

**MEMORANDUM OF AGREEMENT
BETWEEN
SHENENDOAH NATIONAL PARK
AND
THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES
REGARDING THE
REMOVAL OF THE MAID'S CABINS IN SHENENDOAH NATIONAL PARK**

WHEREAS, Shenandoah National Park (Park) is a unit of the National Park Service (NPS) and is charged to meet the directives of the NPS Organic Act of 1916 (P.L. 64-235, 39 Stat. 535) to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations," as it applies to the Skyline Drive Historic District (NHL; 97000375: 069-0234); and

WHEREAS, the National Park Service plans to remove five historic cabins (LCS #s 083075-08307) locally known as the Maid's Cabins (the Project) in the Big Meadows area of the Park and listed as contributing properties of the Skyline Drive Historic District, a district listed on both the Virginia Landmarks Register and the National Register of Historic Places and a National Historic Landmark; and

WHEREAS, the NPS has determined that this Project constitutes an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f), and *Protection of Historic Properties*, its implementing regulations, 36 CFR Part 800, herein referred to as Section 106; and

WHEREAS, the NPS has determined that implementation of this Project will have an adverse effect on the Skyline Drive Historic District by removing the cabins, and the NPS has consulted with the Virginia State Historic Preservation Officer (SHPO) pursuant to the 2008 *Programmatic Agreement among the National Park Service (U.S. Department of the Interior), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers* (2008 PA) and 36 CFR Part 800.6 and the SHPO has concurred with the NPS' determination of adverse effect; and

WHEREAS, the NPS, in consultation with the SHPO, has determined the area of potential effects (APE) for this Project, and the APE is depicted on the attached map and aerial image (Figures 1-2); and

WHEREAS, the NPS has invited the Advisory Council on Historic Preservation (ACHP) to participate in consultation pursuant to 36 CFR Part 800.6(a)(1)(B) and the ACHP has declined; and

WHEREAS, the NPS, pursuant to 36 CFR Part 800.2 the NPS has invited the Catawba Indian Nation (CIN) and the Pamunkey Indian Tribe, two federally-recognized tribes, and the Monacan Indian Nation to participate in consultation. The CIN responded that they are to be notified if Native American artifacts and/or human remains are located during the ground disturbance phase of the project; and

WHEREAS, the NPS has solicited and considered the views of the public using its Planning, Environment, and Public Comment (PEPC) apparatus and procedures pursuant to 36 CFR Part 800.6(a)(4); and

NOW, THEREFORE, the NPS and the SHPO agree that the undertaking shall be implemented in accordance to the following stipulations in order to take into account the effect of the undertaking on historic properties.

The NPS shall ensure that the following measures will be carried out:

STIPULATIONS

I. TREATMENT OF ARCHITECTURAL RESOURCES

- A. Prior to demolition, the Maid's Cabins will be documented according to Historic American Buildings Survey (HABS) Level II standards in accordance with the following procedures:

Task 1: The five Maid's Cabins shall be documented at the Intensive Level in accordance with DHR's *Guidelines for Conducting Historic Resources Survey in Virginia* (2011), including the updated *Photographic Documentation for Virginia Department of Historic Resources Basic Survey* (rev. 2016) on the web at http://dhr.virginia.gov/pdf_files/DHR_Architectural_Survey_Photograph_Policy_2016.pdf.

The intensive level documentation will be entered in the Virginia Cultural Resource Information System (VCRIS).

TASK 2: The Maid's cabins shall be documented in a written report which shall conform to the HABS outline format report guidelines (<http://www.nps.gov/hdp/standards/habsguidelines.htm>). This report shall consist of four parts: Historical Information; Architectural/Engineering/Physical Information; Sources of Information; and Project Information. The historical information section shall emphasize the Maid's Cabins and their association with the Big Meadows area of the Skyline Drive National Historic Landmark District.

In addition, the HABS documentation shall conform to the guidelines specified by the National Park Service as set forth in HABS/HAER/HALS Guidelines (<http://www.nps.gov/hdp/standards/guidelines.htm>) and HABS/HAER Photographs Specifications and Guidelines (<https://www.nps.gov/hdp/standards/PhotoGuidelines.pdf>).

The Outline format report also shall contain a narrative resource description to supplement the information provided by the photographs. The sources of information shall include a detailed listing of historical materials identified and used during the course of preparing the report. These materials may include items such as historic photographs, architectural and engineering drawings, and primary and secondary research materials. The project information section shall be a summary of those involved in preparing the report.

A professional photographer with experience in preparing large-format, black-and-white, archival-quality photographic documentation for HABS/HAER/HALS type documentation projects shall complete the photography for this project. Photograph negatives and print sizes shall be 4" x 5". Negatives and prints shall be processed, labeled, and packaged according to HABS/HAER/HALS archival standards. A list of photo captions (Index to Photos) and a site plan of the building showing the location and direction of the photographs (Key to Photos) shall be included.

Photographic views shall show the historic properties in relation to the surrounding historic resources, including the Big Meadows area and Skyline Drive Historic District. Overview and detail photos of the cabins shall be provided, documenting as much as possible of the engineering and construction methods for each resource. Interior and exterior views of each building/structure also shall be taken, including exterior elevations and detailed views of significant architectural or historical features.

If available, historic construction or engineering plans for the historic properties shall be photographed and reproduced in an archival and legible format,

preferably 11" x 14" or smaller. If photo documentation is not feasible, original plans may be reproduced in a larger archival format.

Historical photographs recording the Maid's Cabins are maintained at Shenandoah National Park. If any additional historical photographs of the cabins are identified, these also shall be documented with large-format photography, pending permission from the archival repository in possession of said images.

No photographs shall be taken which would require entry into unsafe areas or expose workers to unreasonable risk due to unsafe or unhealthful conditions.

Task3: Upon completion of the fieldwork and analysis, a draft Outline Format Report shall be prepared and submitted to the NPS (one (1) copy) and to the SHPO (two (2) copies) for a 30-day review and comment period. This draft report shall include a hard copy of the full text and digitally-scanned copies of the large-format photographic documentation, saved in a .tif format. Following review and written approval of the draft report by the NPS, the final report shall be completed and submitted to the NPS. The following materials shall then be provided to SHPO:

1. Two (2) hard copies of the full text of the final report
2. Two (2) digitally scanned copies of the large-format photographic documentation printed on archival bond paper
3. One (1) copy of the large-format photographic documentation printed on archival bond paper
4. One (1) set of color digital images of the photographic documentation
5. One (1) set of 4" x 5" archival processed black-and-white contact prints
6. One (1) set of 4" x 5" black-and-white negatives

The NPS shall ensure that copies of the resulting materials are made available to local libraries, historical societies, and other entities as desired.

II. TREATMENT OF ARCHAEOLOGICAL RESOURCES

- A. Prior to demolition the NPS shall record the location of the Maid's Cabins as an archaeological site in the Virginia Cultural Resources Information System (VCRIS).
- B. Prior to demolition, the NPS shall develop a plan to minimize impacts to the Maid's Cabins site which will include the use of mats and smooth tired vehicles, avoiding access during wet weather conditions, and periodic monitoring to ensure these planning procedures are being met. The plan shall also include briefing the contractor (s) conducting the work at the Maid's Cabins on the requirements of the plan.
- C. The NPS shall submit the plan to the SHPO for a thirty (30)-calendar-day review period that begins upon receipt of the document. All comments received within the review period will be addressed in the final plan. The NPS shall submit the final plan to the SHPO prior to implementation

III. POST-REVIEW DISCOVERIES

- A. The NPS shall ensure that all construction documents include the following provisions:
 - 1. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during project implementation, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify the NPS of the discovery, and implement interim measures to protect the discovery from looting and vandalism.
 - 2. Immediately upon receipt of the notification required in Stipulation III.A.1 of this document, the NPS shall
 - (a) inspect the Maid's Cabins site to determine the extent of the discovery and ensure that construction activities have halted;
 - (b) clearly mark the area of the discovery;
 - (c) implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
 - (d) have a professional archeologist inspect the construction site to determine the extent of the discovery and provide recommendations regarding its NRHP eligibility and treatment; and

- (e) notify the SHPO of the discovery describing the measures that have been implemented to comply with Stipulations III.A.1 and A.2 of this document.
- 3. Within forty-eight (48) hours of receipt of the notification described in Stipulation III.A.2 (e) of this document, the NPS shall provide the SHPO with its assessment of the NRHP eligibility of the discovery and the measures it proposes to take to resolve potential adverse effects. In making its official evaluation, the NPS, in consultation with the SHPO and other consulting parties may assume the discovery to be NRHP eligible for the purposes of Section 106 pursuant to 36 CFR Part 800.13(c). The SHPO shall respond within forty-eight (48) hours of receipt.
- 4. The NPS, which shall take into account the SHPO's recommendations on eligibility and treatment of the discovery, shall ensure that appropriate actions are carried out and provide the SHPO with a report on these actions when they have been implemented.
- 5. Construction activities may proceed in the area of the discovery when the NPS has determined that implementation of the actions undertaken to address the discovery pursuant to Stipulation III.A are complete.

IV. HUMAN REMAINS

- A. The NPS shall make all reasonable efforts to avoid disturbing gravesites, including those containing Native American human remains and associated funerary artifacts. The NPS shall treat all human remains in a manner consistent with the ACHP's "Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects" (February 23, 2007; <http://www.achp.gov/docs/hrpolicy0207.pdf>) or ACHP policy in effect at the time remains and funerary artifacts are handled.
 - 1. If the remains found are determined to be of Native American origin, the NPS shall comply with the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. Sec 3001 et seq.). If the remains appear to be of recent origin, the NPS will notify appropriate law enforcement officials. If the remains appear to be of historic, but not Native American, origin, the NPS will consult with the SHPO on appropriate treatment.
 - 2. The NPS shall use reasonable efforts to ensure that the general public is excluded from viewing any burial site or associated funerary artifacts. The NPS and SHPO shall release no photographs of any burial site or associated funerary artifacts to the press or general public.

V. STANDARDS AND QUALIFICATIONS

- A. All architectural studies resulting from this Agreement shall be conducted by an individual who meets the Secretary of the Interior's *Professional Qualification Standards* (36 CFR Part 61) in architectural history, and who has experience documenting engineering resources. The photographs for the report will be taken by a professional photographer with experience in documenting architectural resources. All architectural studies shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Historical Documentation* (48 FR 44728-30) and *Architectural and Engineering Documentation* (48 FR 44730-34) and the state *Guidelines for Conducting Historic Resources Survey in Virginia* or subsequent revisions to these documents.
- B. All archaeological studies resulting from this Agreement shall be conducted by an individual who meets the Secretary of the Interior's *Professional Qualifications Standards* (36 CFR Part 61) in archaeology. All archaeological studies shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Archeological Documentation* (48 FR 44734-37), and DHR's *Guidelines for Conducting Historic Resources Survey*, and shall take into account the ACHP's publications, *Consulting About Archaeology Under Section 106* (1990), *Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites* (1999), and *Section 106 Archaeology Guidance* (June 2007) or subsequent revisions to these documents.

VI. DISPUTE RESOLUTION

- A. Should the SHPO object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the NPS shall consult with the SHPO to resolve the objection. If the NPS determines that such objection cannot be resolved, the NPS will forward all documentation relevant to the dispute, including the NPS' proposed resolution, to the ACHP. The ACHP shall provide the NPS with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and provide the ACHP and SHPO with a copy of this written response. The NPS will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NPS shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO, and provide the SHPO and the ACHP with a copy of such written response.

- C. The NPS is responsible to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.
- D. At any time during implementation of the measures stipulated in this MOA, should an objection pertaining to this agreement or the effect of the Project on historic properties be raised by a member of the public, the NPS shall notify the SHPO and attempt to resolve the objection. If the NPS determines that the objection cannot be resolved, the NPS shall comply with Stipulations VI.A and VI.B of this document.

VII. AMENDMENTS

Either the NPS or the SHPO may propose to the other party in writing that the Agreement be amended, whereupon the NPS will consult with the SHPO to consider such an amendment. Both the NPS and the SHPO must agree to the proposed amendment in accordance with 36 CFR 800.5 (e) (5). The amendment will be effective on the date it is signed by both the NPS and the SHPO and filed with the ACHP.

VIII. TERMINATION

If the NPS determines that it cannot implement the terms of this Agreement, or if the SHPO determines that the Agreement is not being properly implemented, NPS or the SHPO may propose to the other party that it be terminated.

Termination shall include the submission of any outstanding documentation on any work done up to and including the date of termination.

If the NPS or the SHPO proposes to terminate this Agreement, that party shall notify the other party to the Agreement, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

Should consultation fail and the Agreement is terminated, the NPS will comply with the 2008 Programmatic Agreement and 36 CFR 800.3 through 800.6 with regard to individual actions covered by this Agreement.

IX. ANTI-DEFICIENCY

All actions taken by the NPS in accordance with this Agreement are subject to the availability of funds, and nothing in this Agreement shall be interpreted as constituting a violation of the Anti-Deficiency Act.

X. REPORTING REQUIREMENT

Upon the completion of all stipulations to this Agreement, the NPS shall provide the SHPO a signed memorandum documenting that the NPS has fulfilled all its responsibilities under this Agreement.

XI. DURATION

This Agreement will continue in full force and effect until five (5) years after the date of the last signature. At any time in the six-month period prior to such date, the NPS may request the SHPO to consider an extension or modification of this Agreement. No extension or modification will be effective unless all parties to the Agreement have agreed with it in writing.

Execution and submission of this Agreement and implementation of its terms evidence that the NPS has afforded the ACHP an opportunity to comment on the Project and its effects on historic properties, and that the NPS has taken into account the effects of the Project on historic properties.

SIGNATORIES:

National Park Service

By: Jennifer S. Flynn

Date: 7/18/17

Jennifer Flynn
Superintendent
Shenandoah National Park

Virginia Department of Historic Resources

By: Stephanie B. Williams for Date: 7.27.17

Julie V. Langan,
Director
Virginia State Historic Preservation Officer