

MEMORANDUM OF AGREEMENT

Re: ELKMONT HISTORIC DISTRICT ENVIRONMENTAL IMPACT STATEMENT AND GENERAL MANAGEMENT PLAN AMENDMENT GREAT SMOKY MOUNTAINS NATIONAL PARK

WHEREAS, the National Park Service (NPS) intends to implement the actions necessary to execute and/or amend portions of the Great Smoky Mountains General Management Plan (1982) concerning the stewardship and long-term management of the Elkmont Historic District; and

WHEREAS, in fulfillment of responsibilities pursuant to the National Environmental Policy Act (NEPA), the National Park Service (NPS) intends to implement the actions documented in an Environmental Impact Statement (EIS) through the issuance of a Record of Decision (ROD) concerning the stewardship and long-term management of the Elkmont Historic District; and

WHEREAS, the NPS intends to document and adhere to the stipulations and findings of this Memorandum of Agreement (MOA) within the Elkmont Historic District's Record of Decision (by reference); and

WHEREAS, the Elkmont Historic District is listed on the National Register of Historic Places (NRHP) and consists of more than 70 structures and outbuildings; 49 of which have been determined as contributing to the NRHP, including a hotel annex, a social clubhouse, and numerous early 20th century summer cottages; and

WHEREAS, the NPS has determined that implementation of the proposed undertaking will have an adverse effect on the Elkmont Historic District, a property listed in the National Register of Historic Places; and

WHEREAS, the NPS has and continues to consult and collaborate with the Tennessee Historical Commission / State Historic Preservation Office (TNSHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), as amended, and has, in accordance with Section 800.8(c), used the NEPA process to fulfill its Section 106 responsibilities; and

WHEREAS, the National Park Service (NPS) intends to implement the actions presented under Alternative C, the NPS preferred alternative, (Undertaking) contained in the Elkmont Historic District (EIS) and General Management Plan Amendment. The EIS is made part of this MOA by reference and serves as the basis of a Preservation Plan for this Undertaking.

In summary, the Undertaking encompasses the following actions:

- Eighteen contributing and one non-contributing building (Structure #4, Swan Cabin) will be retained. These includes the Appalachian Clubhouse, sixteen buildings in the core Daisy Town portion of the district, the Chapman (Byers) Cabin in Society Hill and the Spence Cabin in Millionaire's Row. The structurally failed Wonderland Hotel was removed in late 2006.

- The exterior of the Appalachian Clubhouse will be restored, and its interior rehabilitated for day use, interpretive exhibits and public rental.
- The exterior of the Chapman Cabin will be restored and the interior rehabilitated.
- The Spence Cabin will be rehabilitated for visitor day use.
- The exterior of the sixteen buildings in Daisy Town will be restored and their interiors rehabilitated.
- A total of 30 contributing buildings will be removed, including the Wonderland Club cabins and annex, and other buildings in the Millionaire's Row and Society Hill portions of the district.
- Parking areas within the Elkmont Historic District will be improved or developed for day-use visitors.
- Native plant communities will be restored and allowed to regenerate in disturbed areas and at former building sites.
- Contributing cultural landscape features will be preserved (i.e., stone walls, paths, and the site of the Little River swimming hole).
- Facilities for wayside exhibits and walking tours will be installed and interpretive programs will be developed and implemented to educate the public regarding the area's natural and cultural history;

WHEREAS, in anticipation of this MOA, the NPS has applied for specific project funds to support the undertaking and continues to seek funding through appropriate mechanisms (see Appendix 1 for information on NPS funding). These efforts include seeking collaborative opportunities with consulting parties, stakeholders and interested individual and/or groups to maximize opportunities for the timely completion of this project. NPS will carry out the stipulations in this agreement subject to the availability of funds in accordance with the Antideficiency Act (31 U.S.C. Sections 1341, 1342 and 1517, formerly codified under Sections 3678 and 3679 of the Revised Statutes); and

WHEREAS, the NPS has determined that the undertaking achieves the most reasonable balance between preserving cultural and natural resource values in accordance with National Park Service policies and the Advisory Council on Historic Preservation's policy guidance on "Balancing Cultural and Natural Values on Federal Lands" (December 29, 2002); and

WHEREAS, NPS acknowledges that this undertaking is multi-year and concurs with the TNSHPO and the ACHP that phased compliance is appropriate to address project associated effects; and

WHEREAS, the following consulting parties participated in the consultation and have been invited to concur in this MOA: Smoky Mountain Hiking Club, National Parks Conservation Association, Sierra Club, National Trust for Historic Preservation, and the Elkmont Preservation Committee; and

WHEREAS, the NPS has contacted the Eastern Band of Cherokee Indians and the Chickasaw Nation with regard to the undertaking and has invited these tribes to participate in the planning process; and

WHEREAS, the NPS has afforded the general public multiple opportunities to comment on the undertaking; and

WHEREAS, supporting documentation has been provided in Appendices 1 and 2 of this MOA to demonstrate NPS funding opportunities to support aspects of this agreement and to present an overview of short-term stabilization recommendations for the Elkmont Historic District.

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

STIPULATIONS

The NPS will ensure that the following measures are carried out:

I. Funding

The NPS will submit requests in qualifying fund source categories (cyclic, repair/rehab, cultural cyclic, cultural resource protection program, natural resource protection program and others as appropriate, see Appendix 2) as part of the annual service wide combined call. The TNSHPO will assist in identifying private fund sources, as appropriate to the park, additional consulting parties, and other interested stakeholders to further assist in securing opportunities that will facilitate the completion of work outlined within the undertaking. Cost estimates based on 2004 monies are provided in the Elkmont Historic District Environmental Impact Statement and General Management Plan Amendment, Volume II, Appendix C, Table C1. Funds will be used to ensure that the following measures are carried out but all signatories acknowledge the order in which implementation of specific measures will occur largely depends upon the order of receipt of funds.

II. Documentation

The NPS Southeast Regional Office (Cultural Resources Division) shall advise the Superintendent, Great Smoky Mountains National Park, on the type and level of recordation required for each contributing structure within the Elkmont Historic District. At a minimum, documentation shall consist of:

1. A full set of black and white 35 mm digital photographs appropriately labeled and printed on acid free paper documenting the current exterior and interior condition of each contributing building. Documentation will be consistent with *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation*.
2. A full set of these photographs shall be submitted to the TNSHPO.
3. A full set of these photographs shall be retained in park archives.
4. A full set of these photographs shall be offered to the Library of Congress.

III. Treatment

A). Given the complexity of the undertaking, NPS, ACHP and the TNSHPO agree that the work will be phased to occur over six years. Therefore, within the completion period stipulated in this MOA, and in consultation with the TNSHPO, the NPS shall phase elements of the undertaking as outlined within the Elkmont Historic District Environmental Impact Statement and General Management Plan Amendment, Volume II, Appendix C, table C1. NPS will continue to actively consult with the TNSHPO, ACHP and the consulting parties, as appropriate during each phase of this project. Work that has the potential to affect historic properties in the implementation of this undertaking will be reviewed by individuals that meet the *Secretary of the Interior's Historic Preservation Professional Qualification Standards*, 36 C.F.R., Part 61 Appendix A. Project-specific activities are listed as follows in basic sequence and will include the production of the following documents:

1. **Emergency Stabilization**: Emergency stabilization of the 19 structures identified within the undertaking, which will include brushing of the immediate surroundings of the buildings, removal of trash, replacement in-kind of compromised structural material and roof repair. Priorities for this work will be based on an assessment provided by NPS's Southeast Regional Office historic architect (Appendix 2).
2. **Historic Structure Reports**: Historic Structure Reports (HSRs) shall be completed on all historic properties to be retained. Spence Cabin, Chapman Cabin and Appalachian Clubhouse structures are highest priority for completion of HSRs because of their proposed future use and / or their individual significance. These reports will document the physical evolution of the buildings, identify historic fabric, assess existing conditions, and provide a plan for treatment and use that is consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. The HSRs shall specify measures to prevent any further physical deterioration and correct unsafe conditions. The HSRs will be submitted to the TNSHPO for review and comment before any work is begun.
3. **Stabilization**: The NPS shall develop and initiate stabilization according to the recommendations outlined in HSRs for all the historic properties retained in the Elkmont Historic District and in accordance with treatment provisions of the *Secretary of the Interior's Standards for Historic Preservation* (with particular reference to the standards and guidelines for preservation). Priority will be given to those in greatest need of stabilization. Stabilization efforts shall include measures to ensure that the project area is secured and protected against damage and vandalism until long-term treatment activities can be carried out.
4. **List of Classified Structures Documentation**: Each of the 18 retained contributing structures and 31 removed structures (30 cabins plus the Wonderland Hotel) will be listed on the NPS List of Classified Structures (LCS) database, with LCS records for all the structures documenting their location, current condition, architecture, National Register status, construction history, management category, and current appearance (images of each structure). The LCS records for the retained structures will be updated as needed. The 31 removed structures will have their LCS records moved to the NPS "Shadow" LCS database where their information will be accessible for future consultation and/or information needs.

5. **Interpretive Plan**: An Interpretive Plan (including a Media Concept Plan) shall be prepared that presents the themes, exhibits and other educational methods that will be developed and employed to properly interpret the Elkmont Historic District's history. Additional research will be undertaken as necessary to broaden contextual understanding of Elkmont's history, and information gathered will be incorporated into site interpretive planning and programs. This planning effort will encompass elements of other planning processes listed herein (i.e., the Archeological Resources Management Plan and Natural Resources Restoration Plan) to ensure consistency and context. This effort will be consistent with Director's Order 6 (Interpretation and Education) and NPS Management Policies 2006 Section 7.2.

6. **Cultural Landscape Inventory**: A Cultural Landscape Inventory (CLI) shall be completed for the undertaking's Area of Potential Effects (APE). This inventory shall more fully describe the relationship between the cultural and natural features located within the undertaking's APE and the relationship of natural and cultural elements to site interpretation. Among the natural resource elements that will be discussed in the CLI are the cultural landscape plantings and restoration of native plant communities. The CLI shall include specifics on how the NPS will modify and / or improve the infrastructure (e.g., parking areas, utilities, waste water treatment) in support of the undertaking.

7. **Archeological Resources Management Plan**: An Archeological Resources Management Plan shall be prepared addressing how identified and as yet unidentified archeological resources will be treated within the APE to avoid, protect and / or mitigate the loss or disturbance of archeological resources. In accordance with archeological mitigation recommendations provided in the EIS, and all applicable policies and guidelines, the Archeological Resources Management Plan shall discuss any additional archeological work and / or strategies for avoiding, minimizing, or mitigating impacts to known archeological resources. It will provide recommendations for each proposed project activity including archeological assessments for individual buildings proposed for removal or preservation.

The Archeological Resources Management Plan shall provide the framework for more specific provisions at the implementation level (e.g., additional survey work; construction monitoring; significance evaluations for resources identified by additional survey work; a process for addressing unexpected discoveries; treatment of discovered human burials, sacred objects, and objects of cultural patrimony in accordance with applicable laws and policies including the Native American Graves Protection and Repatriation Act (1990); and further specific steps to avoid or mitigate impacts to archeological resources).

8. **Natural Resources Restoration Plan**: A Natural Resources Restoration Plan will be prepared addressing how natural resources affected by implementation of the Undertaking will be treated. The plan will detail how the NPS will restore and protect sensitive vegetation and aquatic communities, and the associated ecological processes / systems. Restoration activities employed will be consistent with Director's Order 77 (NPS-77). In general, this work will include: development and implementation of a plan to restore native plant communities that pre-date the site's development; recontouring of soil at building removal sites (in compliance with Standards for Archeological Documentation." under NHPA sections 101(a)(7)(A) and 110); removal of exotic invasive plants; and replanting native species propagated from on-site materials.

9. **National Register of Historic Places Nomination:** A National Register of Historic Places nomination shall be prepared and submitted to the TNSHPO for review and evaluation as to whether there remains a new historic district resulting from implementation of the undertaking. The TNSHPO shall use this nomination to reassess the National Register eligibility of the district. The nomination will include information from the CLI to identify and evaluate contributing and non-contributing cultural landscape features and character-defining landscape qualities.

10. **Demolition and Salvage:** A total of 30 contributing buildings will be removed – either by demolition or removal from within the boundary of Great Smoky Mountains National Park -- including the Wonderland Club cabins and annex, and other buildings in the Millionaire's Row and Society Hill portions of the district. Structures slated for demolition will be documented, as appropriate (See Section I. Documentation) before removal. All materials (i.e., chestnut architectural elements, moldings, fixtures etc.) that can be used in the rehabilitation of the retained buildings will be salvaged and securely stored for future use. Removal of structures must be consistent with the provisions outlined and follow Federal Acquisition Regulation (Title 48, FAC 2005–22 DECEMBER 24, 2007 including Subpart 37.3 (Dismantling, Demolition, or Removal of Improvements))

11. **Removal of Structures:** The NPS will investigate and actively pursue the feasibility and appropriateness of offering properties or portions thereof slated for demolition as defined by the Undertaking to be moved beyond the boundary of Great Smoky Mountains National Park and at the recipient's expense. Any offering would be subject to federal regulations governing excess property including the McKinney-Vento Act (42 U.S.C. Sections 102 – 502), Property Management (Title 40 U.S.C Section 572), and Public Contracts and Property Management regulations (41 CFR 102-75). Should this investigation demonstrate to NPS that excising real property of this nature is infeasible and/or inappropriate, then representative examples of significant architectural features as defined by the HSR will be dismantled and removed in such a manner as to ensure the least amount of damage and shall be made part of the park's collection. Salvage of materials must be consistent with the provisions outlined and follow Federal Acquisition Regulation (Title 48, FAC 2005–22 DECEMBER 24, 2007 including Subpart 37.3 (Dismantling, Demolition, or Removal of Improvements)) follow guidelines outlined in John Obed Curtis' *Moving Historic Buildings* (1979).

12. **Implement Long-Term Treatment:** Retained buildings will be brought to a condition that allows for satisfactory protection, maintenance and interpretation (NPS Management Policies 2006, Section 5.3.5.4). The implementation of long-term treatment (i.e. preservation, rehabilitation, or restoration) of the retained buildings will be based on sound preservation practice, as recommended by the HSRs, to enable long-term preservation of historic features, materials, and qualities in accordance with the provisions of the *Secretary of the Interior's Standards for Treatment of Historic Properties*.

B). The NPS shall submit draft copies of the various report / plan / inventory treatment elements associated with the undertaking for the review and comment of the TNSHPO, the ACHP and concurring parties. All review comments must be submitted in writing to the Superintendent of Great Smoky Mountains National Park within thirty (30) calendar days of receipt. The NPS shall take into account the written review comments of the TNSHPO and the ACHP in making final decisions relative to implementation of the treatment steps.

C). The NPS will follow agency guidance (NPS Management Policies 2006, Director's Order 12: Conservation Planning, Environmental Impact Analysis and Decision Making, and Director's Order 75A: Civic Engagement and Public Involvement) in continuing to seek public and consulting party input at key points in the phased process. The NPS shall take into account substantive comments received as a result of this public input in making final decisions relative to implementation of the treatment steps. The NPS, in consultation with the TNSHPO and the ACHP, will convene a meeting at the written request of the consulting parties and/or other interested parties should substantive concerns arise as a result of NPS actions planned or initiated as part of this agreement.

D). The NPS will schedule a meeting in February of each year with the TNSHPO and the ACHP to report progress on project milestones and planned implementation phases. This will also include updates on funding request submissions and approvals. The Chief of Resource Management and the Cultural Resource Manager are the primary park contacts for this project. This meeting allows for the required monitoring and reporting on the implementation of this MOA according to 36 CFR Part 800.6 (c) (4).

IV. Dispute Resolution

A). Should the TNSHPO or the ACHP object in writing within thirty (30) calendar days to any plans and documents submitted in writing to the TNSHPO and ACHP by the NPS pursuant to the terms of the agreement document, the NPS shall consult with the TNSHPO and the ACHP pursuant to the stipulations contained in this agreement document and 36 CFR Part 800.6 to seek to resolve the objection. If the NPS determines that the objection cannot be resolved through the consultation process, as specified in 36 CFR Part 800.6, the Superintendent of Great Smoky Mountains National Park shall initiate additional consultation efforts by forwarding all documentation relevant to the dispute to the ACHP. Within thirty (30) calendar days after receipt of the pertinent documentation, the ACHP shall either:

1. provide the NPS with recommendations, which the NPS shall take into account in reaching a final decision regarding the dispute; or
2. notify the Superintendent of Great Smoky Mountains National Park that it shall comment pursuant to 36 CFR Part 800.6(b), and proceed to comment. Any ACHP comment provided in response to such a request shall be taken into account by the NPS in accordance with 36 CFR Part 800.6, with reference to the subject of the dispute.

B). Any recommendations or comment provided by the ACHP shall be understood to pertain only to the subject of the dispute. The responsibility of the NPS to carry out all actions under this agreement document that are not the subject of the dispute shall remain unchanged.

V. Implementation

Any requirement for the payment or obligation of funds by the Government established by the terms of this agreement shall be subject to availability of appropriated funds. No provision in this agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC Section 1341. If the availability of funds and compliance with the Anti-Deficiency Act impair the NPS's ability to perform under this MOA, then the NPS will consult in accordance with the above stipulations.

VI. Amendments

The principal signatories to this agreement document (the NPS, the TNSHPO, and the ACHP) may request that it be amended or modified, whereupon the NPS, the TNSHPO, and the ACHP, shall consult in accordance with 36 CFR Sections 800.5 and 800.6 to consider such amendments or modifications. Any resulting amendments or modifications shall be developed and executed among the NPS, the TNSHPO, and the ACHP in the same manner as the original agreement document.

VII. Termination

Any of the principal signatories to this agreement document (the NPS, the TNSHPO, and the ACHP) may terminate the agreement by providing thirty (30) days notice to the other signatories, provided that the signatories shall consult during the period before termination to seek agreement on amendments or other actions that would avoid termination.

VIII. Duration

Unless duly amended, this agreement document shall be considered complete once the NPS has fulfilled the stipulations specified in this document. If the above terms, conditions and stipulations have not been fulfilled and acted upon or implemented within six (6) years, the NPS shall reinitiate consultation in accordance with 36 CFR Part 800.3 through 800.6 or, should NPS elect to continue with the undertaking, shall seek to amend the agreement to extend the duration of the agreement in accordance with VI Amendments.

IX. Execution

Execution of this Memorandum of Agreement by the National Park Service, the Tennessee State Historic Preservation Officer, and the Advisory Council on Historic Preservation, and subsequent acceptance and implementation of its terms, is evidence that the NPS has afforded the ACHP an opportunity to comment on the proposed treatment and management of the Elkmont Historic District, Great Smoky Mountains National Park, Tennessee, and its effects on historic properties, and that the NPS has taken into account the effects of the undertaking on historic properties.

SIGNATORIES

SIGNED:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *Ken M. Fowler*
Mr. John M. Fowler, Executive Director

Date: 1/5/09

NATIONAL PARK SERVICE

By: *Dale A. Ditmanson*
Mr. Dale A. Ditmanson, Superintendent, Great Smoky Mountains National Park

Date: 12/8/08

TENNESSEE STATE HISTORIC PRESERVATION OFFICER

By: *E. Patrick McIntyre, Jr.*
Mr. E. Patrick McIntyre, Jr. State Historic Preservation Officer

Date: 12-06-08

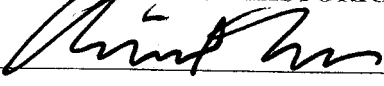
CONCUR:

NATIONAL PARKS CONSERVATION ASSOCIATION

By: My S Kedd Date: 1/27/09

CONCUR:

NATIONAL TRUST FOR HISTORIC PRESERVATION

By:  Date: 2/25/09