

VIRGINIA:

IN THE CIRCUIT COURT FOR ORANGE COUNTY SIXTEENTH  
JUDICIAL CIRCUIT

AMERICAN BATTLEFIELD TRUST, )  
et al. )

*Plaintiff- Petitioners,* )

v. )

Case No.: CL23000622-00

BOARD OF SUPERVISORS FOR )  
ORANGE COUNTY, VIRGINIA, et al. )

*Defendant-Respondents.* )

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**AMENDED BRIEF OF AMICUS CURIAE OF NATIONAL PARKS CONSERVATION  
ASSOCIATION, COALITION TO PROTECT AMERICA’S NATIONAL PARKS, AND  
NATIONAL TRUST FOR HISTORIC PRESERVATION**

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## I. Introduction

This *Amicus Curiae* Brief is respectfully submitted on behalf of three nonprofit organizations that share a long-standing commitment to and involvement in preserving our Nation's battlefields and national parks, as well as in the protection of our Nation's natural resources and environment. As part of this commitment, these *Amici* have worked in Orange County to preserve one of our Nation's most sacred sites, the Wilderness Battlefield, a unit of the Fredericksburg & Spotsylvania National Military Park (also, the "Battlefield").

*Amici* share this interest with Petitioner the American Battlefield Trust ("ABT"), a Virginia nonstock corporation and 501(c)(3) nonprofit organization that owns land within the historic boundaries of the Wilderness Battlefield<sup>1</sup> and is the successor to the Civil War Trust. The *Amici* collectively speak for more than two million members and supporters, including tens of thousands of Virginia residents, and share Petitioners' deep concern about the recent action taken by the Orange County Board of Supervisors ("Board") to approve the massive rezoning proposals at issue in this case (the "Rezoning"). The Rezoning allows the building of the incongruous Wilderness Crossing Development ("Wilderness Crossing") on 2,618 acres of land within the ambit of one of the Civil War's most hallowed battlefields. If Wilderness Crossing and its associated electrical infrastructure proceed as planned, this idyllic portion of Orange County will be transformed into a buzzing hive of industrial activity, and a long shadow will be cast over this historic site, marring its solemn nature.

The purpose of this *Amicus* Brief is two-fold. First, *Amici* provide important historical context as the Court considers the Petitioners' challenge to the Board's unlawful approval of the Rezoning. As we draw near the Nation's 250th anniversary, it is prudent to recognize the national

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<sup>1</sup> [https://www.battlefields.org/about/faqs-battlefield-preservation#how\\_buy](https://www.battlefields.org/about/faqs-battlefield-preservation#how_buy)

significance of the Wilderness Battlefield and the many decades of concerted public and private actions to protect it. Second, *Amici* provide critical details that concretize the particular harms to one of this Nation’s most cherished cultural heritage resources as well as the surrounding environment – built and natural – associated with development of the type proposed by Wilderness Crossing.

The Board’s hasty decision to approve the Rezoning threatens the irreparable desecration of the natural and cultural resources that serve as a testament to the sacrifices and bitter struggles that forged our Nation. Therefore, *Amici* respectfully join Petitioners in urging this Court to deny the Demurrers filed by the proponents of the Wilderness Crossing and put them to their proof, at trial.

## **II. The Interests of the Amici**

The National Parks Conservation Association (“NPCA”) is a 501(c)(3) nonprofit membership organization that was founded in 1919 and is the leading voice of the American people in protecting and enhancing our National Park System. Headquartered in Washington, D.C., NPCA has more than 1.6 million members and supporters nationwide, and more than 44,565 members and supporters in Virginia. NPCA and its members work to protect and preserve our Nation’s most iconic and inspirational places for present and future generations. NPCA’s Mid-Atlantic regional office, located in Washington, D.C., works to safeguard National Park sites in Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia, including the Wilderness Battlefield.

The National Trust for Historic Preservation in the United States (“National Trust”) is a congressionally chartered and privately funded 501(c)(3) nonprofit organization. As set out in the enabling statute, the National Trust’s role is to work to save America’s historic places; tell the full American story; build stronger communities; further the historic preservation policy of the United States; and “facilitate public participation” in the preservation of our nation’s heritage. 54 U.S.C. §

312102. The National Trust has been active in efforts to protect the Battlefield from encroaching development for the past two decades, including filing a legal challenge against the Orange County Board of Supervisors' prior approval of a Walmart Supercenter that would have encroached on the Wilderness Battlefield.<sup>2</sup> The National Trust also has been actively engaged in efforts to protect other battlefields in the region from harmful development proposals, including the Disney's America proposal in 1994, which would have increased development, traffic congestion, and visual and noise pollution, undermining the historical integrity of Manassas Battlefield and the surrounding region. The National Trust has identified the Wilderness Battlefield as one of America's 11 Most Endangered Historic Places for 2024.<sup>3</sup>

The Coalition to Protect America's National Parks is a 501(c)(3) nonprofit organization with more than 3,000 current and former National Park Service employees and volunteers united in their mission to study, educate, speak, and act for the preservation and protection of the National Park System and mission-related programs of the National Park Service. With more than 50,000 years of collective experience managing and protecting national parks, the members of the Coalition to Protect America's National Parks believe that America's parks and public lands represent the very best of our Nation and advocate for their protection by speaking out for national park solutions that uphold the law and apply sound science.

During the County's consideration of the Wilderness Crossing proposal, *Amici* – as members of the Wilderness Battlefield Coalition – submitted four letters opposing the development: letters to the Orange County Board of Supervisors on October 1, 2021 and April 27, 2022; a letter to the Virginia Department of Environmental Quality on September 2, 2022; and a

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<sup>2</sup> *National Trust for Historic Pres. v. Board of Supervisors*, No. CL09-000240 (Orange Co. Cir. Ct. Apr. 29, 2010).

<sup>3</sup> <https://savingplaces.org/press-center/media-resources/americas-11-most-endangered-historic-places-2024-list-unveiled>.

letter to the Orange County Planning Commission on February 7, 2023.

### **III. The Wilderness Battlefield During the American Civil War**

Named for its natural character – a patchwork of fields and forest representative of the local ecology – the Wilderness Battlefield shaped the historic events it played host to in unique ways. Waged from May 5 to May 7 of 1864, the Battle of the Wilderness was the first meeting of Union Lieutenant General Ulysses S. Grant and Confederate General Robert E. Lee and marked the first major engagement of the Union’s Overland Campaign to the Confederate capital of Richmond.



*Figure 1 Wilderness Battlefield (1865)*

In 1864, as today, the area was densely wooded with few clearings and minimal roadway access. In fact, the road configuration is much the same today as it was back then: Route 3 and Route 20, which frame the proposed development at issue, were then known as Germanna Plank Road and the Orange Turnpike, respectively. Lt. Gen. Grant led his 101,895 men down that Orange Turnpike against General Lee’s 61,025. The woods flanked the narrow roadways, creating a claustrophobic atmosphere and dangerous fighting conditions.

As a result of the close quarters, cavalymen were rendered practically useless: tree canopies captured and condensed smoke from firearms and smoldering forest understory, which was particularly flammable due to prior removal of old growth for use in on-site mines and

charcoal production. Amidst this acrid, blinding haze, friendly fire was common as men were forced to shoot by sound rather than sight. This contributed to staggering casualty numbers and the incapacitation of Confederate General James Longstreet, injured by his own men on May 6 during a critical phase of the battle.

The landscape shaped the battle over those three days, with an estimated 29,800 of 162,920 soldiers suffering casualties; its significance cannot be separated from the titular Wilderness. The scale of the loss and improbable nature of the outcome is credited to the landscape: the local Confederates, outgunned and outmanned, nevertheless possessed superior knowledge of the swampy terrain and cabined the conflict to smaller scale confrontations in the woods and thickets.<sup>4</sup> The Battle of the Wilderness was one of the five bloodiest of the American Civil War and marked the beginning of the campaign that ultimately led to the Confederate surrender at Appomattox.

The decades and centuries since those events transpired have seen successful efforts to preserve the character of this hallowed ground. Now, development in the area threatens to erode the same wilderness that affords Battlefield visitors a connection to our nation's history.

#### **IV. Legal and Preservation History of the Wilderness Battlefield**

It is a particularly salient time to recall this history. 2026 will mark the 250th anniversary of the signing of the Declaration of Independence – our nation's semi-quincentennial. Indeed, the National Park Service ("NPS") has marked this tremendous occasion with more than \$30 million in special preservation grants. *See NPS, 250th Anniversary of the Declaration of Independence.*<sup>5</sup>

While the Wilderness and other Civil War Battlefields have a long history as the focus of public

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<sup>4</sup> By contrast, other prominent Civil War engagements were characterized by heavy artillery usage across wide-open fields and ridges. *See, e.g.,* Jon D. Inners et al., PA. GEOLOGICAL SURV., *Rifts, Diabase, and the Topographic "Fishhook": Terrain and Military Geology of the Battle of Gettysburg* (2006); *see also 10 Facts: Civil War Artillery*, AM. BATTLEFIELD TR., <https://www.battlefields.org/learn/articles/10-facts-civil-war-artillery>.

<sup>5</sup> <https://www.nps.gov/subjects/npscelebrates/usa-250.htm>.



and private preservation efforts, these efforts are threatened today.

The United States Congress created the Fredericksburg and Spotsylvania County Battle Fields Memorial in 1927, protecting the land where the Battle of the Wilderness occurred. 16 U.S.C. § 425. The acquisition initially focused on sites near cemeteries that had seen the most bloodshed but later progressed to include broader areas of strategic importance and supporting infrastructure to the war efforts. *See* “Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park Expansion Act of 1989.”<sup>6</sup> The involvement of the federal government in protecting sites as monuments to this powerful episode in the history of the United States followed efforts of private organizations like the Grand Army of the Republic and the United Confederate Veterans. These organizations worked with local communities who recognized the profound historic significance of the war and wanted to ensure that these places, and the struggle they represented, were preserved in public memory for all time. They raised funds and acquired land for monuments and memorials, laying much of the groundwork for the War Department, and later the NPS, to establish a consistent, national program of protection and education. These communities were prescient in their understanding, as the Civil War is a dominant historic presence that continues to affect lives and shape modern political discourse. They understood, as Congress later did, that preserving these spaces for quiet and somber contemplation was essential not only for healing, but also for the Nation’s continued progress and prosperity. *See* Richard West Sellars, “Pilgrim Places: Civil War Battlefields, Historic Preservation, and America’s First National Military Parks, 1863-1900,” 2 CRM: The Journal of Heritage Stewardship (Winter 2005).<sup>7</sup>

Responding to threats to other battle sites from development in Virginia, Congress

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<sup>6</sup> 103 Stat. 1849, PUB. L. NO. 101-214, codified at 16 U.S.C. § 425k *et seq.*, as amended; “An Act to Expand the Boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park Expansion.” 106 Stat. 3565, Pub. L. No. 102-541.

<sup>7</sup> <https://www.nps.gov/crps/CRMJournal/Winter2005/article1.html>.

established the Civil War Sites Advisory Commission (“CWSAC”) in 1990. *Civil War Sites Study Act of 1990*, Pub. L. No. 101-628, §§ 1201 et seq., 104 Stat. 4469 (1990). Three years later, CWSAC produced a report identifying 10,500 sites of armed conflict during the Civil War (“CWSAC Report”).<sup>8</sup> Of these, 45 were distinguished as “Class A” by virtue of their “decisive influence ... [and] direct impact on the course of the war.” CWSAC Report at 3.

The Wilderness Battlefield ranked among those 99th percentile sites possessing the requisite “strategic character,” “national significance,” and “important educational and interpretative dimensions” for top-tier designation. CWSAC Report at 17. In particular, the CWSAC noted the national ramifications of the battle, the scale of the harm suffered, the illustrative nature of the tactics employed, the role of the battle in the period’s public imagination, and that the battle involved notable firsts – including the first engagement of the Overland Campaign that signaled “The Beginning of the End of the Confederacy.” CWSAC Report, Appendix I, at 192, 202. CWSAC also determined the threat level posed by surrounding development and land use trends was “high.” *Id.* at 30, 49; *id.* Appendix I at 202.

In subsequent preservation efforts, Congress established the American Battlefield Protection Program (“ABPP”) as a subsidiary of the NPS and requested an update to the CWSAC report. Pub. L. No. 107-359, 111 Stat. 3016, 16 U.S.C. § 496k. The resulting report, “2009 Update,” found that nearly two decades on, the Wilderness Battlefield remained highly threatened by development in the area, along with ten other first tier sites in Virginia. 2009 Update at 9.<sup>9</sup> A recent episode underscores this high threat level: the legal challenge to and ultimate relocation of

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<sup>8</sup> American Battlefield Trust v. Bd. Of Supervisors for Orange Cnty., Petition for Review and Complaint for Declaratory, Mandamus, Injunctive & Other Relief, Ex. 4, “CWSAC Report,” at 3, No. CL23000622-00 (Va. Cir. Ct. Orange Cnty. 2023) (hereinafter “ABT Petition”). Available at <http://npshistory.com/publications/battlefield/cwsac/report.pdf>.

<sup>9</sup> *Supra*, Note 8, ABT Petition, Ex. 6, “CWSAC Report 2009 Update,” at 9.

a proposed Walmart Supercenter near the Wilderness Battlefield in the early 2010s. *See Nat'l Trust for Historic Pres. v. Board of Supervisors of Orange County, Virginia*, No. CL-09-000240 (Orange Co. Cir. Ct. Apr. 29, 2010). In that case, as in the one at bar, concerns about threats to the visual integrity of the battlefield landscape and deleterious effects of increased vehicle traffic motivated the opposition. In fact, NPS Director Jonathan Jarvis raised these very concerns in a 2010 letter that was submitted in support of and included as an attachment to the *Amicus Curiae* brief filed in that case. *See* Letter of Jonathan B. Jarvis, Director, National Park Service (Jan. 21, 2010), attached as Exhibit A to Brief of *Amicus Curiae* Civil War Preservation Trust and National Parks Conservation Association, in the matter of *Nat'l Trust for Historic Pres. v. Board of Supervisors of Orange County, Virginia* (hereinafter “Walmart *Amicus* brief”).<sup>10</sup>

This lawsuit led to productive discussions with coalition and community members that ultimately motivated Walmart to not only move its development miles away from the Battlefield, but also to purchase and protect the 52 acres the company originally planned to develop. Significantly, Walmart took these actions without a court order. *See* Kerri Rubman, *Interview: How the Wilderness Battlefield Coalition Faced Down Walmart*.<sup>11</sup> While the Walmart Supercenter would not have been located on “battlefield land,” the company tacitly recognized the importance of protecting the broader study area and surrounds of parkland – reflecting the same standards for protection and concerns articulated by CWSAC and ABPP. *See id.* at 12–15.

More recently, Congress again recognized the need to protect areas like the Wilderness Battlefield by expanding these longstanding mechanisms of historic preservation. In 2024, Congress passed the American Battlefield Protection Program Enhancement Act (“Enhancement Act”), a provision of the broader Expanding Public Lands Outdoor Recreation Experiences

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<sup>10</sup> Attached hereto as Exhibit 1.

<sup>11</sup> 26 Forum J. 20, 12 (2011) (available at <https://muse.jhu.edu/article/908424/summary>).

(EXPLORE) Act that President Biden signed into law in early 2025. EXPLORE Act, Pub. L. No. 118-234, H.R. 6492, 118<sup>th</sup> Cong. (2025). The Enhancement Act establishes grant programs for battlefield acquisition and preservation partnerships – with a focus on priority battlefields – and creates a process for expanding and updating battlefield boundaries. It also adds requirements for reports on the status of battlefield preservation. Congress’ understanding of the need to preserve the battlefields that tell the story of our country is shared by the public, who have raised alarm about the Wilderness Crossing Development in a slew of media articles, reminiscent of the attention that inspired the CWSAC, ABPP, and the lawsuit against Walmart. *See, e.g.,* Emily Hemphill, *160 Years Later, a New Battle of the Wilderness is Waged*, THE DAILY PROGRESS, May 14, 2024.<sup>12</sup>

## V. The Wilderness Battlefield Today

The constant and arduous efforts to preserve the Wilderness Battlefield over the past century has paid off: visitors come from all over to find solace in this historic wilderness and gain perspective for the momentous battles that took place on this land. The NPS articulates its goals in managing the Wilderness Battlefield as preserving its natural and historic resources to ensure that current and future generations can enjoy, learn from, and be inspired by the site. This involves protecting battlefield memorabilia, offering educational resources to visitors, and safeguarding the overall character of the former fighting grounds. When visitors embark on any of the dozen-plus miles of trails in the park, they may encounter a host of monuments, burial sites, preserved earthworks, and remnants of artillery positions. *See, e.g.,* Cindy Sabato, *Imperiled by Development, Wilderness Battlefield Named One of Nation’s 11 Most Endangered Historic Places*, PIEDMONT ENV’TL COUNCIL, May 1, 2024.<sup>13</sup> Visitors can drive to other sites, such as Grant’s headquarters,

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<sup>12</sup> [https://dailyprogress.com/news/local/business/development/160-years-later-a-new-battle-of-the-wilderness-is-waged/article\\_6babec90-0caa-11ef-a6ed-cbfaf2594de5.html](https://dailyprogress.com/news/local/business/development/160-years-later-a-new-battle-of-the-wilderness-is-waged/article_6babec90-0caa-11ef-a6ed-cbfaf2594de5.html).

<sup>13</sup> <https://www.pecva.org/region/orange/imperiled-by-development-wilderness-battlefield-named-one-of-nations-11-most-endangered-historic-places/>.

the site where Confederate General Longstreet was wounded by friendly fire, or the stalemate location at Saunders Field – all while soaking in the atmosphere of original forests and clearings that remain largely untouched. To immerse themselves in the experience, visitors may head to the Wilderness Exhibit Shelter for open-air exhibits on strategic battlefield offenses, cannon placements, soldier burial grounds, and field hospitals utilized during the war. *See U.S. NAT'L PARK, Wilderness Battlefield - Fredericksburg & Spotsylvania National Military Park.*<sup>14</sup> Moreover, by preserving the landscape and dense vegetation throughout the site, visitors can sense the atmosphere, tension, brutality, and sacrifice that characterized the battle at Wilderness and changed the course of history.

The Wilderness Battlefield also contributes mightily to the region's economy. In 2023, 845,000 visitors to the Fredericksburg and Spotsylvania National Military Park spent \$56.6 million in nearby communities, generating substantial revenue for the local economy; this amount exceeds the \$54.4 million total visitor spending in Orange County alone that year. *See Matthew Flyr and Lynne Koontz, 2023 National Park Visitor Spending Effects: Economic Contributions to Local Communities, States, and the Nation*, 26, August 2024.<sup>15</sup> For additional perspective, while total visits to National Parks in 2023 had not rebounded to 2019 pre-pandemic levels, visits to Wilderness Battlefield in 2023 *surpassed* 2019 levels by 12.7%.<sup>16</sup> Visitor interest in this battlefield is gaining momentum – alongside threats to its integrity.

## **VI. The Threats from Wilderness Crossing**

In April 2023, despite substantial community opposition, Orange County rezoned 2,618 undeveloped acres for Wilderness Crossing, a planned commercial and industrial development, directly adjacent to the Wilderness Battlefield (*Figure 2*). *See Andra Landi, Orange County OKs*

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<sup>14</sup> <https://www.nps.gov/frsp/planyourvisit/wildernessbattlefield.htm>.

<sup>15</sup> <https://doi.org/10.36967/2305351>.

<sup>16</sup> Raw data provided by National Park Service Staff, Oct 2024.

*Wilderness Crossing despite outpouring of opposition*, April 26, 2023.<sup>17</sup> The project proposes construction of 5000 houses, 750 acres of industrial development, and hundreds of acres of commercial development. Despite the proposed development’s proximity to the historic Wilderness Battlefield, no analyses of impacts – whether direct or indirect – to historic and cultural resources or the environment were conducted.<sup>18</sup> See *Figure 2*.

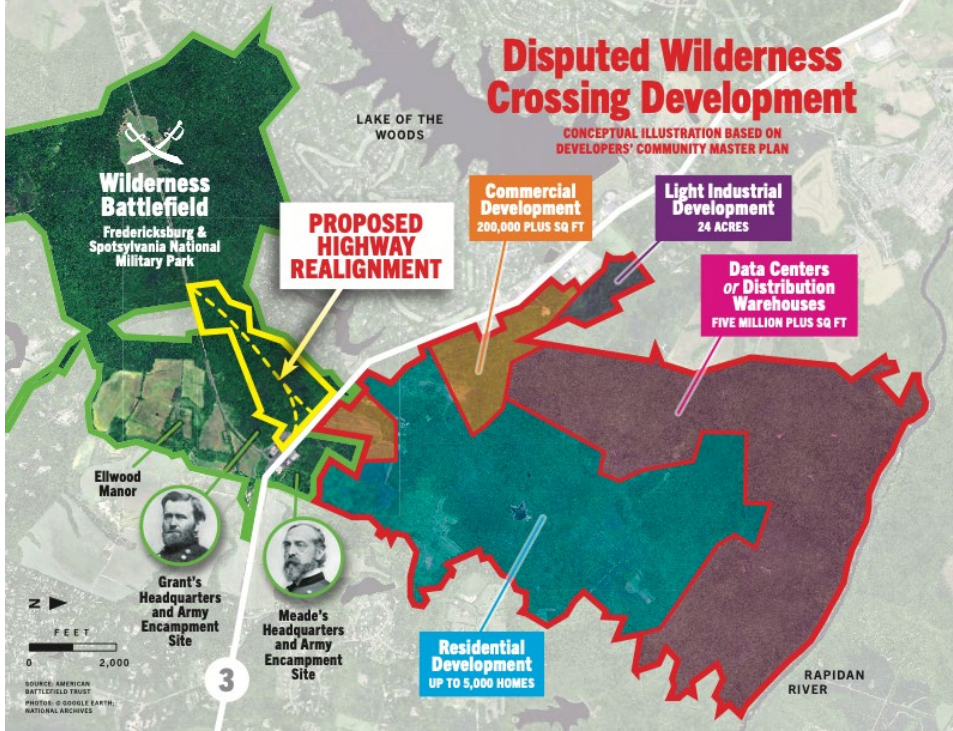


Figure 2: Map of proposed Wilderness Crossing development adjacent to the Wilderness Battlefield<sup>19</sup>

Nor did the County consider the recommendations set forth in the Wilderness Battlefield Gateway Study (“Study”), which was developed by a community of stakeholders – including County leaders – in the wake of the Walmart lawsuit. See, generally, HILL STUDIO ET AL., WILDERNESS BATTLEFIELD GATEWAY STUDY I-2–I-3 (2012). An overview of the Study and the

<sup>17</sup> [https://dailyprogress.com/news/local/orange-county-oks-wilderness-crossing-despite-outpouring-of-opposition/article\\_43567ad4-e484-11ed-bafe-434a2dc2e33d.html](https://dailyprogress.com/news/local/orange-county-oks-wilderness-crossing-despite-outpouring-of-opposition/article_43567ad4-e484-11ed-bafe-434a2dc2e33d.html)

<sup>18</sup> See *supra*, note 8, ABT Petition.

<sup>19</sup> Disrupted Wilderness Crossing Development, by Wilderness Battlefield Coalition, available at <https://www.prnewswire.com/news-releases/imperiled-by-development-wilderness-battlefield-named-one-of-nations-11-most-endangered-historic-places-302132492.html>.

anticipated impacts from the proposed Wilderness Crossing development follows below.

#### **A. The Wilderness Battlefield Gateway Study**

The proposed Walmart Supercenter and ensuing lawsuit exposed the need to balance preservation with economic development. Following the lawsuit’s resolution, a community of stakeholders – local residents, engineers, conservationists, landowners, and members of the Orange County Planning Commission – created a plan to inform and guide future development near the Battlefield to support the region’s cultural, historic, and environmental resources.<sup>20</sup> The coalition presented its finding in two phases. Phase I, released in April 2012, reflected the input of a broad class of local government representatives, professionals, experts, and the general public.<sup>21</sup> Phase I proposed three scenarios from which Phase II identified an ideal course of action (the “Preferred Development Plan”) for the region. *See generally* Phase II.<sup>22</sup>

The Preferred Development Plan details those points of consensus that stakeholders prioritized and includes short term (20-year) and long term (50-year) recommendations. Phase II at 4. The Preferred Development Plan emphasizes preserving recreational use of the Rapidan River, securing the area’s water supply, establishing a “Mixed-Use Village” and “Business Campus,” improving the Route 3 corridor and other infrastructure, and notes that “Heritage Tourism efforts encouraged in Chapter III [of Phase I] should continue in support of the final preferred plan.” *See* Phase II at 8–11. The Study concluded that large, open spaces are essential complements to development and recommended “small industries” interspersed in a “mixed-use community.”

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<sup>20</sup> Study, Executive Summary, Phase I Report, pp. I-1—I-11, available at [https://www.battlefields.org/sites/default/files/2023-02/wbgs-phase-1-report-web\\_0.pdf](https://www.battlefields.org/sites/default/files/2023-02/wbgs-phase-1-report-web_0.pdf). Phase I referenced in ABT Petition on pages 32 and 33. The Study is an exhibit to the Germanna-Wilderness Area Plan, which the County incorporated into its Comprehensive Plan in 2015. *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Available at <https://www.battlefields.org/sites/default/files/2023-02/wbgs-phase-2-report-web.pdf>. Phase II referenced in ABT Petition on pages 32 and 33.

Phase I at VI-14. The Study also emphasized that the footprint for development should not exceed 30% of the undeveloped land north of Route 3, and that development should be “sensitive” to nearby historic sites and not disturb “artifacts and important viewsheds.” *Id.* at VI-7—VI-11.

The Rezoning and development plan approved by Orange County abandons the consensus, principles and methods embodied in this multi-year Study and Preferred Development Plan: Wilderness Crossing would, in fact, disrupt the artifacts and hallowed viewsheds. Rather than “small industries,” the rezoned area for Wilderness Crossing allows 750 acres of industrial development for “data centers or research and development centers” and “wholesale distribution or warehouse.”<sup>23</sup> Rather than open space and a cap on developed areas, the entirety of the 2,618 acres would be built out with high-density residential areas, commercial and “light industrial” development, and a substantial area of intense industrial use, along with new transmission lines, utilities, roads, and a reservoir. *See Fig. 2 and 3*; ABT Petition, Ex. 2, Voluntary Proffer Statement.

## **B. Visual Impacts**

The scenic quality of the Wilderness Battlefield exerts a powerful influence, both educational and emotional, on the visitor experience. As discussed *supra* at pages 4-6, the wild and untamed nature of the landscape shaped the progress and ultimate outcome of the pivotal Battle of the Wilderness. The NPS, with involvement of neighboring landowners, has carefully tended and managed this viewshed so that visitors can fully appreciate the awful scale and intensity of the conflict. The scenic quality of the area informed the Study’s recommendations but was ignored by the developers and County.

The NPS’s Visual Resources Program regularly conducts Visual Impact Analyses (VIA) of proposed developments and uses those insights to preserve the scenic integrity of protected sites, in

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<sup>23</sup> For general information about *Wilderness Crossing*, see <https://www.wildernesscrossingva.com/>.



collaboration with neighboring communities and development of appropriate mitigation measures.<sup>24</sup> But no VIA was conducted here. *Amici* NPCA, which works regularly with NPS to conduct and interpret VIAs, used standard line-of-sight methodology to illustrate the extent of potential impacts to the historic viewshed of the Wilderness Battlefield, approximating the more detailed VIA that NPS' Visual Resources Program would conduct. See Figure 3.<sup>25</sup>

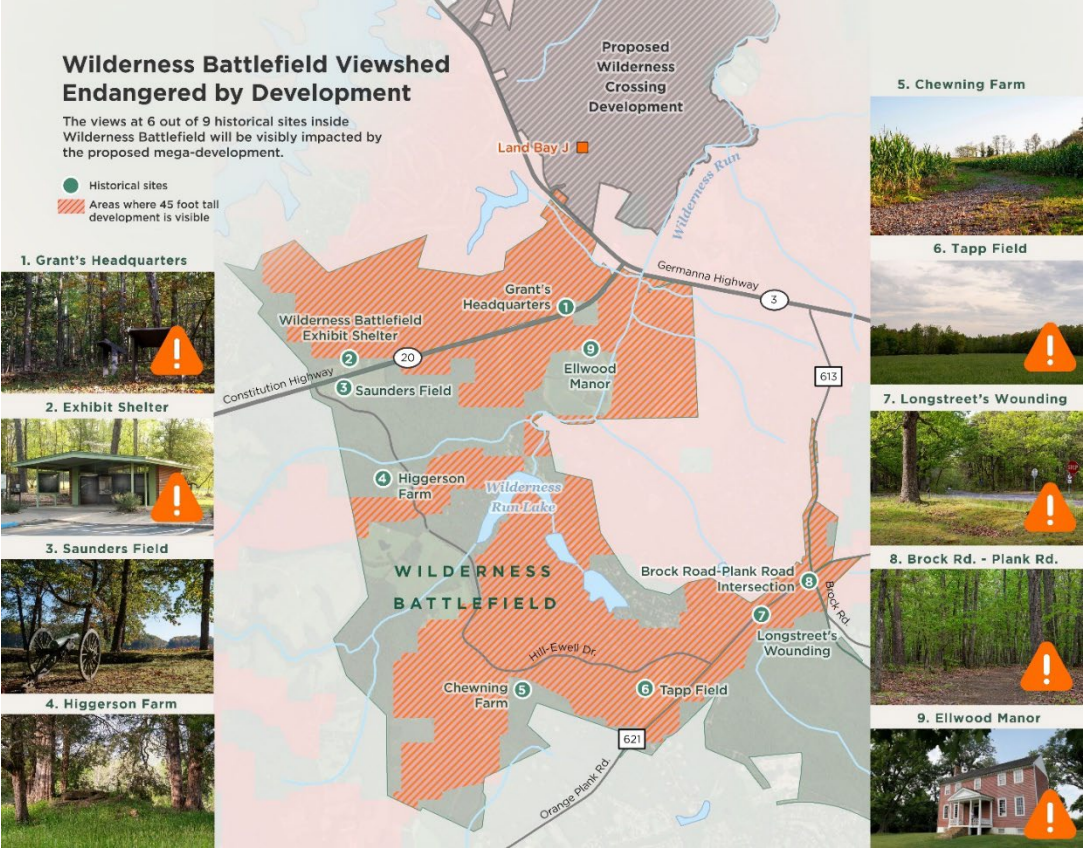


Figure 3: Map of anticipated viewshed impacts from the Proposed Wilderness Crossing Development. The orange-shading represents all locations within the Wilderness Battlefield from which structures in the development's industrial zone that are taller than 45 feet could be seen.

To create this illustration, *Amici* NPCA referred to the General Development Plan (GDP)

<sup>24</sup> See <https://www.nps.gov/subjects/scenicviews/planning-and-management.htm>

<sup>25</sup> National Parks Conservation Association (Feb. 11, 2025). Figure 3 is attached hereto as a full-page exhibit in Exhibit 2. This map is based on data retrieved from NPS and National Hydrography Dataset, along with the General Development Plan for the proposed Wilderness Crossing Development. See also ABT Petition, Ex. 2, "Generalized Development Plan," at 33. Historical sites and photos were retrieved from NPS Wilderness Battlefield Driving Tour website.

for Wilderness Crossing development, which lays out plans for 45-foot tall structures for standard commercial development in Land Bay J and heavy industrial zoned in Land Bays Y, T, and X. (Note: only Bay J is depicted here; Bays X, T, and X are located in the Data Center/Distribution Warehouse section noted in *Figure 2*.) NPCA then used the ArcGIS Online Tool for Viewsheds from the Environmental Systems Research Institute (ESRI)<sup>26</sup> and accompanying Elevation Analysis Service to determine those areas within the Wilderness Battlefield onto which structures 45-feet and taller at the development site would visually intrude. *See Figure 3*. Such structures include data processing centers, which typically stand up to 80 feet, and new high voltage electric transmission lines, which may protrude 80-200 feet depending on the voltage of the line.<sup>27</sup>

The visual impact analysis is important because Orange County approved the rezoning for industrial development without height limitations for “electric transmission, distribution, and substation facilities, and towers (water or other).”<sup>28</sup> While even 45’ foot structures could be visible from much of the Wilderness Battlefield Site, structures that are 80 feet or taller would be even more dominant in the skyline. As *Figure 3* indicates, six of nine key historic sites discussed *supra* at 10, along with expanses of trails and landscapes, within the Wilderness Battlefield would be marred by views of industrial infrastructure that are incompatible with the historic setting.<sup>29</sup>

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<sup>26</sup> <https://doc.arcgis.com/en/arcgis-online/analyze/create-viewshed-mv.htm>.

<sup>27</sup> *See, e.g.*, NPS, “Powering the Grid,” Appalachian National Scenic Trail Poster for Public Meetings, Environmental Impact Statement for the Delaware Water Gap National Recreation Area and Middle Delaware National and Scenic Recreational River, Susquehanna to Roseland 500kV Transmission Line Project (Aug. 2010), *available at* <https://parkplanning.nps.gov/document.cfm?parkID=220&projectID=25147&documentID=35765> and attached hereto as Exhibit 3.

<sup>28</sup> Further, the initial development was limited to 5 million square feet, which was considered by the county’s professional planning staff and noted in the Wilderness Gateway Study; that cap was lifted and increased to 30 million square feet. *See* ABT Petition, Ex. 2 “Rezoning Ordinance,” at 1, Ex. 2, “Voluntary Proffer Statement,” at 6, No. CL23000622-00 (Va. Cir. Ct. Orange Cnty. 2023).

<sup>29</sup> Measurement based on elevation and direct point to point line-of-sight is an industry standard methodology but has some limitations; it is used here to illustrate the extent of potential visual

### C. Industrial Development Impacts

Wilderness Crossing’s infrastructure requirements, noise levels, accompanying traffic, and environmental impacts would permanently damage the character of the Battlefield, mar significant viewsheds, and diminish the visitor experience, compromising the purposes for which the Wilderness Battlefield was preserved. Visually, data center facilities comprise a “sea of power lines, infrastructure and substations” that resemble a “maximum-security prison.” See Caroline O’Donovan, *Fighting Back Data Centers, One Small Town at a Time*, WASHINGTON POST, Oct. 5, 2024.<sup>30</sup> They include buildings up to 80-feet tall – which house computer processing equipment and servers – and even taller high-voltage transmission lines, along with electrical substations, stormwater management ponds, stacks of backup generators, and noisy air chillers to cool the servers. The complexes are brightly lit and typically enclosed with 8-foot security fencing and guard gates. See Charlie Paullin, *Virginia Explained: Data Center Expansion, with all its Challenges and Benefits*, VA. MERCURY, May 28, 2024.<sup>31</sup>

Data centers may comprise much, if not all, of the industrial use at Wilderness Crossing. “Growth is accelerating in orders of magnitude” in both the number of requests and the size of each facility.<sup>32</sup> Recent requests for 60-90 megawatt (MW) data centers, as well as centers that demand 300 MW to several gigawatts (GW), surpass the historic average of 30 MW per data center.<sup>33</sup> Data

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impacts to this revered site and emphasize the need for a formal and full Visual Impact Analysis conducted by NPS. See, e.g., <https://www.nps.gov/subjects/scenicviews/inventory-process.htm>.

<sup>30</sup> <https://www.washingtonpost.com/technology/2024/10/05/data-center-protest-community-resistance/>.

<sup>31</sup> <https://virginiamercury.com/2024/05/28/virginia-explained-data-center-expansion-with-all-its-challenges-and-benefits/>

<sup>32</sup> On Dominion Energy’s 2024 Q2 earnings call, CEO Robert Blue noted that this past summer in 2024, Dominion registered six new all-time peak demand records, largely due to massive data center development in Virginia. See *Dominion Energy (D) Q2 2024 Earnings Call Transcript*, THE MOTLEY FOOL, Aug. 1, 2024 <https://www.fool.com/earnings/call-transcripts/2024/08/01/dominion-energy-d-q2-2024-earnings-call-transcript/>.

<sup>33</sup> *Dominion Energy (D) Q1 2024 Earnings Call Transcript*, THE MOTLEY FOOL, May 2, 2024 <https://www.fool.com/earnings/call-transcripts/2024/05/02/dominion-energy-d-q1-2024-earnings-call-transcript/>.

centers of this capacity would be accompanied by an abundance of servers housed in massive industrial buildings, a labyrinth of high-voltage transmission lines, and a constant, escapable buzz.

Data centers have well-documented noise impacts that would further disrupt the Wilderness Battlefield. The industrial development area of Wilderness Crossing would be a mere ¾ mile from protected Battlefield land. A noise analysis for the Digital Gateway data center development in Prince William County determined that it would bring a ~12.4 decibel increase, more than doubling noise in the area, that could be heard three miles away; it warned that the noise not only disrupts, but also poses tangible health risks such as increased stress-related conditions, difficulty with concentration, and anxiety. *See* John Lyver, *Noise Analysis for PW County Data Centers*, PRINCE WILLIAM CNTY., June 5, 2024.<sup>34</sup>

In addition to noise and visual disturbances, data centers demand substantial amounts of energy and water that would strain local resources. If the area designated for industrial use becomes a data center campus, it would encompass roughly 32 million square feet and require upgrades to existing transmission lines. Based on similarly sized data center developments in Virginia, this development could require more than 2.9 GW of power to operate, plus diesel generators for backup power. Each generator can run up to 500 hours (more than 20 days) a year without triggering air quality permitting requirements, *See* 9 Va. Admin. Code §5-80-1105(B)(2), even though they emit more than 40 toxic air contaminants that include cancer-causing substances in addition to known harmful pollutants such as carbon dioxide, nitrogen oxide, particulate matter, and volatile organic compounds, among others.<sup>35</sup> *See* Sandro Steiner, *et al.*, *Diesel Exhaust:*

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[transcript/](#).

<sup>34</sup> <https://www.pwcva.gov/assets/2024-06/240605%20Presentation%20to%20DCOAG-JMT%20%28Lyver%29.pdf>.

<sup>35</sup> Compared to gasoline engines, diesel engines emit much higher levels of pollutants such as nitrogen oxides (NOx) that lead to ground-level ozone, and particulate matter. *See* U.S. ENERGY INFO. ADMIN, *Diesel Fuel Explained*, March 14, 2024 <https://www.eia.gov/energyexplained/diesel-fuel/diesel-and-the-environment.php>.

*Current Knowledge of Adverse Effects and Underlying Cellular Mechanisms*, 90 ARCHIVES OF TOXICOLOGY 1541, 1543-46 (2016).<sup>36</sup> Their operation would increase air pollution within Wilderness Battlefield; they also would undermine the goals of the Virginia Clean Economy Act (VCEA), which mandates a transition to 100% renewable energy by 2050 and emphasizes phasing out of fossil fuel-based electricity. *See* Va. Code § 56-585.5(B).

Data centers also are water intensive and would strain the nearby and increasingly drought-prone Rapidan River.<sup>37</sup> For example, a 10-100 MW data center can consume up to 550,000 gallons/day for evaporative cooling of the equipment, equivalent to the amount of water the average American would consume over 18.4 years. *See* EPA, *Watersense: Statistics and Facts*.<sup>38</sup> Orange County relies on the Rapidan River to supply its 36,000 residents with drinking water, and any additional strain could compromise this essential resource. *See* Whitney Pipkin, *Forested area near Virginia Civil War site threatened with development*, BAY J., May 23, 2024; Rapidan Service Authority, About RSA.<sup>39</sup> In 2002, the river almost went completely dry, prompting local water supply planning requirements to ensure safe and reliable drinking water. *See* Charlie Paullin, *Virginia local governments will now have to plan for water supply regionally*, VA. MERCURY, Dec 6, 2023.<sup>40</sup> In 2023, the Rapidan Service Authority requested an increase in water allocation from the river in anticipation of development and growth in the area. However, the Virginia Department of Environmental Quality denied the request and limited the county to its current allocation, citing

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<sup>36</sup> [https://pmc.ncbi.nlm.nih.gov/articles/PMC4894930/pdf/204\\_2016\\_Article\\_1736.pdf](https://pmc.ncbi.nlm.nih.gov/articles/PMC4894930/pdf/204_2016_Article_1736.pdf).

<sup>37</sup> *See* *Rain and Drought in Virginia*, VA. PLACES, <http://www.virginiaplaces.org/climate/drought.html>.

<sup>38</sup> <https://www.epa.gov/watersense/statistics-and-facts>.

<sup>39</sup> [https://www.bayjournal.com/news/growth\\_conservation/forested-area-near-virginia-civil-war-site-threatened-with-development/article\\_aa6e576a-191b-11ef-9b65-8f3802d3658e.html](https://www.bayjournal.com/news/growth_conservation/forested-area-near-virginia-civil-war-site-threatened-with-development/article_aa6e576a-191b-11ef-9b65-8f3802d3658e.html);  
<https://rapidan.org/about-rsa>.

<sup>40</sup> <https://virginiamercury.com/2023/12/06/virginia-local-governments-will-now-have-to-plan-for-water-supply-regionally/>. Additional information about Virginia's water supply planning program is at <https://www.deq.virginia.gov/our-programs/water/water-quantity/water-supply-planning> (noting that the Water Supply Planning (WSP) program was created after the 2001-2002 drought).

impacts to the river during drought conditions.<sup>41</sup>

If Wilderness Crossing includes distribution center(s) and/or warehouse(s), in addition to or instead of data center(s), the impacts would be different but equally devastating to Wilderness Battlefield. Much of Wilderness Battlefield is within eyesight of Route 20, a historic and unpretentious two-lane highway, and Route 3. A Traffic Impact Study for Wilderness Crossing predicts that it would cause an additional 37,721 new trips *per day* by 2031,<sup>42</sup> much of which would consist of diesel-fueled trucks. A traffic study for a 680,000-square-foot Amazon warehouse concluded that it would generate 6,000 vehicle trips a day, at least 2,300 of them from diesel trucks. *See* Kaveh Waddell, *When Amazon Expands, These Communities Pay the Price*, CONSUMER REPS., Dec 9, 2021.<sup>43</sup> Wilderness Crossing has 32.6 million square feet rezoned for industrial use.

Such increases in traffic will cause increased emissions and damage ambient air quality at the Battlefield. When traffic congestion is consolidated in a specific area, as the Traffic Study predicts for Wilderness Crossing, vehicle-related pollutants are more concentrated. *See* Kai Zhang & Stuart Batterman, *Air Pollution and Health Risks Due to Vehicle Traffic*, SCI. TOTAL ENV'T, Apr 15, 2013.<sup>44</sup> Vehicle emissions also contribute to ground level ozone, or smog, which would further limit visitor experience of the “Wilderness” aspect of the Battlefield.<sup>45</sup> And, traffic would

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<sup>41</sup> Virginia Department of Environmental Quality, VWP Individual Permit Number 23-0250 (March 15, 2024), p. 3 of 11, attached hereto as Exhibit 4

<sup>42</sup> *See* ABT Petition, Ex. 2, “Traffic Impact Study,” at 186. Although the actual traffic impact will depend on the scope of residential development and the specific industrial activity chosen for the site, the Traffic Impact Study does not provide different load predictions. We refer here to the most conservative numbers provided in the Study.

<sup>43</sup> <https://www.consumerreports.org/cars/corporate-accountability/when-amazon-expands-these-communities-pay-the-price-a2554249208/>

<sup>44</sup> <https://pmc.ncbi.nlm.nih.gov/articles/PMC4243514/#:~:text=Traffic%20congestion%20increases%20vehicle%20emissions,on%20roads%20is%20very%20limited.>

<sup>45</sup> *See Cleaner Air*, U.S. DEPT. OF TRANSP., <https://www.transportation.gov/mission/health/cleaner-air#:~:text=Vehicle%20emissions%20contribute%20to%20the,illnesses%2C%20including%20pneumonia%20and%20bronchitis.>

adversely affect the emotional experience of visiting the historic Battlefield; indeed, studies have shown that traffic congestion deteriorates visitors' experience of a destination. See Min-Woo Jo, Hyunno Kim & Hio-Jung Shin, *Understanding Traffic Congestion to Improve Tourist Satisfaction in Local Tourism*, 30 INT'L J. OF TOURISM & HOSP. RSCH. 85, (2016).<sup>46</sup>

#### **D. Proposed Realignments of Routes 3 and 20.**

While increased traffic would also cause acute and particular harms to the Battlefield itself from the realignment of the intersection of Routes 3 and 20, which parallels the roads that existed at the time of the battle. It is important to note that the road realignment plan is independent of the particular industrial uses included in the development. Wilderness Crossing's Generalized Development Plan (GDP) depicts a proposed realignment of Route 20 that would shift its intersection with Route 3 Northward to serve as the main entrance to the development. See ABT Petition, Ex. 2, "Generalized Development Plan," at 33, and Figure 2. While the ramifications of increased traffic are discussed above, the proposed road realignment would cause acute harm, both physical and auditory, as approximately one mile of road infrastructure would be removed and reconstructed elsewhere on park property. See Don McCown, *Wilderness Crossing: an in-Depth Look*, PIEDMONT ENV'TL COUNCIL, Jan. 4, 2023.<sup>47</sup> The realignment's downstream effects on the Battlefield would likely necessitate reconfiguration of park infrastructure,<sup>48</sup> informational resources for visitors, and itineraries for tours of the grounds – to say nothing of the harm to the 'wild' atmosphere that draws many to this site. Realigning the road risks destroying visitors' ability to understand the battle as it unfolded.

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<sup>46</sup>[https://www.researchgate.net/publication/305269640\\_Understanding\\_traffic\\_congestion\\_to\\_improve\\_tourist\\_satisfaction\\_in\\_local\\_tourism](https://www.researchgate.net/publication/305269640_Understanding_traffic_congestion_to_improve_tourist_satisfaction_in_local_tourism).

<sup>47</sup> Available at <https://www.pecva.org/region/orange/wilderness-crossing-an-in-depth-look/>.

<sup>48</sup> For a general sense of this existing infrastructure for visitors, see NATIONAL PARK SERVICE, *Fredericksburg and Spotsylvania National Military Park* ("Explore the Wilderness Battlefield" interactive map), <https://www.nps.gov/frsp/planyourvisit/wildernessbattlefield.htm>.

## VII. Conclusion

The Wilderness Battlefield site remains a meaningful part of our Nation's history and culture. For almost a century, the National Park Service has diligently preserved the Battlefield's character and afforded generations an opportunity to learn about and experience a pivotal moment in our nation's history. The Wilderness Crossing Development threatens to irrevocably damage the integrity of this site and undermine future visitors' experiences – indeed, the very name of the development signifies its impact. Orange County, in approving the rezoning, is complicit in allowing the precious legacy of this Civil War site to deteriorate and vanish. Both in its process and in its decision, the Board did not act reasonably or with any concern about its own role and responsibility for historic preservation. Accordingly, *Amici* National Parks Conservation Association, Coalition to Protect America's National Parks, and National Trust for Historic Preservation respectfully request that the Court deny the Demurrers and Motions to Dismiss filed by the County and developers of the proposed Wilderness Crossing Development.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of February 2025, a true and correct copy of this amended brief were served via First Class U.S. Mail and electronic mail to the following:

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