

Preserving Civil War Sites Maryland's Voluntary Easement Strategy

The single bloodiest day of the Civil War occurred September 17, 1862, near Antietam Creek at Sharpsburg, Maryland. This battle, and perhaps the remainder of the war, may not have unfolded the way it did if Gen. Robert E. Lee's and Gen. George B. McClellan's armies had not clashed at Fox's, Turner's, and Crampton's Gaps at South Mountain three days earlier. The battles for South Mountain delayed McClellan's advance long enough to allow Lee's divided Confederate army to regroup at Sharpsburg, fight the Battle of Antietam, and retreat intact to Virginia. Until the state took action in 1990, neither the South Mountain battle sites nor the land over which two Union corps approached the Antietam battlegrounds were protected by the National Park Service, the State of Maryland, or the Frederick or Washington County governments.

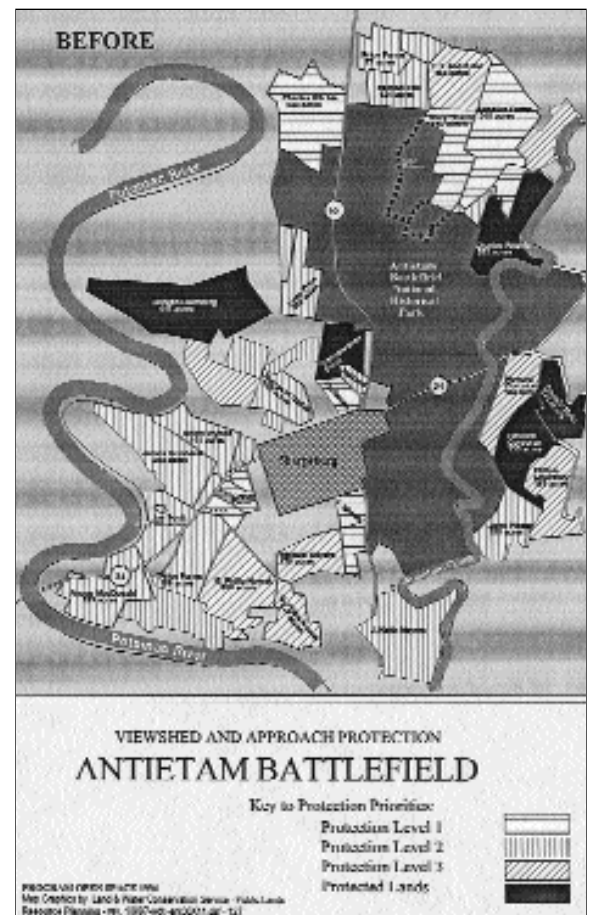
The area on which fighting took place at Antietam encompassed roughly 8,000 acres. The Congressionally authorized boundary of Antietam National Battlefield encompasses only 3,250 acres—1,046 acres owned in fee by the National Park Service, 1,434 acres in private ownership on which the National Park Service has acquired scenic easements, and 700 acres privately owned without restrictions. The State of Maryland has now acquired conservation easements or fee title on 4,035 acres of land outside of the federal boundary, more than doubling the size of the protected area around Sharpsburg. These acquisitions should protect the views from the battlefield and its major approaches and prevent development of historic farms on which major maneuvers, encampments, or field hospitals were located during and after this famous battle.

The Third National Conference on Battlefield Protection, held in Chattanooga, Tennessee, in September 1996, provided an opportunity to give a second progress report of Maryland's Civil War site preservation effort, which began in 1990. This effort has primarily involved the purchase of conservation easements. Funds needed to acquire these easements have come from two sources: Program Open Space (POS), Maryland's \$60 million annual land acquisition and open space grants program funded by a real estate transfer tax; and federal Intermodal Surface Transportation

and Efficiency Act (ISTEA) enhancement funds administered by the Maryland Department of Transportation. The state has also used these funds to purchase in fee six historic farms. The state bought these farms outright because the owners preferred not to sell just an easement; the parcels will be resold to farmers after easements are withheld to prevent development.

The first progress report on this program was delivered to the National Park Service's initial battlefield protection conference in Lexington, Kentucky, in June 1992. There I illustrated how Maryland planned to protect Civil War sites at Antietam and South Mountain. This was shortly after ISTEA was enacted and during the time when the Congressionally appointed Civil War Sites Advisory Commission was completing its study. Three sites in Maryland—Antietam, South Mountain, and Monocacy—were listed as Priority

Map indicating lands around Antietam National Battlefield originally targeted for Maryland's voluntary easement program.



I sites in need of protection. The most significant parts of these three battle sites are now protected, although the state continues to negotiate the purchase of more easements.

Property Rights and Wrongs

Three property owners who lived in or next to the Antietam National Battlefield attended the Lexington conference in 1992. These three were activists in the property rights movement in Maryland and were ardent foes of the National Park Service's limited plans to expand Antietam National Battlefield's boundary. Two of them wrote the *Land Rights Letter*, a property rights journal circulated nationally, to denounce state and local land use regulations and federal land acquisition plans. They came to the Lexington conference to find out what the National Park Service and the state were planning at Antietam that would affect the value of their land.

Maryland has come a long way in Civil War site preservation in the four years between the two National Park Service conferences, working in a

political atmosphere highly sensitive to private property rights. At the Chattanooga conference I reported that these three activists organized key meetings of property owners at which the state explained its voluntary land protection program. Two of them served on Washington County's citizen advisory committee for the Antietam National Battlefield, which endorsed the state's voluntary easement acquisition approach. Each of them and their families have sold easements on their farms, permanently protecting their land from development and helping to preserve the context of the Antietam National Battlefield.

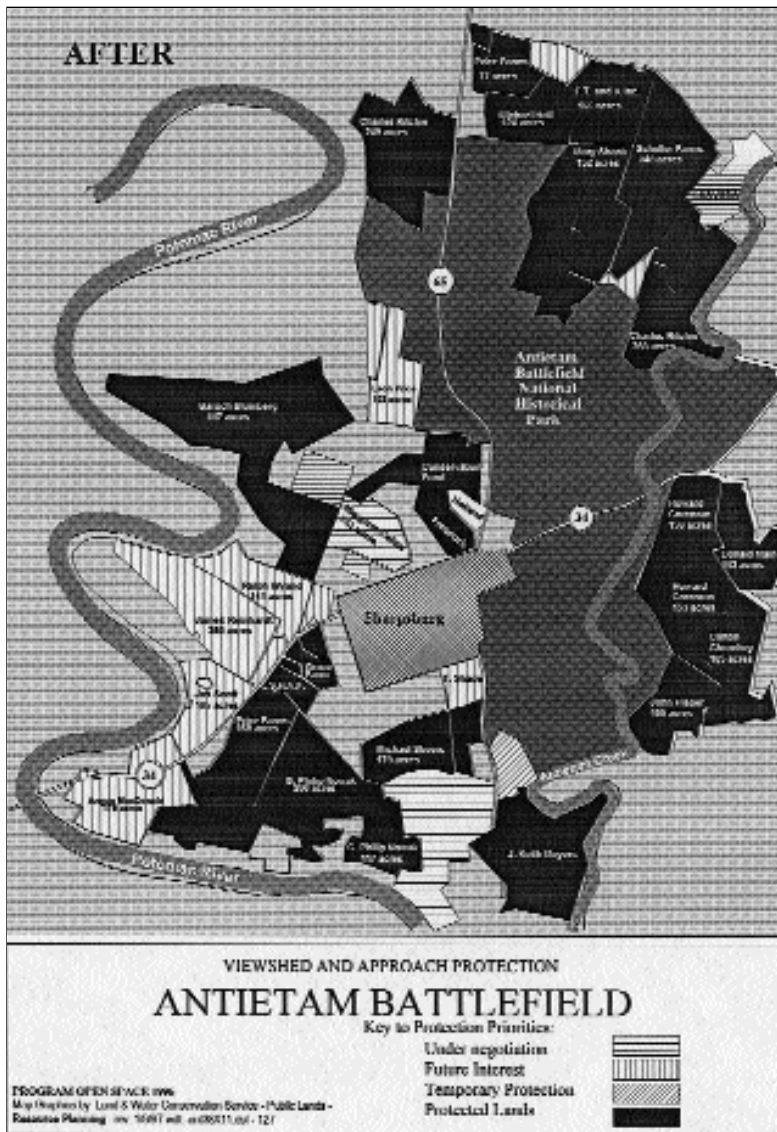
These property owners were given the opportunity to receive money for voluntarily surrendering the permanent development potential of their farms. The state decided from the outset to work with property owners in the local farm community on their own terms. POS has been able to use existing state land conservation programs and financial resources to match federal transportation enhancement funds to deliver specific benefits to the property owners. POS avoided the pitfalls of other government officials who tried previously to impose planning and regulatory solutions to manage growth in the county in a way that merely polarized the Sharpsburg community, without addressing the real threat of development.

Progress To Date

A committee of the Governor's Civil War Heritage Commission was established in early 1992 to pursue the protection of land around Antietam National Battlefield. This committee developed a plan for protecting these lands, with various color codes on the plan's map denoting the priorities for purchasing conservation easements or fee interests related to their historic or visual importance or threat of development at the time. This plan was adopted by the Civil War Heritage Commission, chaired by O. James Lighthizer, Secretary of the Maryland Department of Transportation. It was also adopted by the Department of Natural Resources and by two committees appointed by Secretary Lighthizer to advise on the selection of projects to be funded under the transportation enhancement program of ISTEA.

As easements on priority properties were purchased, POS created progress maps comparing protected lands with properties within the federal battlefield boundary. The maps presented in Chattanooga showed 26 protected properties at Antietam, totaling 4,035 acres. To date, Maryland officials have spent \$6 million in POS and ISTEA enhancement funds at Antietam and are negotiating to buy six more easements for about \$2 million.

Map indicating lands around Antietam National Battlefield that were protected as of January 1997.





When residential and commercial development threatened the Grove Farm, the state and its partners bought three parcels and purchased a conservation easement on a fourth. The entire farm will be sold back into agricultural use.

The state's first priority was to protect four subdivided parts of the Grove Farm, where President Lincoln met Gen. McClellan on October 3, 1862. In 1991, part of this farm was protected by the purchase of a 40-acre parcel that Washington County had approved as a 10-lot residential subdivision. The funds used for the purchase came from a \$100,000 land trust grant from the Maryland Environmental Trust, which was matched by grants from The Civil War Trust, Civil War roundtables, and others. Later, in 1992, the state used ISTEA funds to buy two additional sections of this farm in fee—a five-acre parcel slated for construction of an American Legion Hall and 20 acres zoned for a motel and commercial shopping center. Next, an easement was purchased on the farmhouse "Mount Airy," the 30 acres surrounding the house, and the appurtenant farm buildings. This farmhouse complex had served as Union Maj. Gen. Fitz John Porter's headquarters during the Battle of Antietam and as a Federal field hospital after the battle.

East of Sharpsburg at South Mountain, the state focused its efforts on protecting the sites of fighting between the Union and Confederate armies on September 14, 1862, three days before the Battle of Antietam. The South Mountain Committee of the Civil War Heritage Commission, chaired by George Brigham, founder and director of the Central Maryland Heritage League, developed a plan similar to that at Antietam for protecting Fox's and Tumer's Gaps, where the most intensive battles took place.

Following the South Mountain plan, the state has now protected seven properties totaling 457 acres in these gaps. When added to previous easements purchased by or donated to the state, 785 acres have been permanently protected. Maryland paid \$2.7 million for these easements under the joint-funding program, and is negotiating for three more easements on about 400 acres for another million dollars.

Fighting also occurred at Crampton's Gap on South Mountain and around the historic village of

Burkittsville. Here a third plan was developed to protect farms on which soldiers fought, maneuvered, or camped. The state has purchased four easements and one farm in fee near Burkittsville, thereby protecting 1,205 acres. The state is now negotiating for five more easements on about 500 acres here, after spending about \$1.2 million, and expects to spend another \$1.6 million for an additional 500 acres of easements.

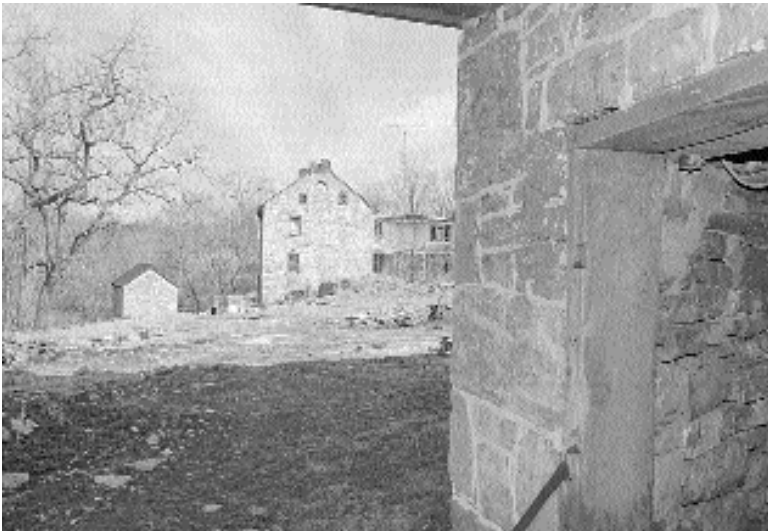
In addition, the Department of Transportation purchased a key part of the Best Farm at Monocacy National Battlefield with \$1.5 million in ISTEA funds. It has donated this 20 acre parcel to the National Park Service, with the assistance of the Trust for Public Land. The Department also awarded \$518,000 in ISTEA enhancement funds to rehabilitate the President Street Station, another Civil War site in Baltimore City.

When compared with funding for Civil War site protection in other states, Maryland has invested more than all other states combined, including more than \$13 million in state and federal funds. Kentucky is the next highest investor with \$3.35 million.

Maryland's Strategy

In the late 1980s, the controversial rezoning of the Grove Farm for a shopping center, combined with former Governor William Donald Schaefer's deep concern about uncontrolled development around Antietam, prompted Washington County officials to establish a citizens advisory committee to study the issue of growth. This committee recommended two zoning changes in the Sharpsburg area: 1) rezone agricultural land to allow one house per three acres instead of one house per acre; and 2) create a historic zoning district to protect trees and control the appearance of new construction along approaches to the battlefield. Unfortunately, this type of zoning does not seriously attempt to perpetuate farming. It promotes typical suburban housing developments and safeguards high land values so owners can mortgage their land when they are ready to retire. This type of zoning is a time-bomb for any rural community within commuting distance of major job centers, as most of Maryland has become.

The controversy among farmers and other citizens in the Sharpsburg area over this advisory committee's recommendations was so negative that the county officials backed off the recommended rezoning. While the recommendations did lead to adoption of a historic zoning district, they also polarized the community and caused the formation of an active property rights movement that has thwarted further growth management in the county.



In 1993, the Maryland DOT acquired a conservation easement on the 249-acre Richie Farm. The easement protects historic and archeological resources and the scenic vista along Hagerstown Pike, a main approach to Antietam National Battlefield.

Our strategy—“when planning doesn’t work, buy it”—tried to avoid all of this controversy. The state used a grant from the National Trust for Historic Preservation to establish a Rural Historic Village Protection Program to focus on the voluntary gift or purchase of easements on farms. We worked directly with property owners to encourage them either to donate easements to the Maryland Environmental Trust or the Maryland Historical Trust or to sell their easements to the Maryland Agricultural Land Preservation Foundation, three state-sponsored easement holding organizations. We even helped to establish a local land trust called the Washington County Land Quality Foundation, chaired by the husband of one of the property rights advocates. Unfortunately, shortly after this effort began in the early 1990s, the bottom fell out of the state’s budget for easement purchases. About \$120 million in POS and agricultural easement funds were diverted to close Maryland’s General Fund deficit in 1991 and 1992.

Fortunately, ISTEA was enacted in 1991. It required that 10% of the state’s surface transportation funds be dedicated to “transportation enhancements.” Historic preservation and scenic easements were two of the ten eligible categories. In February 1992, when the funds began returning to POS, Governor Schaefer established the Civil War Heritage Commission. Secretary Lighthizer and Torrey Brown, Secretary of the Department of Natural Resources, signed a Memorandum of Understanding to jointly fund Civil War site and greenway acquisitions with equal amounts of ISTEA enhancement and POS funds—\$5 million each. We were back in business after a jerky start.

After the Civil War Heritage Commission’s Antietam Committee established the priority plan for Antietam, we recruited the property rights advocates to convene a meeting of local property owners. At this meeting, we explained our program

to buy easements on a strictly voluntary basis, with independent fair-market value appraisals. We pledged to buy land in fee only when the owner would not sell an easement and to return these lands to farming after easements have been conveyed to the state. At the end of the meeting, a number of questions were answered, but no one opposed the strategy. Several farmers expressed interest in signing up to begin negotiating easements. Since then, 76% of all owners contacted around Antietam have sold easements or land to the state or are under contract to sell within the next few months.

A Concerted Effort

Maryland has benefited from a political commitment to heritage preservation and a willingness to devote large amounts of public money to purchasing development rights. While this favorable combination may be difficult to repeat in other states, it is well worth the attempt.

Maryland’s highest public officials, including two Governors and their cabinet officers, members of the General Assembly, and elected local government leaders, have all supported protecting Maryland’s Civil War heritage. They are responsible for the state’s commitment of federal ISTEA enhancement funds to match state POS funds for battlefield preservation. The Memorandum of Understanding between the Secretaries for joint funding of Civil War site preservation was approved by the Maryland Board of Public Works and endorsed by Washington County, the Town of Sharpsburg, the legislative delegation from the area, and the Antietam Citizen’s Advisory Committee. The expenditures have also been approved by the budget committees of the Maryland Senate and House of Delegates.

Governor Parris N. Glendening has recently proposed legislation that would establish a Rural Legacy Program patterned in large part on the successful Civil War site preservation program. Over the next five years, the Rural Legacy Program would seek to control sprawl development by using \$138 million in transfer tax and bond funds to acquire conservation easements and open space in large contiguous concentrations of the state’s most important farmland and natural resource areas.

Maryland has always been a leader in land conservation. It has the most successful state purchase of development rights program in the country—the Maryland Agricultural Land Preservation Foundation, which has saved more than 128,000 acres of farmland. The state has one of the most successful gift easement programs in the Maryland Environmental Trust, with more than 50,000 acres of land under easements donated by property owners in return for tax benefits. It also has POS,

one of the oldest and most successful real estate transfer tax funded land acquisition programs in the U.S. Founded 28 years ago, POS has protected more than 180,000 acres of land for the state's park and wildlife systems and provided over 3,000 grants to local governments for park acquisition and development.

Some lessons from the Maryland Civil War site preservation program may be applicable in other states.

- Maryland successfully adapted the appropriate preservation tools to fit the political and economic context of the area it wanted to preserve. Unless there is a favorable political climate, preservation techniques such as National Register listings and attempts at down zoning or local historic district designation may not be effective. Attempts to designate large areas around Brandy Station, Virginia, as a historic district resulted in owner consent requirements and other changes to the Virginia process for designating historic districts that may have harmed the cause of historic preservation statewide. (For more about Brandy Station, see Boasberg, page 19.)
- Farmers and local property owners are not the enemy of historic preservation; in many cases they are allies. Preservationists need to understand and to have empathy for the economic concerns of property owners, whether families or businesses, to obtain their cooperation in any preservation strategy.

The Hallein property at Fox's Gap witnessed the heaviest fighting during the Battle of South Mountain. President Rutherford B. Hayes, then a lieutenant colonel, was wounded in the fight. A conservation easement protects 97.6 acres of the site.



- State and local governments should seek to establish public programs to finance land preservation. Dozens of states and many local governments have enacted successful programs to buy parkland, easements, and historic sites, funded by transfer taxes, revenue bonds, gaming proceeds, or other sources. These programs are very popular with voters, even those who normally vote against other forms of taxes. Unless governments have public or private money to work with, they cannot hope to compete effectively with developers who do.
- Governments and preservationists alike should seek the reauthorization of the transportation enhancement provisions of the ISTEA when it comes up for a vote in the next Congress. ISTEA has become the single greatest source of Civil War site preservation funds throughout the nation.

Successful Civil War site preservation strategies must be tailored to the unique political, economic, and historical factors in each community and should use a variety of land conservation tools and resources. Purchased conservation easements appear to be one of the most acceptable techniques for land conservation, especially in a political environment sensitive to private property rights. As Maryland and other states with purchase of development rights programs have learned, this technique is not cheap, but it can be permanent and less expensive in the long run than paying the public costs of sprawl development.

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