, as published in the *Virginia Department of Historic Resources State Collections Management Standards* (June 26, 2009), or subsequent revisions or replacements to that document, the SHPO agrees to maintain such records and collections in accordance with 36 CFR 79, "Curation of Federally Owned and Administered Archaeological Collections."

### **IX. Personnel Qualifications**

MDTA shall ensure that all archaeological work pursuant to this PA is carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards for Archaeologists* (48 FR 44738-9), and that all historic preservation work is carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals* (48 FR 44738-9).

## **X. Review of Project Related Plans**

MDTA shall provide relevant sections of preliminary, semi-final, and final Project plans to the other consulting parties for review and comment. Upon circulation and assurance that relevant sections have been distributed, the signatories and other consulting parties shall be provided an opportunity for review and comment per Stipulation I.D.

## **XI. Subsequent Changes to the Project**

If, subsequent to the implementation of Stipulation X, MDTA proposes any significant changes to the location or relative footprint of the Project affecting the design or disturbance area of the Project, MDTA shall provide the signatories and any other consulting party deemed appropriate with information concerning the proposed changes per Stipulation I.D.

## **XII. Post-Review Discoveries**

- A. In the event that previously unidentified historic properties are discovered or if unanticipated effects on historic properties occur during construction activities, MDTA shall require the construction contractor to halt all construction work in the area of the resource. In addition, for any discovered archaeological resources, work shall also halt in surrounding areas where additional subsurface remains can reasonably be expected to occur. Work in all other areas of the Project may continue.
- B. MDTA shall notify the signatories and other consulting parties within two working days of the discovery (36 CFR Part 800.13). In the case of prehistoric or historic Native American sites, MDTA shall notify appropriate state and federally recognized tribal leaders, and MCIA and/or VCI within two working days of the discovery.

MDTA shall ensure that an archaeologist or architectural historian meeting the Secretary of the Interior's Professional Qualifications Standards (48 FR 44739) shall investigate the work site and the resource, and then MDTA shall forward to the signatories and other consulting parties (and MCIA and/or VCI in the case of Native American sites) an assessment of the NRHP eligibility of the resource (36 CFR Part 60.4) and/or proposed treatment actions to resolve any adverse effects on the resource. The signatories, other consulting parties, and, when relevant, MCIA and/or VCI shall respond within five working days of receipt of MDTA's assessment of NRHP eligibility of the resource and proposed action plan. MDTA, in consultation with FHWA, shall take into account the recommendations of the signatories, other consulting parties, tribal leaders, and MCIA and/or VCI regarding NRHP eligibility of the resource and/or the proposed action plan to resolve adverse effects, and then carry out appropriate actions.

- C. MDTA shall ensure that construction work within the affected area does not proceed until appropriate treatment measures are developed and implemented, or the determination is made that the located resource is not eligible for inclusion on the NRHP.
- D. Disputes between the signatories over the treatment of historic properties shall be resolved as provided for in Stipulation XIV.A of this PA.



### **XIII. Treatment of Human Remains**

- A. MDTA shall make all reasonable efforts to avoid disturbing gravesites individually eligible for the NRHP or contributing to the historic significance of a NRHP eligible property, including those containing Native American human remains and associated funerary artifacts. MDTA shall treat all such gravesites in a manner consistent with the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007), or any replacement or subsequent revision to this document.
- B. In the event human burials are encountered during archaeological investigations or construction in any portion of the Project in Maryland, MDTA shall immediately halt subsurface disturbance in the area of the discovery and in the surrounding area where additional remains can reasonably be expected to occur. MDTA will ensure that human remains and associated funerary objects are brought to the immediate attention of the MD SHPO, FHWA, and Charles County State's Attorney, as appropriate. No activities that might disturb or damage the remains will be conducted until the MD SHPO has determined whether excavation is necessary and/or desirable. MDTA, in consultation with the MD SHPO and other interested parties, as appropriate, shall develop a plan for the appropriate treatment of the remains and comply with the Maryland State burial law (Title 10 Subtitle 4 Parts 10-401 through 10-404 of the Annotated Code of Maryland), or any replacement or subsequent revision to this law. MDTA shall submit the plan for review and approval by the MD SHPO pursuant to the terms of this PA. Work in the affected area shall not proceed until development and implementation of appropriate treatment plan or other recommended mitigation measures are completed; however, work outside the area of archeological features may continue.

In Virginia, human remains and associated funerary objects encountered during the course of actions taken as a result of this PA shall be treated in a manner consistent with the provisions of the Virginia Antiquities Act, § 10.1-2305 of the *Code of Virginia* and its implementing regulations, 17 VAC5-20, adopted by the Virginia Board of Historic Resources and published in the Virginia Register on July 15, 1991, and the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001) and its implementing regulations, 36 CFR Part 10. Any replacements or subsequent revisions to the Virginia Antiquities Act and its implementing regulations would supersede the present ones. In accordance with the regulations stated above, MDTA may obtain a permit from the VA SHPO for the archaeological removal of human remains should removal be necessary.

- C. In the event that the human remains encountered are likely to be of Native American origin, whether prehistoric or historic, MDTA, on behalf of FHWA, shall immediately notify (via telephone, facsimile or regular mail) appropriate tribal leaders of Indian tribes recognized by Maryland, the Commonwealth of Virginia, MCIA, VCI, and any federally recognized tribes with an interest in the area. MDTA shall determine the treatment of Native American human remains and associated funerary objects in consultation with appropriate tribal leaders of Indian tribes recognized by Maryland, the Commonwealth of Virginia, MCIA, VCI, and any

federally recognized tribes with an interest in the area. MDTA shall make all efforts it deems reasonable to ensure that the general public is excluded from viewing any Native American gravesites and associated funerary objects. The signatories to this PA shall release no photographs of any Native American gravesites or associated funerary objects to the press or to the general public.

#### **XIV. Dispute Resolution**

##### **A. Objection by Consulting Party**

1. Should any party to this PA object at any time in writing to the manner in which the terms of this PA are implemented, to any action carried out or proposed with respect to the implementation of the PA, or to any document prepared in accordance with and subject to the terms of the PA, FHWA shall first consult with the objecting party for a period not to exceed 30 days to resolve the objection. If FHWA determines that the objection cannot be resolved through such consultation, FHWA shall then consult with all consulting parties to this PA to resolve the objection. FHWA shall honor the request of the consulting parties to participate in the consultation and shall take any comments provided by those parties into account.
2. If the objection is resolved during the thirty day consulting period, FHWA may proceed with the disputed action in accordance with the terms of such resolution.
3. If at the end of the thirty day consultation period, FHWA determines that the objection cannot be resolved through such consultation, then FHWA shall forward all documentation relevant to the objection to ACHP, including FHWA's proposed response to the objection, with the expectation that ACHP shall, within thirty calendar days after receipt of such documentation:
  - a. Advise FHWA that ACHP concurs with FHWA's proposed response to the objection, whereupon FHWA shall respond to the objection accordingly; or
  - b. Provide FHWA with recommendations, which FHWA shall take into account in reaching a final decision regarding its response to the objection; or
  - c. Notify FHWA that it shall comment pursuant to 36 CFR Part 800.7(a)(4), and proceed to comment. Any comment provided in response to such a request shall be taken into account and responded to by FHWA in accordance with 36 CFR Part 800.7(c)(4) and Section 110(1) of the National Historic Preservation Act.
4. FHWA shall take into account any ACHP recommendation or comment provided in accordance with this Stipulation with reference only to the subject of the objection. FHWA's responsibility to carry out all actions under this PA that are not the subject of the dispute shall remain unchanged.
5. Should ACHP not exercise one of the above options within thirty calendar days after receipt of all pertinent documentation, FHWA may assume ACHP's concurrence in its proposed response to the objection and proceed to implement that response.

**B. Objection from the Public**

If at any time during implementation of the measures stipulated in this PA, a member of the public object in writing to FHWA, MDTA, or VDOT regarding the manner in which the measures stipulated in this PA are being implemented, FHWA shall notify the signatories to this PA and take the objection into account, while consulting with the objector. The signatories may also request that FHWA notify the other consulting parties to this PA about the objection.

**XV. Amendments**

This PA may be amended only upon written agreement by each of the signatories. Any signatory to this Agreement may request an amendment to FHWA, whereupon the other signatories must respond with any comments within thirty calendar days. The amendment would then be executed in accordance with 36 CFR Part 800.6(c)(7). If the signatories cannot agree to appropriate terms to amend the PA, any signatory may terminate the agreement in accordance with Stipulation XVI, below.

**XVI. Termination**

- A. If any signatory to this PA determines that the document's terms are not being or cannot be carried out, that signatory may immediately consult with the other signatories in writing, explaining the reasons for proposing termination, and consult with the other signatories for at least thirty calendar days to attempt to develop an amendment per Stipulation XV. If within thirty calendar days an amendment cannot be reached, any signatory may immediately terminate the PA upon written notification to the other signatories. Termination hereunder shall render this PA without further force or effect.
- B. Once the PA is terminated, and prior to work continuing on the Project, FHWA must either (a) execute a PA pursuant to 36 CFR Part 800.6 or (b) request the comments of ACHP under 36 CFR Part 800.7(a). FHWA shall notify the signatories as to the course of action it shall pursue.
- C. Such consultation shall not be required if FHWA proposes termination because the Project no longer meets the definition of an undertaking set forth in 36 CFR Part 800.16(y).

**XVII. Duration**

This PA shall continue in full force and effect until ten years after the date of the last signature of a signatory. At any time during the twelve month period prior to the ten year expiration date, the signatories may agree to extend this PA, with or without amendments. No extension, with or without amendments, shall be effective unless all signatories to this PA have agreed with it in writing within thirty calendar days. If FHWA or MDTA decides it will not proceed with the Project, they may so notify VDOT, MD SHPO, VA SHPO, and the other consulting parties, and then this PA becomes null and void. Termination shall include the submission of a technical report by MDTA on any work done up to and including the date of termination.

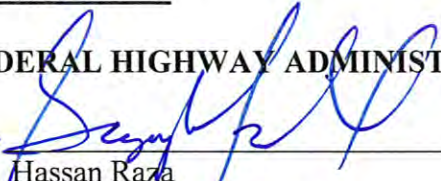
### **XVIII. Reporting**

MDTA shall prepare a written Project status update, anticipated schedule, and summary of all activities carried out pursuant to this PA every three years from the signature date of this PA, and provide a copy to all the signatories and other consulting parties to this PA. The three year notification period will coincide with the common National Environmental Policy Act (**NEPA**) reevaluation date. After three notifications in nine years have expired, the signatories may agree to extend the PA at any time in the remaining twelve month period, prior to the ten year expiration date per Stipulation XVII.

Execution of this PA by FHWA, MDTA, VDOT, MD SHPO, and VA SHPO, its filing with ACHP in accordance with 36 CFR Part 800.6(b)(1)(iv), and subsequent implementation of its terms, shall evidence, pursuant to 36 CFR Part 800.6(c), that MDTA has taken into account the effects of the Governor Harry W. Nice Memorial Bridge Project on historic properties.

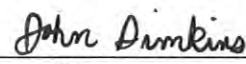
**SIGNATORIES**

**FEDERAL HIGHWAY ADMINISTRATION**

By:   
for Hassan Raza  
DelMar Division Administrator

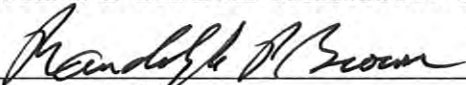
Date: 7/7/11

**FEDERAL HIGHWAY ADMINISTRATION**

By:   
Irene Rico  
Virginia Division Administrator

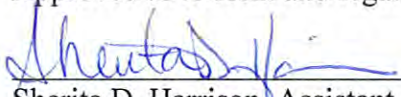
Date: 6/17/11

**MARYLAND TRANSPORTATION AUTHORITY**


By:   
Randolph P. Brown  
Acting Executive Secretary

Date: 5/6/11

Approved as to form and legal sufficiency:

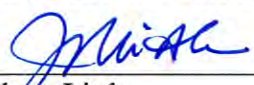
  
Sherita D. Harrison, Assistant Attorney General

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

By:   
Stephen J. Long  
Environmental Division Administrator

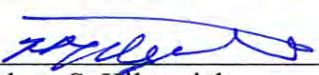
Date: 6/13/11

**MARYLAND STATE HISTORIC PRESERVATION OFFICER**

By:   
J. Rodney Little  
Director, Maryland Historical Trust

Date: 5-13-11

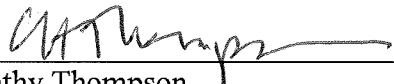
**VIRGINIA STATE HISTORIC PRESERVATION OFFICER**

By:   
Kathleen S. Kilpatrick  
Director, Virginia Department of Historic Resources

Date: 6/22/11

**CONCURRING PARTIES**

CHARLES COUNTY GOVERNMENT, PLANNING AND GROWTH MANAGEMENT

By:   
Cathy Thompson  
Community Planning Program Manager

Date: 8/3/11

**CONCURRING PARTIES (continued)**

THE NORTHERN NECK OF VIRGINIA HISTORICAL SOCIETY

By: Steve Walker Date: 8-16-11  
Steve Walker  
President

**CONCURRING PARTIES (continued)**

MARYLAND COMMISSION ON INDIAN AFFAIRS

By: \_\_\_\_\_

E. Keith Colston  
Executive Director

Date: \_\_\_\_\_



**CONCURRING PARTIES (continued)**

VIRGINIA COUNCIL ON INDIANS

By: Deanna Beacham  
Deanna Beacham

Date: 7/28/2011

**CONCURRING PARTIES (continued)**

TOWN OF COLONIAL BEACH

By: \_\_\_\_\_  
Frederick C. Rummage  
Mayor

Date: \_\_\_\_\_

**CONCURRING PARTIES (continued)**

MR. JOSEPH KNOTT

By: \_\_\_\_\_  
Joseph Knott

Date: \_\_\_\_\_

**CONCURRING PARTIES (continued)**

~~MR. JERRY VOLMAN~~

By: \_\_\_\_\_  
Jerry Volman

Date: \_\_\_\_\_

BRC, LLC, a Maryland Limited  
Liability Company

By: Bryan's Road Carpenters, Member

By: Mark D. Mudd  
Mark D. Mudd, President

DATE 8/8/11

**CONCURRING PARTIES (continued)**

MR. DAVID ROSE

By: \_\_\_\_\_  
David Rose

Date: \_\_\_\_\_



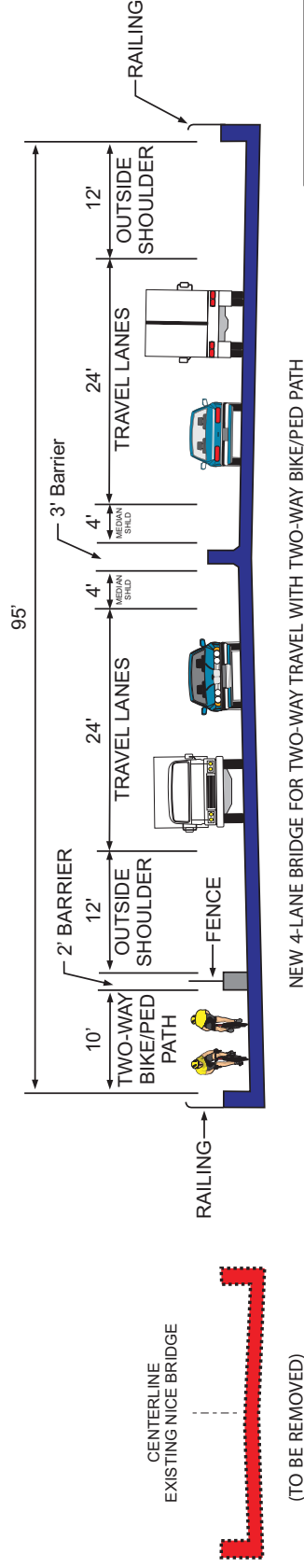
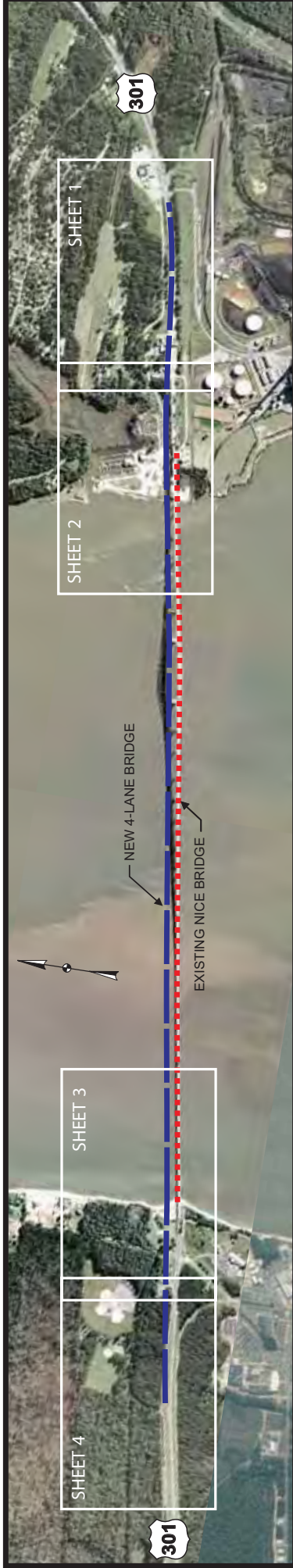
# **Attachment A**

Project Location Map and Plans of  
the Preferred Alternate (Modified Alternate 7)





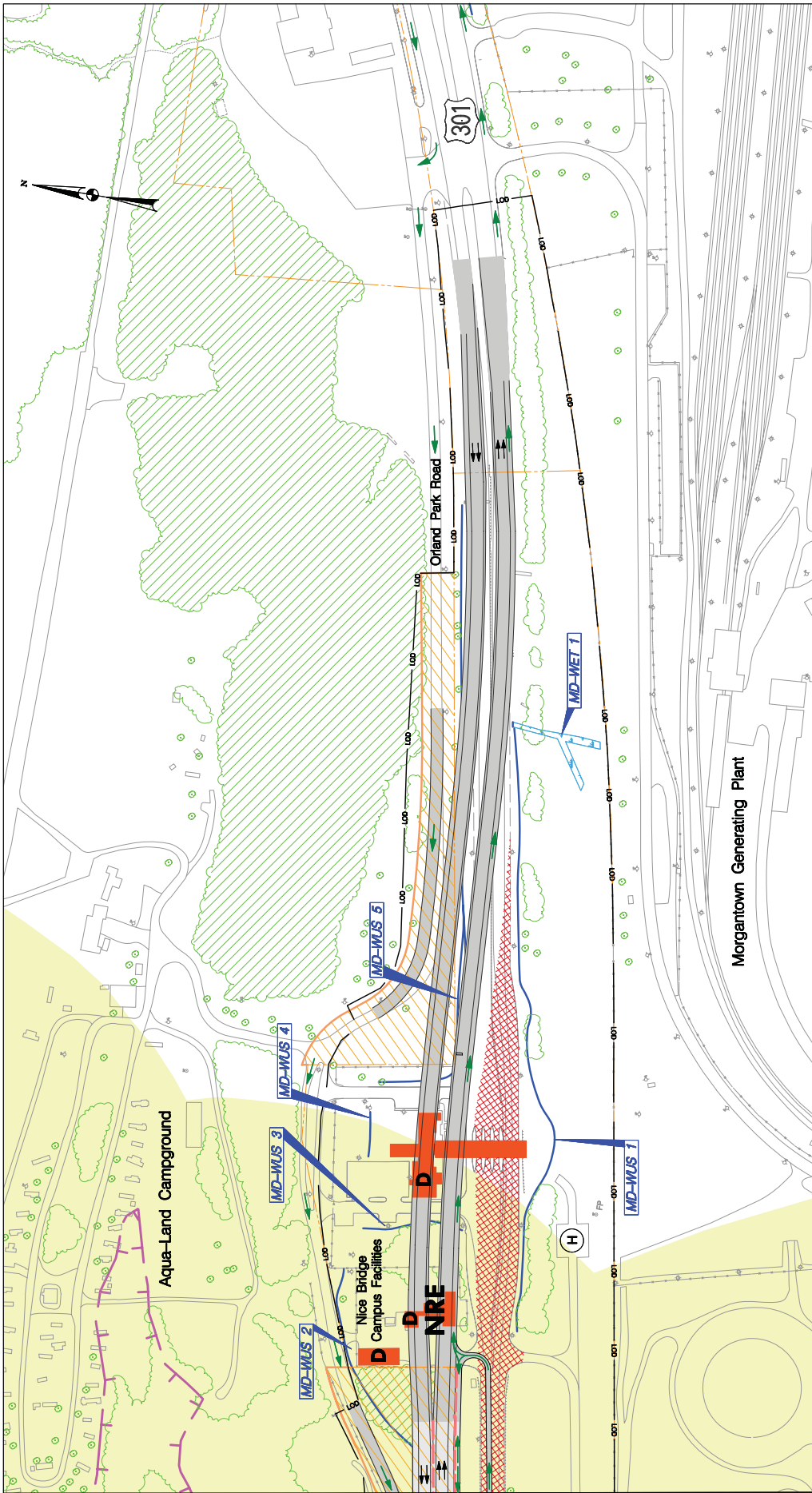




NEW 4-LANE BRIDGE FOR TWO-WAY TRAVEL WITH TWO-WAY BIKE/PED PATH

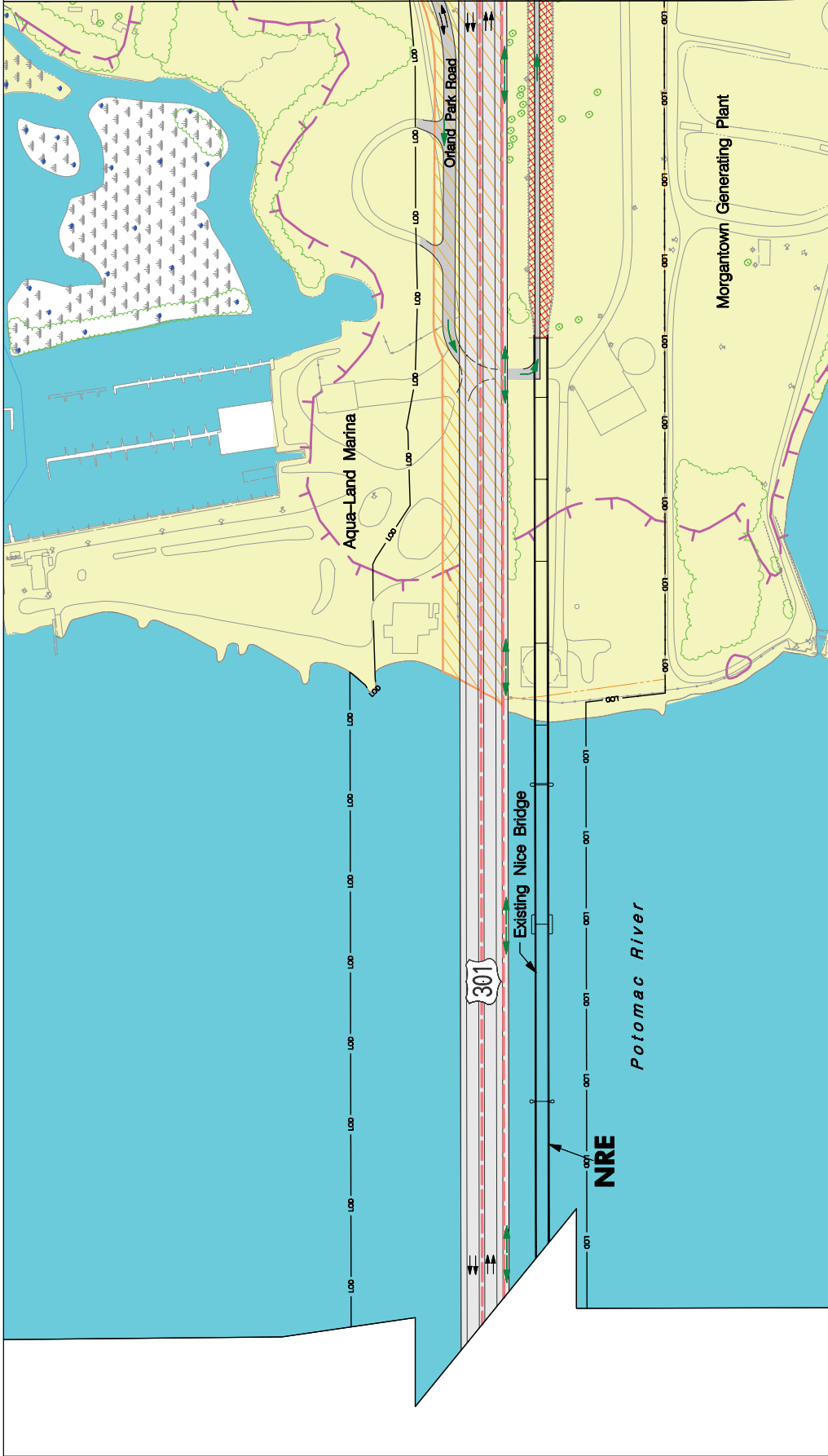
# MODIFIED ALTERNATE 7

**Nice Bridge Improvement Project**  
 Appendix A  
 Modified Alternate 7  
 Index Sheet  
 November 2010



**Nice Bridge Improvement Project**  
 Appendix A November 2010  
 Preferred Alternate 7  
 Modified Alternate 7 (Sheet 1 of 4)



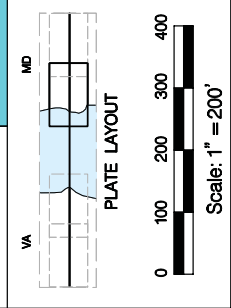


**Nice Bridge Improvement Project**  
 Appendix A November 2010  
 Preferred Alternate  
 Modified Alternate 7 (Sheet 2 of 4)

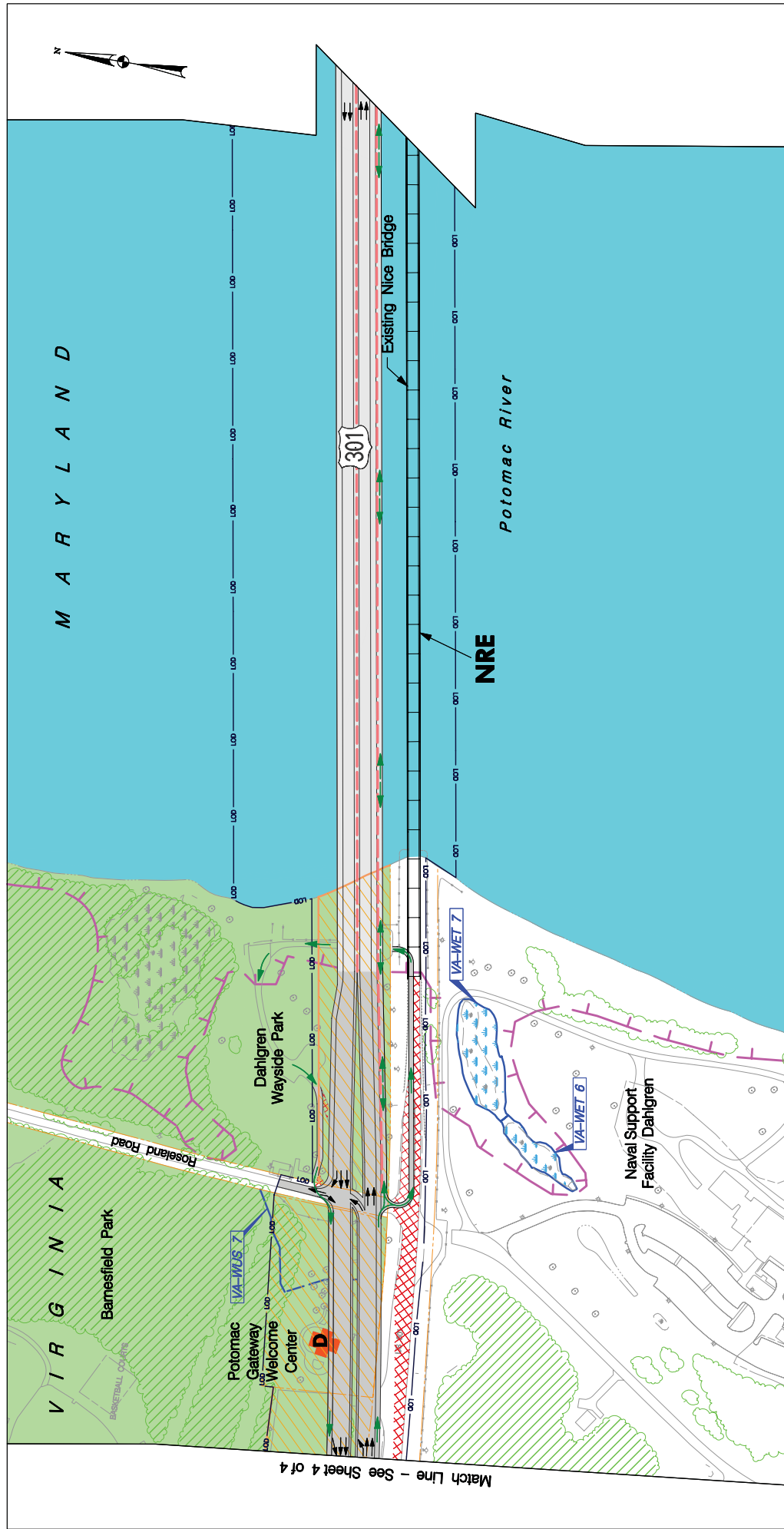


**LEGEND**

	Bridge Structure		100 Year Floodplain
	New Roadway		Jurisdictional Wetland
	Pavement Removal		National Register of Historic Places - Eligible
	Retaining Wall		Potential Displacement
	Proposed Fence		Bike / Pedestrian Traffic Flow
	Limit of Disturbance		
	Existing Property Line		
	Proposed Acquisition		
	Traffic Barrier		
	Parkland		
	Critical Area (MD)		
	Forest Stand		



T:\Nice Bridge Study\Preferred Alternates\K&S\0001\TY-2.dgn



Match Line - See Sheet 4 of 4

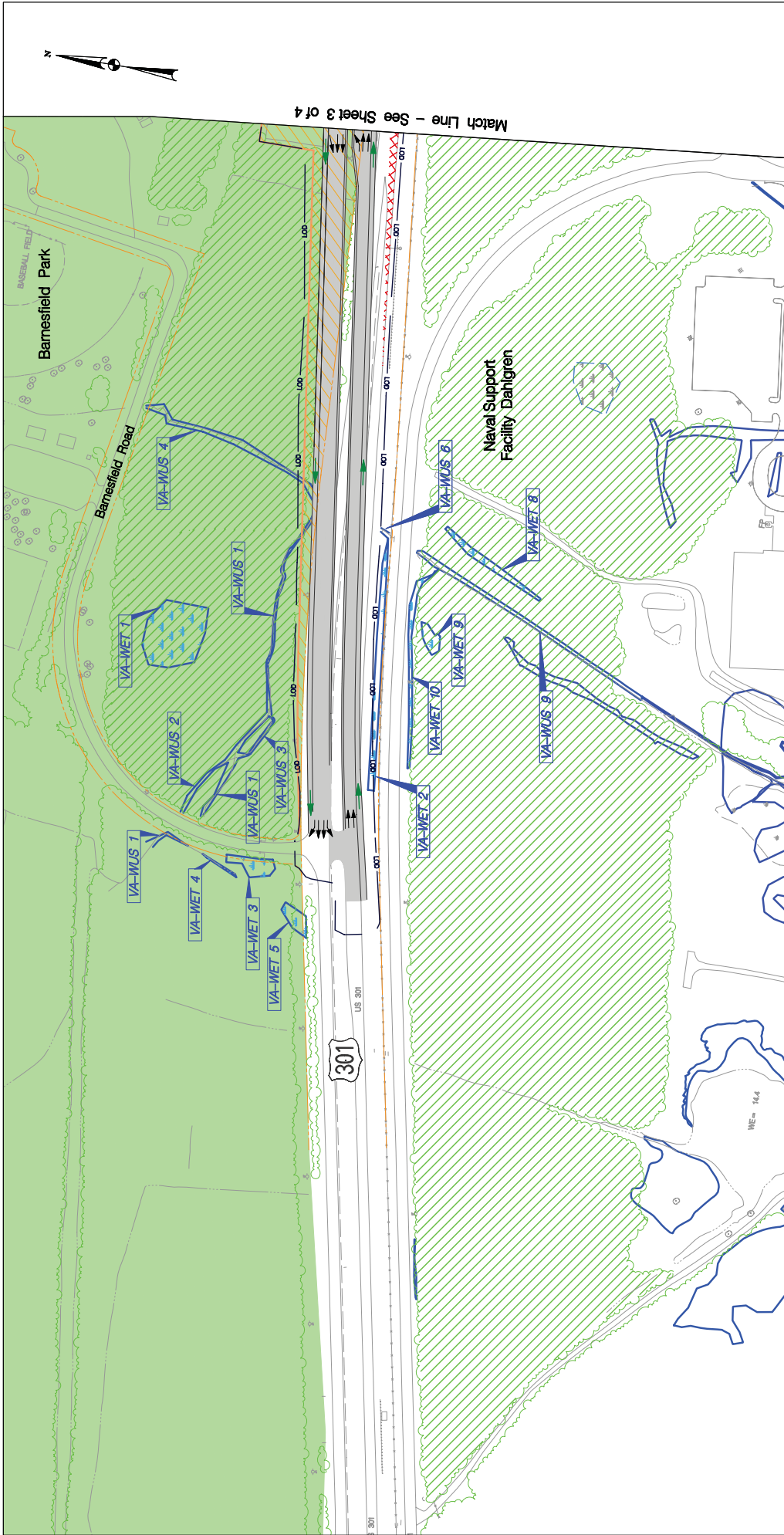
**Nice Bridge Improvement Project**  
 Appendix A November 2010  
 Preferred Alternate  
 Modified Alternate 7 (Sheet 3 of 4)

**LEGEND**

	Bridge Structure		Proposed Acquisition		100 Year Floodplain
	New Roadway		Traffic Barrier		Jurisdictional Wetland
	Pavement Removal		Parkland		National Register of Historic Places - Eligible
	Retaining Wall		Critical Area (MD)		Potential Displacement
	Proposed Fence		Forest Stand		Bike / Pedestrian Traffic Flow
	Limit of Disturbance				
	Existing Property Line				

**PLATE LAYOUT**

Scale: 1" = 200'

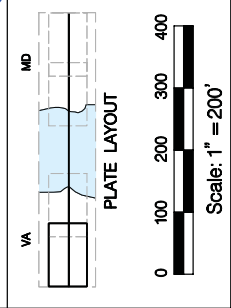


**Nice Bridge Improvement Project**  
 Appendix A  
 Preferred Alternate  
 Modified Alternate 7 (Sheet 4 of 4)  
 November 2010



**LEGEND**

	Bridge Structure		Proposed Acquisition		100 Year Floodplain
	New Roadway		Traffic Barrier		Jurisdictional Wetland
	Pavement Removal		Parkland		National Register of Historic Places - Eligible
	Retaining Wall		Critical Area (MD)		Potential Displacement
	Proposed Fence		Forest Stand		Bike / Pedestrian Traffic Flow
	Limit of Disturbance				
	Existing Property Line				



# **Attachment B**

Maryland and Virginia Preliminary APE

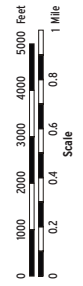







# Governor Harry W. Nice Memorial Bridge Improvement Project

Charles County, Maryland and King George County, Virginia



 Preliminary Architectural Area of Potential Effects  
 Preliminary Archaeological Area of Potential Effects  
 Map Source: USGS 7.5 Minute Series  
 Popes Creek, MD; Mathias Point, MD/VA; Dailgren, VA/MD; Colonial Beach North, VA/MD

## Preliminary Area of Potential Effects

November 2010

