

MEMORANDUM OF AGREEMENT

AMONG the U.S. FOREST SERVICE, SOUTHERN REGION, ALABAMA COUSHATTA TRIBE OF TEXAS, ALABAMA QUASSARTE TRIBAL TOWN, CHEROKEE NATION, COUSHATTA TRIBE OF LOUISIANA, EASTERN BAND OF CHEROKEE INDIANS, KIALEGEE TRIBAL TOWN, MUSCOGEE (CREEK) NATION, POARCH BAND OF CREEK INDIANS, THLOPHTLOCCO TRIBAL TOWN, UNITED KEETOOWAH BAND OF CHEROKEE INDIANS, COKER CREEK HERITAGE GROUP, NATIONAL PARK SERVICE / NATIONAL TRAILS, TENNESSEE VALLEY AUTHORITY, TENNESSEE STATE HISTORIC PRESERVATION OFFICER, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,

FOR THE REMEDIATION OF DAMAGE TO A 1.05-MILE SEGMENT OF THE UNICOI TURNPIKE / TRAIL OF TEARS NATIONAL HISTORIC TRAIL (40MR408) ON THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST, MONROE COUNTY, TENNESSEE

WHEREAS the U.S. Forest Service, Southern Region (Forest Service) construction activities in March and June of 2014, damaged and diminished the physical integrity to National Register eligible archaeological site and Traditional Cultural Property 40MR408, a one mile section of the Unicoi Turnpike, an original route of the Trail of Tears National Historic Trail (NHT), designated by the National Trail Systems Act, P.L. 90-543, as amended through P.L. 111-11 (40MR408) and other historic properties; and

WHEREAS these construction activities were performed without prior consultation with appropriate parties in accordance with Section 106 of the National Historic Preservation Act, P.L. 89-664, as amended by P.L. 96-515; and

WHEREAS, the Forest Service proposes to remediate the damage the Forest Service caused to historic properties along a 1.05 segment of 40MR408; and

WHEREAS, remediation of 1.05 mile segment of site 40MR408 will provide Tribal and public pedestrian access to, and interpretation of, this section of the Unicoi Turnpike/Trail of Tears; and

WHEREAS, the Forest Service will implement management practices to improve the protection and enhancement of historic properties within the area of potential effect; and

WHEREAS, Forest Service has determined that the remediation of the damaged section of the Unicoi Turnpike/Trail of Tears (40MR408) outlined in the trail remediation plan, developed by a Forest Service Enterprise Team composed of a landscape architect, civil engineer, and a trails technician and supplement with vegetation treatments proposed by the

forest ecologist/botanist for the Cherokee National Forest (Attachment A), has the potential to adversely affect the Unicoi Turnpike/Trail of Tears (40MR408) and historic properties 40MR428, 40MR734, 40MR735, 40MR736, and 40MR744; and

WHEREAS, the Forest Service has defined the trail remediation undertaking's area of potential effect (APE) (Attachment B) as the 1.05 mile segment of the Unicoi Turnpike/Trail of Tears located on national forest lands within the former AgCredit Tract and the area extending 5 meters either side of this portion of the Unicoi Turnpike/Trail of Tears; and the portion of the Segment 1 Spur containing berms 36 – 38 and the area extending 5 meters either side of the Segment 1 Spur and up to and 10 meters north of berm 38; and the portion of Segment 2 Spur containing berms 45 and 46 and the area extending 5 meters either side of the Segment 2 Spur up to and 10 meters north/northwest of berm 46; and the portion of Segment 4 containing berms 48 – 50 and the area extending 5 meters either side of the Segment 2 Spur up to and 10 meters southeast of berm 50; and an area extending 20 meters either side of the Unicoi Turnpike/Trail of Tears where it crosses the powerline right of way within the area designated and maintained as the powerline right-of-way (for split rail fence placement); an area extending 20 meters either side of the Unicoi Turnpike/Trail of Tears where it crosses Peels Branch for the removal of downed trees using hand tools; and in addition to spot treatments along this portion of the Unicoi Turnpike/Trail of Tears trail/road way, repeated spot treatments for eradication of a large kudzu infestation (non-native invasive plant) near Joe Brown Highway; and

WHEREAS all of the Trail of Tears routes hold cultural and religious significance for many Tribal nations, with the portion of the original route which followed the Unicoi Turnpike on the Tellico District of the Cherokee National Forest having particular and direct ancestral and historical connections to the Alabama Coushatta Tribe of Texas, Alabama Quassarte Tribal Town, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Thlopthlocco Tribal Town, and the United Keetoowah Band of Cherokee Indians. Additionally, this physical land area encompasses culturally significant meaning derived not only by the removal experience but also in respect to the thousands of family members buried in unmarked graves within the corridor; and

WHEREAS the Alabama Coushatta Tribe of Texas, Alabama Quassarte Tribal Town, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Thlopthlocco Tribal Town, and the United Keetoowah Band of Cherokee Indians, consider the forced removal of American Indian people from their native homelands a blatant attempt to conquer and suppress the native spirit, as well as an attack on the traditional values that define American Indian peoples. The resulting loss of life and home has had a continuing impact on the spirituality of the removed tribes, both in the west and in their traditional homelands; and

WHEREAS the Unicoi Turnpike follows an antecedent and ancient transportation route through the southern Appalachians, connecting Tribal communities as evidenced by the presence

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

of sites 40MR728, 40MR734, 40MR735, 40MR736, and others; and

WHEREAS representatives from the consulting Tribes have informed the Forest Service that people and substances of religious and ceremonial importance to the Tribes were transported over this route for centuries, up to and including Removal; and

WHEREAS representatives from the consulting Tribes informed the Forest Service that the Trail of Tears and Unicoi Turnpike constitute a Traditional Cultural Property (TCP) eligible for listing in the National Register of Historic Places as well as an American Indian sacred site under Executive Order 13007; and

WHEREAS the Keeper of the National Register of Historic Places officially determined the sections of the Trail of Tears / Unicoi Turnpike recorded as 40MR408 to be a Traditional Cultural Property of significance to the Tribes; and

WHEREAS the previous damage by the Forest Service caused a partial loss of the integrity of the culturally significant meaning associated with this American Indian sacred site (E.O. 13007) and caused a partial loss of the integrity that makes this property an historic property; and

WHEREAS the Forest Service has consulted with the Alabama Coushatta Tribe of Texas, Alabama Quassarte Tribal Town, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Thlopthlocco Tribal Town, and the United Keetoowah Band of Cherokee Indians, with the Tennessee State Historic Preservation Officer (SHPO), the Coker Creek Heritage Group, and TVA multiple times since discovering the damage to the trail in July of 2015; and

WHEREAS, in consultation with the signatories and concurring parties to this Memorandum of Agreement (MOA), the Forest Service conducted an archaeological damage assessment, soils and hydrology assessment, phase I cultural resources inventory, and botanical survey and assessment of the damaged portion of the Unicoi Turnpike/Trail of Tears (40MR408) and the surrounding area, identifying nearly \$2.4 million in physical damage to the archaeological value and costs of restoration and repair; and

WHEREAS the Alabama Coushatta Tribe of Texas, Alabama Quassarte Tribal Town, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, Thlopthlocco Tribal Town, and the United Keetoowah Band of Cherokee Indians, actively participated in the development, field implementation, and review of the assessments to quantify the damage and costs of restoration and repair to the trail and other historic properties and intend to have an active role in the implementation of several stipulations within this MOA, they shall participate as invited signatories to this MOA (herein after referenced as Signatory Tribes); and

WHEREAS the damage was caused to a National Historic Trail (P.L. 90-543, as amended through P.L. 111-11) administered by the National Park Service, National Trails (NPS/NT), and the NPS/NT has actively participated in the development and implementation of the assessments to quantify the damage and costs of restoration and repair to the trail within the APE and intends to have an active role in the implementation of stipulations within this MOA, they shall participate as an invited signatory to this MOA; and

WHEREAS the Unicoi Turnpike/Trail of Tears is valued by the local community of Coker Creek, Tennessee, and the Coker Creek Heritage Group shall be an active participant in the implementation of stipulations within this MOA, they shall participate as an invited signatory to this MOA; and

WHEREAS, the Tennessee Valley Authority (TVA), an executive branch corporate agency created by congressional charter to provide navigation, flood control, electricity generation, fertilizer manufacturing, and economic development to the Tennessee Valley, operates and maintains a major electric powerline corridor known as the Alcoa to Hiwassee Line, that crosses the damaged portion of the Unicoi Turnpike/Trail of Tears and requires an open right-of-way, clear of tall and woody vegetation to facilitate for the safe and reliable operation of its Transmission system, and for access of equipment to maintain that right-of-way and the powerline structures within it; and

WHEREAS, although the damage to be remediated by this MOA was caused solely as a result of Forest Service' actions, TVA has nonetheless voluntarily agreed to participate as a signatory to this MOA to cooperate with the Forest Service and the other signatories as it pertains to TVA fee owned lands or lands under TVA's jurisdiction; and

WHEREAS, TVA's participation as a invited signatory to this agreement shall in no way reduce their easement, special use permit, or other property rights with respect to the lands covered by this agreement; and

WHEREAS the Forest Service has consulted the SHPO pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f), he shall participate as a signatory to this MOA; and

WHEREAS, the Forest Service has consulted with the National Trail of Tears Association (NTOTA), the Tennessee Chapter of the Trail of Tears Association (TN TOTA), the Coker Creek Ruritan Club, the Tennessee Overhill Heritage Association, Monroe County, and other residents of the Coker Creek community regarding the effects of the undertaking on historic properties, and has invited them to sign this MOA as concurring parties; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the Forest Service notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen to participate in the consultation pursuant to

36 CFR § 800.6(a)(1)(iii); and

WHEREAS, to help protect historic properties from future damage, the Forest Service has taken personnel actions, issued management directives to clarify the requirements of Section 106 and the role of the Forest Supervisor in Section 106 reviews; required the entire professional staff of Cherokee National Forest to participate in the two-day Section 106 training class provided by the ACHP on March 15 – 16, 2016; initiated archival research and ground truthing, of the entire Unicoi Turnpike and Trail of Tears on Forest Service lands in North Carolina, Georgia, and eastern Tennessee, through a formal partnership agreement with Western Carolina University (WCU); enhanced and expanded the curatorial storage capacity of WCU to support this work; developed (2016) and finalized (2019) a wildland fire protocol for use in the mile wide Trail of Tears corridor to protect the trail and cultural resources; partnered with the ACHP to develop and present a one day Section 106 training session to Forest Service employees throughout the Southern Region; established and filled a full-time Trail of Tears Coordinator position for the Southern Region, and established a pre-106 and pre-NEPA process for the Coordinator to review projects being considered in the mile wide Trail of Tears and Unicoi Turnpike corridors, as measures to improve the protection of the historic property; and

NOW, THEREFORE, the Forest Service, SHPO, and ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

The Forest Service shall ensure that the following measures are carried out:

I. REMEDY OF THE DAMAGED ONE MILE SECTION OF TRAIL BED

- A. The Forest Service shall implement the trail remediation plan, developed in consultation with the consulting parties. This trail remediation plan and its accompanying engineering drawings, comprise Attachment A of this MOA. The trail remediation is designed to facilitate pedestrian access for interpretation purposes. Trail remediation work shall begin within one year of the Regional Forester's signature on this MOA.
 1. Special precautions will be taken to avoid further damage to portions of the damaged Unicoi Turnpike/Trail of Tears containing historic trail sidewalls, particularly when using and turning small mechanized equipment.
- B. The Forest Service will partner with the signatory Tribes to develop and fund at least one Tribal resource crew to support the trail rehabilitation work. This work will

include installation of erosion control blankets, straw wattles, straw bales, and seeding.

- C. Prior to the implementation of the trail remediation plan, the Forest Service shall complete the items identified in the Operating Plan for Archaeological Support for Remediation of a Damaged Portion of the Unicoi Turnpike/Trail of Tears (Attachment C) This work includes:
1. Archaeologically controlled re-exposure of the original Unicoi Turnpike sidewalls in those locations where one or both ends of the earthen berms identified for removal are anchored against the sidewalls
 2. Hand excavation of a cross section to the base of berms 4, 6, 7, 18, 29, 20 and 129, that potentially derive from archaeological site matrices for sites 40MR728, 40MR734, 40MR735, 40MR736, and 40MR744, removing and screening 10% of the total berm volume to recover artifact content. If this sample indicates substantial artifact content, with potential to inform with regard to site function, date of occupation, or site structure, the remainder of the soils for that berm will be hand excavated and screen sorted for artifact recovery.
 3. Monitors and/or professional archaeologists from one or more of the signatory Tribes.
 4. In the unlikely event that human remains are identified during these excavations, the NAGPRA inadvertent discovery protocol in Stipulation XIV of this document will be followed.
 - i. Resumption of the work will depend on the results of consultation with the Tribes under 43CFR10.5, and
 - ii. it may be necessary to revisit the remediation project and other stipulations of this MOA with all the consulting parties.
- D. Plant species selected for long term revegetation efforts identified in the proposed action shall be selected in consultation with the signatory Tribes, National Park Service's National Trails (NPS/NT), SHPO, and with TVA (for the portion of the APE within the powerline right-of-way). The Forest Service and signatory Tribes shall work together to achieve the desired composition of native plant and tree species with actual work starting no later than two years after execution of this MOA. This revegetation plan shall be incorporated into the Management Area described in Stipulation III of this MOA. Tribal members and Tribal youth crews from the signatory Tribes shall participate in projects supporting these revegetation goals at Forest Service expense.
- E. This MOA does not cover any revegetation efforts that may be proposed outside of the APE, which shall be subject to separate Section 106 review and consultation with all signatories.

II. INTERPRETATION AND ACCESS TO THE RESOURCE

- A. The Forest Service shall, through partnership agreements, with the signatory Tribes provide ten years of assistance in the form of lodging, transportation, and meals for Tribal members to participate in heritage immersion programs for Tribal members for up to two consecutive weeks per year near the location of the Trail of Tears in the Coker Creek and Tellico Plains communities of eastern Tennessee. The first heritage immersion program shall be held in the summer of 2020.
- a. The curriculum and logistical support for each heritage immersion program shall be developed and determined solely by the signatory Tribe that wishes to host it.
 - b. The Forest Service and signatory Tribes shall meet annually to revisit this stipulation and the partnership agreements to evaluate their effectiveness.
 - c. Ten years after the date of the first heritage immersion program, the Forest Service and signatory Tribes shall revisit this stipulation and consider extending this stipulation for an additional ten year period.
- B. As the signatory Tribes have requested, the Forest Service shall revisit the current draft design charrette document (based on July 2015 meeting) for the nearby Fort Armistead area that was developed by the National Park Service's National Trails (NPS/NT) with Forest Service, National Trail of Tears Association (NTOTA), the Tennessee chapter of the Trail of Tears Association (TN TOTA), Cherokee Nation, United Keetoowah Band of Cherokee Indians, Thlopthlocco Tribal Town, and Coker Creek Heritage Group participation. This alternative mitigation was requested by the signatory Tribes because of Fort Armistead's direct association with the Unicoi Turnpike/Trail of Tears, and the signatory Tribes' formal notification to the Forest Service in 2016 of the site's designation by the signatory Tribes as an American Indian Sacred Site, pursuant to Federal Executive Order 13007.
- a. The Forest Service shall host listening sessions within the communities of or with committees created by the signatory Tribes (their choice), to gather information on how or if the Fort Armistead site and the Unicoi Turnpike/Trail of Tears corridor on national forest lands shall be interpreted for the public. Hosting of these listening sessions will begin in the fall of 2020.
 - i. These listening sessions shall include a short presentation by a Forest Service employee(s) on the history and present-day appearance of the Unicoi Turnpike, Fort Armistead, and other pertinent cultural resources within the Unicoi Turnpike/Trail of Tears corridor.
 - ii. The Forest Service may use portions of the NPS/NT draft design charrette document (2015) for Fort Armistead to illustrate its interpretative potential.
 - iii. The Forest Service will invite NPS/NT staff participation in these Tribal community listening sessions.

- b. The signatory Tribes will provide logistical support to the Forest Service in identifying and reserving locations for these listening sessions. They shall also provide local advertising and messaging for these listening sessions within their Tribal communities, if the hosting signatory Tribe deems advertising necessary. All associated expenses shall be the responsibility of the Forest Service.
- c. The purpose of these Tribal listening sessions is to assist the Forest Service in determining:
 - i. if on-site interpretation and public visitation of the Fort Armistead site is appropriate, and if so, at what scale of interpretation and public access, or
 - ii. if the Forest Service needs to identify an off-site location, still within the Coker Creek community, for the interpretation of this historic property and all of its historical periods of significance to the public.
- d. After the listening sessions are completed and within three years of execution of this MOA:
 - i. The Forest Service shall formally consult with representatives of the signatory Tribes to compare the results of all the listening sessions against the current draft design charrette document (2015) for Fort Armistead from NPS/NT.
 - ii. After this consultation meeting, the Forest Service shall decide between on-site or off-site interpretation for the Fort Armistead site.
 - iii. If, after this consultation meeting, the Forest Service determines that significant changes need to be made to the current draft charrette document (2015), the Forest Service shall convene a design charrette with representatives from the signatory Tribes and request, and if necessary fund, technical assistance from NPS/NT to develop a new draft proposal for the interpretation and any interpretative facilities and infrastructure that may be needed to support either the on-site or off-site interpretation of Fort Armistead, with all of its historical periods of significance represented.
 - iv. All interpretive elements associated with Indian Removal (the Trail of Tears) within the Unicoi Turnpike/Trail of Tears corridor will utilize the Trail of Tears NHT design standards developed by the NPS/NT.
- e. The Forest Service will submit the draft interpretive proposal to all the consulting parties for a forty-five (45) day review. Any comments on the draft will be reviewed by the Forest Service, signatory Tribes, NPS/NT, and SHPO for possible incorporation into the final proposal.
- f. The final proposal will become part of the Interpretive Master Plan for Fort Armistead and the Unicoi Turnpike/Trail of Tears on the Cherokee, Nantahala, and Chattahoochee National Forests. This Interpretive Master Plan shall be completed within five years of the execution of this MOA.

- g. The Forest Service will implement the final proposal as outlined in the Interpretive Master Plan. Implementation will begin within six years of the execution of this MOA and be completed by within ten years of the execution of this MOA. All phases of implementation of the Interpretive Master Plan will be subject to full Section 106 compliance.
- C. Should the signatory Tribes secure a location for an interpretive site to Indian Removal in general, on the grounds of the National Museum of the American Indian or another location off of national forest system lands, the Forest Service and the signatory Tribes may negotiate an amendment to this MOA detailing the level and type(s) of support the Forest Service will provide for this interpretive site.
- D. Within three months of execution of this MOA, the Forest Service shall provide the signatory Tribes and SHPO an opportunity to review and provide written comment on the draft National Historic Landmark (NHL) nomination for the Fort Armistead site. The Forest Service shall incorporate the edits and comments provide by the signatory Tribes and SHPO into the NHL nomination and resubmit it to the NPS National Historic Landmarks program. The Forest Service will protect and avoid putting any confidential information provided by the Tribes into the NHL nomination.
- E. The Forest Service shall locate and nominate all known original route locations of the Trail of Tears and Unicoi Turnpike on national forests lands to the National Register of Historic Places within seven years of the execution of this MOA. The nominations shall include input from the signatory Tribes and be reviewed and signed by the appropriate SHPO (as required by the National Register). The Forest Service will protect and avoid putting any confidential information provided by the Tribes into the NR nominations. All newly identified trail routes will be formally recorded as archaeological sites with the appropriate SHPO and/or state archaeological agency.

III. UNICOI TURNPIKE/TRAIL OF TEARS HERITAGE CORRIDOR

- A. Immediately after the execution of this MOA and in consultation with the signatory Tribes and SHPO, and in partnership with NPS/NT, the Forest Service will adapt the draft Forest Plan Management Area language for the Unicoi Turnpike/Trail of Tears on the Nantahala National Forest in North Carolina, developed in consultation with the Tribes and other interested parties in North Carolina for the Nantahala/Pisgah Forest Plan Revision, to create a similar Forest Plan Management Area designation for the Unicoi Turnpike/Trail of Tears on the Cherokee National Forest. This will require a Forest Plan amendment, along with SHPO and Tribal consultation and public involvement, pursuant to the National Forest Management Act (NFMA) and relevant Forest Planning Rule.
- B. Following execution of this MOA, the Forest Service will initiate efforts to designate this Management Area, on other national forests in the region that the Unicoi Turnpike and Trail of Tears cross and will consult separately from this MOA on these efforts.

Consultation with the federally recognized Tribes and each state's SHPO is required as part of the Forest Plan revision and amendment process.

- C. The Forest Service shall perform (or cause to be performed) a full cultural landscape inventory of the Unicoi Turnpike and Trail of Tears NHT heritage corridors on the Cherokee, Nantahala, and Chattahoochee, and Sumter National Forests (if trail is found to be present there) by means of a cultural landscape study.
- a. This cultural landscape study protocol will be developed in consultation with the signatory Tribes and each state's SHPO and in partnership with Western Carolina University or another research institution within six months of the execution of this MOA.
 - b. Tribal resource specialists shall be directly involved in the fieldwork and analysis at Forest Service expense.
 - c. SHPO resource specialists shall be invited to be directly involved in the fieldwork and analysis of work on the Cherokee National Forest at Forest Service expense.
 - d. Although NPS/NT may provide some financial support, the bulk of the financial responsibility will belong to the Forest Service.
 - e. The Forest Service shall share all data generated from the cultural landscape inventory and study with all the signatory Tribes, SHPOs, NPS/NT, and TVA.
 - f. The Forest Service agrees not to release any confidential information provided to the Forest Service by the signatory Tribes (Section 8106 of the Food, Conservation, and Energy Act of 2008, 25 U.S.C. 3056; Section 307103 of Public Law 113-287, 54 U.S.C. 307103).
 - g. The Forest Service agrees to consult the signatory Tribes, SHPO, and NPS/NT on all interpretive materials for the Unicoi Turnpike and Trail of Tears on national forest lands. The Forest Service agrees to release nothing related to Tribal interest to the public without the signatory Tribes' input and consensus on the release.
 - h. This cultural landscape inventory of the Unicoi Turnpike and Trail of Tears corridors on the Cherokee, Nantahala, and Chattahoochee, National Forests shall be completed within seven years of the execution of this MOA.
 - i. Upon completion of the cultural landscape study, the Forest Service shall nominate all portions of the Unicoi Turnpike/Trail of Tears on national forest lands and other associated historic properties on national forest lands, including any traditional cultural properties, to the National Register of Historic Places.
- D. In consultation with the signatory Tribes, other federally-recognized Tribes with ancestral connections to the southeastern United States, and the appropriate SHPO, the Forest Service shall develop a digital GIS map of all Removal trails on national forest lands for all Southeastern Tribes within twelve years of the execution of this MOA. This data will be shared with the associated federally recognized Tribes, NPS/NT and SHPOs.

IV. TRAIL OF TEARS COORDINATOR

The Forest Service established a Unicoi Turnpike and Trail of Tears Heritage Corridors Coordinator (Coordinator) to oversee the successful implementation of the stipulations of this MOA. This person is a Forest Service employee working for the Regional Office.

- A. The Coordinator will serve as the primary contact with the NPS/NT regarding the Trail of Tears NHT on national forest system lands in the Forest Service Southern Region and will work in partnership with NPS/NT to ensure the sections of the National Trails System Act regarding the Trail of Tears NHT are implemented.
- B. The Coordinator will serve as the primary contact and reviewer of projects proposed within the mile wide Unicoi Turnpike and Trail of Tears Corridors on national forest lands in the Southern Region, ensuring agency consistency in cultural resources and sacred site protection and NHPA compliance along the trail.
- C. Internally, the Coordinator will serve as the primary contact for forest planning for those national forests containing portions of the Unicoi Turnpike and Trail of Tears Heritage corridors in the Southern Region, ensuring agency consistency in forest planning along these corridors.
- D. The Coordinator will work with the Eastern Region of the Forest Service to promote agency consistency in the management of the Trail of Tears NHT on the Mark Twain and Shawnee National Forests.

V. LAND ACQUISITION PLAN

The Forest Service recognizes that it is the primary public landowner of approximately 60 miles of the Unicoi Turnpike, an original route of the Trail of Tears National Historic Trail within the Southern Region. The Forest Service further recognizes that it is in the unique geographical position to become the primary stewards of additional miles of original route locations of the Unicoi Turnpike/Trail of Tears and other possible removal route trails that led onto the Unicoi Turnpike.

- A. The Forest Service, in consultation with the signatory Tribes and in partnership with the NPS/NT, the SHPO, and local landowners, will develop a prioritized land acquisition plan for property that may voluntarily become available for acquisition. Land under consideration would be those parcels in the immediate vicinity of the Fort Armistead site and those containing known portions of the original Unicoi Turnpike/Trail of Tears trails.
- B. Following the execution of this MOA, the Forest Service will pursue the acquisition of priority properties that may voluntarily become available with assistance from the signatory Tribes, SHPO, and other appropriate partners whenever practicable.

- C. The Forest Service will adhere to The National Trails System Act (P.L. 90-543 as amended through P.L. 111-11) which expressly states, “No lands or interests in lands outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Trail of Tears NHT except with the consent of the owner thereof.” (Section 5(a)(16)(D)).
- D. In accordance with Section 110 of the NHPA, the Forest Service will survey all newly acquired parcels in the immediate vicinity of the Fort Armistead site and those containing known portions of the original Unicoi Turnpike/Trail of Tears for historic properties. The survey protocols for these land parcels will be developed in consultation with the signatory Tribes to ensure protection of the sacred aspects of these historic properties.

VI. LESSONS LEARNED

- A. The Forest Service, in consultation with the signatory Tribes, the SHPO, and the ACHP will develop a multi-media lessons learned product, regarding the damage to the trail that occurred in 2014 and the consultation efforts to remediate the damage for public and professional publication and distribution. This material will detail the ramifications for the affected Tribes and local community. This will be completed within three years of the execution of this MOA.
- B. The Forest Service, SHPO, and the signatory Tribes will co-develop and co-present symposia at regional and national meetings to illustrate how cultural resource management has ramifications on living people and how agencies, cultural resource management firms, and federal agencies can work more closely together.

VII. TRIBAL CULTURAL SENSITIVITY TRAINING FOR Forest Service EMPLOYEES

The Forest Service and the signatory Tribes will work together to develop and deploy a cultural sensitivity learning engagement for Forest Service employees in the Southern Region within two years of the execution of this MOA. The SHPO will be invited to assist with the development of this training. All current Forest Service employees will participate in this learning engagement within four years of the execution of this MOA.

VIII. CURATION AND REBURIAL

- A. All future documentation (paper and electronic) and cultural artifacts associated with this cultural landscape study and other research associated with the Unicoi Turnpike and Trail of Tears on the Cherokee, Nantahala, Sumter and Chattahoochee National Forests shall be curated at Western Carolina University or another identified facility at Forest Service expense until such time as the Eastern Band of Cherokee Indians curation facility is completed.
- B. The Forest Service shall enter into a curation agreement with Western Carolina University (or another identified facility) and the signatory Tribes stipulating limitations and notification prior to these collections being used for any research or in publications or presentations.
- C. When the Eastern Band of Cherokee Indians curation facility comes online, the curation facility for these materials shall be reevaluated by the signatory Tribes and the Forest Service.
- D. The Forest Service shall establish a keep-safe mitigation facility on each national forest (Cherokee, Nantahala, Sumter, and Chattahoochee) to assist the signatory Tribes in reinternment of individuals/ancestors repatriated to the Tribes with no provenience. Approval of requested reburials will follow Forest Service national and regional policy. Requests will be considered on a case-by-case basis in consultation with the Tribes (Section 8103 of the Food, Conservation, and Energy Act of 2008; 25 U.S.C. 3051-3053 and Forest Service Manual 1560 and any supplement guidance). Tribes will not be obligated to use the keep-safe mitigation facility if they consider other locations preferable; a Tribe(s) can work with a national forest to find an alternate location.

IX. TRIBAL PARTICIPATION

The Forest Service recognizes the importance of Tribal involvement and government to government consultation in the pre-planning, planning, and implementation of activities that may occur within the Unicoi Turnpike and Trail of Tears corridors on national forest lands. These activities include those associated with all aspects of managing and interpreting the Trail of Tears NHT, Unicoi Turnpike, and Fort Armistead. Given this recognition, the Forest Service shall formalize this commitment in the Management Area language for the Unicoi Turnpike / Trail of Tears that will be incorporated into the Forest Plans for the Nantahala, Cherokee, Chattahoochee, and Ozark – St. Francis National Forests and Land Between the Lakes National Recreation Area and develop a protocol that outlines its commitment to coordinate all activities within the mile wide Unicoi Turnpike and Trail of Tears corridors on national forest lands with the signatory Tribes.

- A. The signatory Tribes shall, at the expense of the Forest Service, provide Tribal personnel/members with specialized expertise in cultural resources and traditional ecological knowledge to support the work that will be needed to implement the tasks identified in this MOA.
- B. The signatory Tribes shall assist the Forest Service in recruiting Tribal youth to serve on crews to assist with the restoration of the damaged portion of the trail, working with various cultural and natural resource specialist to perform cultural landscape studies of the Unicoi Turnpike and Trail of Tears corridors, and with the installation of any interpretive infrastructure on the Unicoi Turnpike/Trail of Tears and at Fort Armistead.
- C. The signatory Tribes shall provide the Forest Service logistical support for the Tribal community listening sessions regarding the interpretation of Fort Armistead and the associated segments of the Unicoi Turnpike/Trail of Tears on national forests in the Southern Region as described in Stipulation II.B.b of this MOA.
- D. The signatory Tribes shall provide representatives to (1) help present the Tribal cultural sensitivity learning engagement sessions to Forest Service employees and (2) to help present training to the Coker Creek community members who agree to serve as docents for the Unicoi Turnpike/Trail of Tears and Fort Armistead in Monroe County, Tennessee (see Stipulation X.A. below). Travel expenses for these Tribal representatives will be paid by the Forest Service.
- E. The signatory Tribes shall assist the Forest Service, and NTOTA in developing and delivering educational programs and events for the public schools in the Coker Creek and Tellico Plains communities (see Stipulation X.D. below).
- F. The signatory Tribes shall be active participants in reviewing and providing input and comments on land management planning efforts for the Unicoi Turnpike and Trail of Tears NHT management areas on national forests in the Southern Region.

X. COMMUNITY ENGAGEMENT AND PARTICIPATION

- A. Members of the Coker Creek Heritage Group, on successful completion of a training program designed by the Forest Service, NPS/NT, SHPO, and signatory Tribes, may serve as docents for the Unicoi Turnpike/Trail of Tears and Fort Armistead site in Monroe County, Tennessee. The scheduling of any of tours of the Fort Armistead site must receive prior approval from the Forest Service.
- B. The Coker Creek Heritage Group agrees, that with at least six week prior notice per use, to assist the Forest Service in securing free use of the Coker Creek Ruritan Club facility or an alternative facility (1) as a training classroom for Tribal youth crews that will be engaged in work supporting the terms of this MOA; (2) as a training classroom for members of the Coker Creek Heritage Group to be trained as docents for the Trail of Tears and Fort Armistead in Monroe County, Tennessee; and (3) as a classroom facility for the Tribal youth heritage immersion camps identified in stipulation II.A of this MOA.

- C. The Forest Service will work with the Coker Creek and Tellico Plains communities to secure lodging and other resources to support the Tribal youth heritage immersion programs identified in Stipulation II.A. of this MOA.
- D. The Coker Creek Heritage Group will assist the Forest Service in making connections with the school administrators for the public schools in the Coker Creek and Tellico Plains communities. Should the schools express an interest, and within two years of the execution of this MOA, the Forest Service, in partnership with the signatory Tribes, SHPO, NTOTA, and others, will work with the public schools in the Coker Creek and Tellico Plains communities to develop educational programs and events to teach elementary and high school students about the rich history of the area.

XI. NATIONAL PARK SERVICE, NATIONAL TRAILS PARTICIPATION

- A. The Signatories and concurring parties to this MOA recognize the National Park Service, National Trails (NPS/NT) as the administrator for the Trail of Tears NHT (The National Trails System Act, 16 U.S.C. 1244).
- B. NPS/NT may continue to cooperate with the Forest Service by providing financial and technical assistance when possible to support work to document, manage, and interpret the Trail of Tears NHT on national forest lands.
- C. NPS/NT recognizes the Southern Region of the Forest Service' responsibility as the land managing agency to conduct government to government consultation with the federally recognized Tribes with direct historical and ancestral connections to those portions of the Trail of Tears NHT and associated historic properties on national forests lands in the Southern Region.
- D. NPS/NT may be active participants in reviewing and providing input and comments on land management planning efforts for the Trail of Tears NHT management areas on national forests in the Southern Region.
- E. NPS/NT participation levels may be contingent upon additional resources or Forest Service funding support.

XII. PARTICIPATION OF OTHER PARTIES

If during the life of this MOA other parties should become interested in participating in items stipulated in this MOA, those parties shall contact the Forest Service with a written statement regarding their interest. The Forest Service will then meet with the leaders of the petitioning party. After the meeting, the Forest Service will contact all the signatories regarding the party's petition to participate. If the Forest Service determines that the petitioning party's interests in participating do not conflict with or detract from any of the stipulation in this MOA, and if there are no specific objections from the other signatories, the party shall be granted either concurring party or invited signatory status to this MOA (depending on level of involvement) by way of an amendment to this agreement.

XIII. DURATION

This MOA will expire if its terms are not carried out within *fifteen (15) years* from the date of its execution. Prior to such time, the Forest Service may consult with the other signatories to reconsider the terms of the MOA or to extend its duration through an amendment in accordance with Stipulation XVI below.

XIV. POST-REVIEW DISCOVERIES

- A. All work will strictly comply with all Native American Graves Protection and Repatriation Act (NAGPRA) regulations as they apply to the inadvertent discovery of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony (43 CFR 10.4). If human remains or other items covered by the Native American Graves Protection and Repatriation Act (NAGPRA) or any indication of NAGPRA items are encountered while carrying out any stipulation in this MOA, the Forest Service shall implement the following NAGPRA protocol, conforming with the Treatment Guidelines for Human Remains and Funerary Objects from the Eastern Band of Cherokee Indians (Attachment D) :
- a. Upon the inadvertent discovery of Native American human remains, the onsite Tribal monitor and/or professional archaeologist shall call a halt to all work in the immediate area, leave the human remains *in situ* but protected and respectfully covered, and provide immediate telephone notification of the discovery to the Trail of Tears Coordinator who will notify the Forest Archaeologist and Law Enforcement. The Tennessee State Archaeologist shall also be notified as a courtesy, however NAGPRA and 43CFR10 direct the process for treatment and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony on federal lands. The signatory Tribes' requests in this arena, by law, take priority.
 - b. No photographs of human remains shall be taken by anyone associated with the remediation project. Photography is only permitted by law enforcement or coroner, and only if required by state law.
 - c. The Trail of Tears Coordinator will immediately (within 24 hours) notify the consulting Tribes via email and telephone of the discovery and begin consultation on the disposition of the human remains.
 - d. Work associated with the remediation (including the archaeological data recovery work) will not continue in the immediate area until Tribal consultation is complete and a plan for disposition/reinternment is in place. The Tennessee State Archaeologist shall be notified when this plan has been finalized. Depending on the discovery, it may be necessary to revisit the remediation project and other stipulations of this MOA with all the consulting parties.
- B. If additional potential historic properties are discovered or unanticipated effects on historic properties found, the Forest Service shall implement the following protocol:

- a. The onsite Tribal monitor and/or professional archaeologist shall call a halt to all work in the immediate area, leave the area of concern in situ but protected, and provide immediate telephone notification of the discovery to the Trail of Tears Coordinator who will notify the Forest Archaeologist.
- b. The Forest Archaeologist and Trail of Tears Coordinator will inspect the area of concern with the Tribal monitor and on site professional archaeologist, and help record and, if necessary, prepare a damage assessment for the new find. The Trail of Tears Coordinator will notify all signatories of the discovery within 48 hours. This notification will include the site documentation.
- c. Work associated with the remediation (including the archaeological data recovery work) will not continue in the immediate area until Section 106 consultation is complete. Depending on the discovery, it may be necessary to revisit the remediation project and other stipulations of this MOA with all the consulting parties.

XV. MONITORING AND REPORTING

Every six months following the execution of this MOA until it expires or is terminated, the Forest Service shall schedule a teleconference with all consulting parties to this MOA to report on work undertaken pursuant to its terms. Two weeks prior to this teleconference, the Forest Service shall provide all consulting parties with a written summary report of all activities undertaken as part of this MOA. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Forest Service efforts to carry out the terms of this MOA. For the life of this agreement, the Forest Service shall host annual meetings with the consulting parties to discuss progress towards items identified in this MOA. This meeting may coincide with or abut another meeting where many of the parties may be attending.

XV. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Forest Service shall consult with such party to resolve the objection. If the Forest Service determines that such objection cannot be resolved, the Forest Service will:

- A. Forward all documentation relevant to the dispute, including the Forest Service's proposed resolution, to the ACHP. The ACHP shall provide the Forest Service 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 Forest Service shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide

them with a copy of this written response. The Forest Service 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 Forest Service may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Forest Service shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. The Forest Service's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

XVI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

XVII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation XVI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the Forest Service must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The Forest Service shall notify the signatories as to the course of action it will pursue.

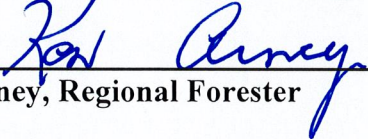
Execution of this MOA by the Forest Service, SHPO, and ACHP and implementation of its terms evidence that Forest Service has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

SIGNATORIES:

**MEMORANDUM OF AGREEMENT
FOR THE REMEDIATION OF DAMAGE TO A 1.05-
MILE SEGMENT OF THE UNICOI TURNPIKE / TRAIL OF TEARS
NATIONAL HISTORIC TRAIL ON
THE TELlico RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

U.S. Forest Service, Southern Region



Ken Arney, Regional Forester

Date 10/15/2019

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Tennessee Historical Commission

E. Patrick McIntyre, Jr.

E. Patrick McIntyre, Jr., State Historic Preservation Officer

Date

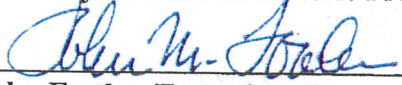
10-16-17

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Advisory Council on Historic Preservation



John Fowler, Executive Director

Date 12/10/19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Cherokee Nation



Date 12/4/19


Chad Harsha, Secretary of Natural Resources

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

United Keetoowah Band of Cherokee Indians



Joe Burch, Chief

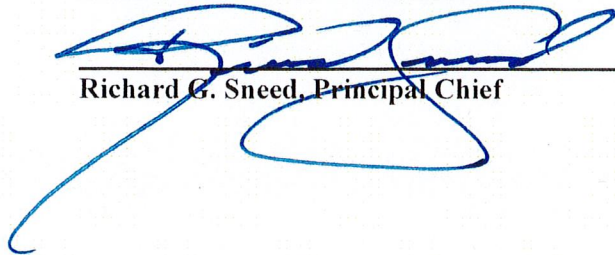
Date 11/12/19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Eastern Band of Cherokee Indians



Richard G. Sneed, Principal Chief

Date

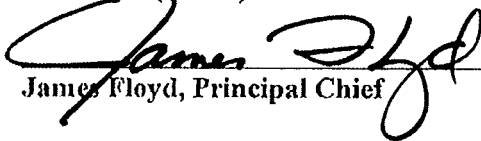
11/1/19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Muscogee (Creek) Nation of Oklahoma


James Floyd, Principal Chief

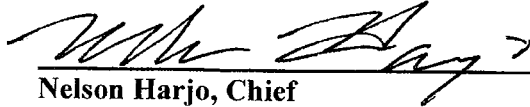
Date 09/11/2019

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Alabama Quassarte Tribal Town



Nelson Harjo, Chief

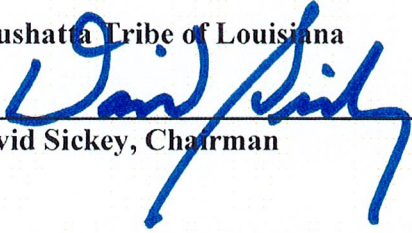
Date 10-9-19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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NATIONAL HISTORIC TRAIL ON
THE TELlico RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Coushatta Tribe of Louisiana



David Sickey, Chairman

Date

10-23-19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Coker Creek Heritage Group



Mark Morris, President


Date 10-27-19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Tennessee Valley Authority



Rebecca Tolene, Vice President Environment

Date 11-21-19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

CONCURRING PARTIES:

**MEMORANDUM OF AGREEMENT
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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

National Trail of Tears Association

Jack Baker

Jack Baker, President

Date 5 Nov 2019

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

CONCURRING PARTIES:

**MEMORANDUM OF AGREEMENT
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NATIONAL HISTORIC TRAIL ON
THE TELlico RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Tennessee Chapter, National Trail of Tears Association

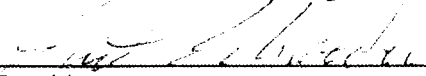
Debbie Moore Date 10/16/19
Debbie Moore, President

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

CONCURRING PARTIES:

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Tennessee Overhill Heritage Association



President

Date 7-6-2014

Executive Director

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

CONCURRING PARTIES:

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THE TELlico RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Coker Creek Ruritan Club



President

Date 10-27-19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

CONCURRING PARTIES:

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Charles Hall Museum of History and Heritage, Tellico Plains, Tennessee

Sam Hall Mathews

President of Board of Directors

Date *November 5, 2019*

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Alabama Coushatta Tribe of Texas

_____ Date _____
Cecilia Flores, Chairperson

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Kialegee Tribal Town

_____ Date _____
Jeremiah Hobia, Town King

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Poarch Band of Creek Indians

Stephanie Bryan, Tribal Chair

Date _____

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Thlopthlocco Tribal Town

_____ Date _____
Ryan K. Morrow, Mekko

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike/Trail of Tears, Monroe County, TN

INVITED SIGNATORIES:

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THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

National Park Service, National Trails



Aaron Main, Superintendent

Date 12/5/19

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

CONCURRING PARTIES:

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NATIONAL HISTORIC TRAIL ON
THE TELLICO RANGER DISTRICT OF THE CHEROKEE NATIONAL FOREST,
MONROE COUNTY, TENNESSEE**

Monroe County, Tennessee

_____ Date _____
County Mayor

MOA for Remediation of Damage to a 1.05 Mile Segment of the Unicoi Turnpike / Trail of Tears, Monroe County, TN

ATTACHMENT A

Trail Remediation Plan



United States Department of Agriculture

TRAIL OF TEARS

Trail Remediation for AGCredit Tract

REGION 8

CHEROKEE NATIONAL FOREST



CONTENTS

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Introduction

In order to fulfill its mandate of preserving and protecting the natural and cultural resources of the Cherokee National Forest, and the tribes, the National Forest Service proposes this Remediation Plan. This plan specifically addresses the damage related to an erosion and access control and stream channel remediation project that was conducted without Section 106 compliance along a 1.05 mile section of the Trail of Tears National Historic Trail (Unicoi Turnpike), several logging roads leading off the Trail of Tears NHT, and Peels Branch on the Tellico Ranger District, Cherokee National Forest, in Monroe County, Tennessee.

The segment of this National Historic Trail addressed in this restoration plan is recorded as site 40Mr408. The Unicoi Turnpike was formally established in 1816, following the route of ancient American Indian trails. It connected South Carolina to Tennessee, crossing through the Cherokee Nation. In North Carolina and Tennessee, the Unicoi Turnpike was the primary route used during Indian Removal or the Trail of Tears. Indian Removal is one of the more significant events in the history of the relations between the United States Government and American Indians. In 1838, the U.S. Government forcibly removed Cherokee people from their traditional lands, sending them west to Indian Territory (now Oklahoma). The Unicoi Turnpike served as the primary removal route for Cherokees living in what is now western North Carolina and eastern Tennessee. One year prior, almost 1000 Creek refugees who had fled the chaos of the Second Creek War and sought sanctuary in the area, were also rounded up and removed along this route. (Archaeological Damage Assessment, 2017).

TRAIL TREAD REMEDIATION AND MAINTENANCE PLAN

This Trail Remediation and Maintenance Plan consists of a plan proposal of three components:

1. Remediation of the adverse impacts caused by the Forest Service in 2013. These impacts include the construction of berms and dips along the route between the Joe Brown Highway to the south, and the Forest Service property line just south of Unicoi Lakes road to the north.
2. Erosion Control Measures to ensure that the remediation efforts will remain intact during high volume rain storms. Take a look at recreation from a regional, cross boundary perspective.
3. Maintenance and Monitoring measures to ensure that trail segment is maintained in conditions that reflect similar historic conditions.

TRAIL TREAD REMEDIATION OF ADVERSE IMPACTS

This segment of the Trail of Tears, approximately 1.05 miles long currently has 36 constructed features that consist of water diversion berms or water bars and vehicular control features known as tank traps. These features were constructed without proper environmental analysis, and required consultation with the affected federally recognized Tribes, the Tennessee State Historic Preservation Office, the Advisory Council on Historic Preservation, and the National Park Service's National Trails. The constructed features are poorly designed and do not retain the historic character or show reverence for this sacred site. The physical characteristics of the historic trail consist of a 12 foot wide pathway that has become deeply entrenched over time by foot travel, livestock and wagon travel and motorized vehicular travel, as well as blading and logging by the previous landowner. The trail tread is currently at an elevation that is below what was historically experienced in 1838. It is not expected that the historic tread height be restored. There are historic road banks currently existing along both sides of the pathway in most locations.

The adverse impacts, consisting of large berms and dips vary in size but are approximately 15' to 18' wide and 20'-24' long. Constructed either by excavator or dozer blade, the dips were gouged into the roadway and berms pushed up to block the entire pathway often creating check dams that leave standing water in the dips behind the berms.

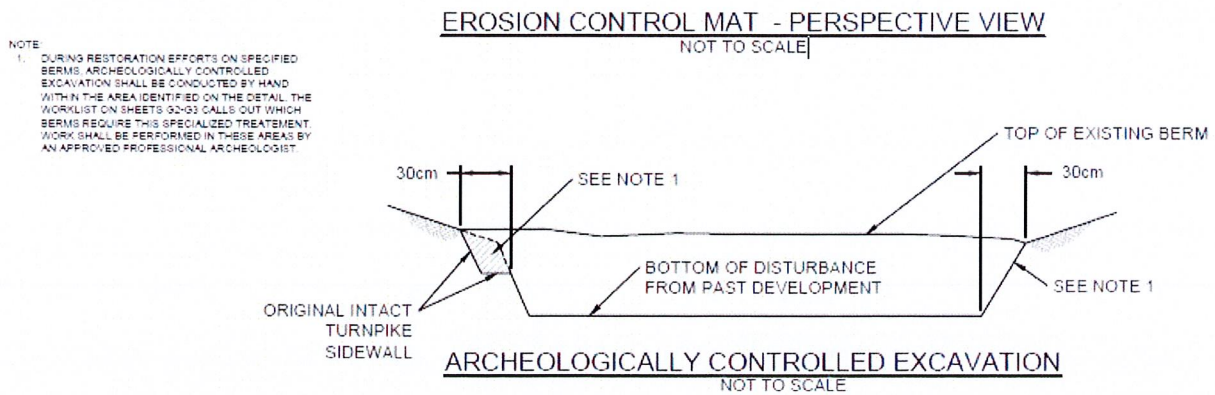
There is a need for some form of erosion control on this trail route, as it traverses slopes ranging from 5 to 10%. The entrenched nature of the roadway routes water directly down slope.

Archaeological Investigation and Data Recovery Prior to Trail Tread Remediation

The 2017 archaeological damage assessment report (Shumate and Riggs 2017: 47-48) identified eight berms in sensitive areas. Seven of these berms need to be removed using archaeological methods and representative sample (i.e. 10% of volume) will be screened for artifacts. These are berms 4, 5, 6, 7, 18, 19, 20, and 129. Berm 5, the eighth berm, will need to remain in place and be modified into a rolling dip feature in order to ensure proper erosion control on the trail tread (see Sheet 2 of engineered drawings). In addition, the 2017 archaeological damage assessment report identified the need to archaeologically control the re-exposure of the original Unicoi Turnpike sidewalls for the remaining 28 berms in those locations where one or both ends of berms are anchored against the sidewall(s). With the exception of berms 2, 9, 10, 14, 16, 27, and 33, a section (or sections) of the berm extending 30 centimeters from the original sidewall will be excavated archaeologically by hand to expose the original sidewalls and ensure no further impacts to the road banks will occur. Like berm 5, berms 2, 9, 10, 14, 16, 27, and 33 need to remain in place and be modified into a rolling dip feature.

This work is described in greater detail in a separate statement of work and will be performed by professional archaeologists and Tribal monitors under a separate agreement. Even with this archaeological pre-work, this trail tread remediation project still has the potential to adversely affect the National Register eligible Trail of Tears National Historic Trail / Unicoi Turnpike (40MR408) and four other archaeological sites located in and immediately adjacent to the trail

route. Stipulations in the signed Section 106 Memorandum of Agreement associated with this trail tread remediation project will serve as alternative mitigation for these potential adverse effects.



Other Archaeological and Cultural Considerations

Artifacts from a historic property was also found on a road spur in the area of berms 45, 46, and 47 (site 40MR734). Berms 45 and 46, located on a spur road leading off of the Trail of Tears / Unicoi Turnpike Trail are proposed for removal and remediation as they are within the line of sight of the trail (see Sheet 2 of engineered drawings). Site 40MR734 is a moderate density, pre-contact lithic scatter with an early 19th to early 20th Century large mining pit. According to the artifact inventories accompanying the archaeological damage assessment report and the separate Phase I survey report, no artifacts were recovered from the surface of berms 45 and 46 (Shumate and Riggs 2017; Patch et al. 2017). Therefore, berms 45 and 46 will not be sampled using archaeological methods, but they will be monitored during project implementation.

A professional archaeologist and Tribal monitor will be onsite to monitor and assist with the implementation of the trail tread remediation project. However, this project still has the potential to adversely affect the National Register eligible Trail of Tears National Historic Trail / Unicoi Turnpike (40MR408), and five other National Register eligible sites (40MR728, 40MR734, 40MR735, 40MR736, and 40MR744). Stipulations in the signed Section 106 Memorandum of Agreement associated with this trail tread remediation project will serve as alternative mitigation for these potential adverse effects.

Special precautions will be taken to avoid further damage to portions of the damaged Unicoi Turnpike / Trail of Tears containing historic trail sidewalls, particularly when using and turning small mechanized equipment.

All work will strictly comply with all Native American Graves Protection and Repatriation Act (NAGPRA) regulations as they apply to the inadvertent discovery of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony (43 CFR 10.4). Upon the inadvertent discovery of Native American human remains, the onsite Tribal monitor and professional archaeologist shall call a halt to all work in the immediate area, leave the human remains *in situ* but protected, and provide immediate telephone notification of the

discovery to the Trail of Tears Coordinator who will notify the Forest Archaeologist and Law Enforcement. No photographs of human remains shall be taken by anyone associated with the remediation project. Photography is only permitted by law enforcement or coroner, if required by state law. The Forest Archaeologist will immediately (within 24 hours) notify the consulting tribes via email and telephone of the discovery and begin consultation on the disposition of the human remains. Work associated with the remediation (including the archaeological data recovery work) will not continue in the immediate area until tribal consultation is complete and a plan for disposition/reinternment is in place. Depending on the find and results of Tribal consultation, it is possible that the entire trail remediation project will need to be re-evaluated.

Pit Dewatering and Tadpole Capture and Removal

Prior to implementing the remediation methods, it may be necessary to capture and relocate any wildlife from puddles in the pits that will be filled in. The wildlife biologist/technician shall address this situation with the appropriate best practices.

Roadbed Remediation Methods

The remediation proposal has two forms of temporary erosion control methods. Where it is possible to route the water off the roadway by “daylighting” the tread elevation out from the side banks without creating additional impacts to the intact historic road banks, a rolling drain dip will be used to route the water off the roadway. The berm material will be placed back into the dip above it to restore the grade of the roadway prior to the construction of the dip and berm. A gradual rolling dip will upslope with a gradual rise that will divert the water to the side while retaining a gentle rolling walkable surface. Rolling drain dips will be constructed to replace berm and dip features #2, 5, 9, 10, 14, 16, 27 and 33 See Drawing on Sheet D1- Roadbed Remediation-“Tank-Trap”/Berm Removal.

Table 1. Berms located directly on the Trail of Tears / Unicoi Turnpike

Berm Number	Remediation Measure Prescribed
2, 5, 9, 10, 14, 16, 27, and 33	Replace / modify berms into a gradual drainage / rolling dip feature (see Drain Dip Detail, D8 [Sheet 12 of 16] and Erosion Control Mat Installation, D6 [Sheet 10 of 16] in the engineering drawings in Appendix).
1, 3, 4, 6, 7, 8, 11, 12, 13, 15, 17, 18, 19, 129, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 34, and 35	Remove berms to restore the road bed by filling in the dip associated with each berm with the berm soil. Cover with temporary erosion control blanket then seed and mulch. Install straw wattles or straw bales immediately uphill and downhill of mulch to arrest runoff until vegetation takes hold to stabilize road bed.

Where it is not possible to divert water off the route, check dams will be constructed by installing erosion control wattles or straw bales across the entire width of the entrenched roadway. This will slow or stop the water depending on the amount of water being received, thus reducing the possibility of erosion to occur, as well as allowing sediment to settle behind the temporary structures.

This proposal addresses the erosion control needs along the route by replacing the existing features. There are no additional features proposed where existing features do not exist and no new disturbance will occur.

Some berms that occur on the side roads that spur off from the Trail of Tears route will be retained to control erosion. Because the features are in view of the Trail of Tears route, the berms will need to be cleaned up by leveling out the top of the existing berm and then by using mulch and seed to cover the contrasting soil color that draws attention to the berm. The berms that are not needed for erosion control returned back to the original grade, and the exposed soils will be protected by wattles and erosion control blanket material.

There are approximately 200 cubic yards of material that need to be moved, the equivalent of 20 dump trucks of material. Each berm contains an average of 4-7 cubic yards of compacted clay/loam soils. The use of a mini-excavator will be utilized to carefully take down the berms and fill the dips. The mini-excavator will not cross Peels Branch, however the per square inch (PSI) ground pressure of the mini-excavator (4.7 PSI) is less than that of an adult human male on foot (8 PSI). Precautions will be taken to avoid further damage to portions of the damaged Unicoi Turnpike / Trail of Tears containing historic trail sidewalls, particularly when using and turning small mechanized equipment.

Mini-excavator: Example 1



Mini-excavator: Example 2

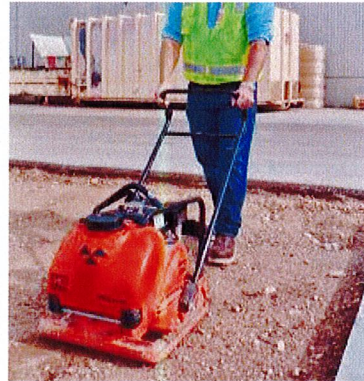


A small soil plate compactor will be used to compact the redeposited loose soils in layers of 4 to 6 inches during the process of taking down each berm. This will reduce erosion and washout of the newly redeposited soils during heavy rain events.

Soil Compactor: Example 1 1



Soil Compactor: Example 2



The placement of the erosion control wattles and blankets, seeding and mulching as well as bringing in dead wood can be done by members of the consulting Tribes and local community, supervised by a trails specialist.

Erosion Controls Measures

Bio-degradable straw or palm wattles will be placed at the upper edge of the impacted soil at each adverse impact site, and at the lower edge or toe of the berm. Wattles are recommended primarily to provide control on the newly disturbed areas from the removal of the berms. Straw bales are recommended where slopes merit the additional size and height would be warranted to slow the water and drop out the sediment.

Erosion control: wattle



Erosion control: straw bales



Bales are larger (taller and wider) and have more stability to handle a little larger flow. Where the original report recommended leaving berms, straw bales are recommended to replace berms while retaining similar function until vegetative grown can be established. See Drawings on Sheet D2-D4 Straw Bale Check Dam and Wattle Details.

Erosion control blankets or mulch will be placed to cover the entire roadway width from the upper wattle to the lower wattle to ensure that the exposed soil that has been replaced will not erode causing further damage. Erosion control blankets are recommended where the ground slope is 5% or greater and straw mulch for less than 5% grade.

Erosion Control: Blankets



Vegetation Remediation

Once the remediation of the road bed with rolling dips, and installing the erosion control measures is complete, the next steps are to address the non-native invasive plants (NNIP) and seed the project area with native species. NNIP treatments will be handled under a separate contract or agreement. NNIP treatments will include spot treatments (backpack sprayers of herbicide and hand tools) for some species such as sericea lespedeza (*Lespedeza cuneata*), privet (*Ligustrum sinense*), and autumn olive (*Eleagnus umbellata*), but may also require more mechanized equipment (mobile ground-based herbicide sprayer on a UTV) for larger infestations of Nepal grass (*Microstegium vimineum*) and kudzu (*Pueraria montana*). While some small infestations may be eliminated through a single treatment, larger infestations will require multiple herbicide treatments over several years. Kudzu infestations typically take several years to knock back to a “managed level,” and then require continued monitoring and follow-up spot treatments in subsequent years to keep an area free from re-colonization (Pistrang 2016).

The entirety of the APE will be seeded. The use of a native seed mix and seedling plugs along the outside edges (4’ on each side), while using a low growing seed mix in the walking “path” (a width of 4’ on the center line) will create a narrowing effect while not impacting the roadbed. Where erosion control blankets (ECBs) are used, seed shall be placed prior to placement of the ECBs. Live seedling plugs will be placed in areas near Peels Branch where moisture is sufficient for plantings. Seeding and plantings shall be directed by the Forest botanist/ecologist (Pistrang, 2016).

There may be situations where downed trees across or in the immediate vicinity of the trail, particularly near Peels Branch, need to be removed. The stumps or root wads at the side of the Trail route will be retained in the soil as to not further disturb any archaeological deposits. Then the tree trunks and branches will be cut up in pieces that can be removed by hand.

Restricting Motor Vehicle Usage

Currently, road closure gates are in place at both ends of the route. The road closure gate will be replaced with post and rail fencing with a turnstile type (kissing gate) access point. This structure is a permanent change that will create a barrier to vehicular use and yet provide inviting access for foot traffic. Boulders will be placed within the timber to discourage single track vehicular use as well. Signs will also be installed prohibiting motor vehicles. The pedestrian access fencing would be installed once the remediation effort is evaluated after two years, and is considered fully stabilized. Interpretive panels on the rail fencing, developed in consultation with the Tribes, SHPO, and NPS, would tell the story and give the visitor context to support and enhance the experience. See drawings on sheets D10 - D11 Sign Installation Details, Rail Post and Rail Fence. Fencing installation will be monitored by a professional archaeologist.

At the point where the Tennessee Valley Authority power line crosses the Trail of Tears a zig zag split rail fence will be placed on each side of the Trail of Tears, with a 16 foot opening in each side located at the center line of the TVA powerline right of way for TVA access along the right of way.

Zig-Zag Split Rail Fencing



TRAIL MONITORING AND MAINTENANCE POST IMPLEMENTATION

Required in this plan is a monitoring and maintenance cycle to ensure that the erosion control measures are working properly, and the closures are restricting vehicular use. Monitoring the erosion control measures would entail the following measures.

- Photo monitoring of placement and stability of the erosion control wattles and blankets
- Photo monitoring of any sediment displacement and deposition
- Evaluation of motor vehicle closure effectiveness

Monitoring Schedule and Recording Procedures

Initially protocols will need to be put into place for monitoring and maintenance strategies. Procedures will vary depending on what is being monitored and evaluated. However a monitoring schedule and reporting system can be developed for the full scope of monitoring requirements.

1. Establish a monitoring schedule related to the class schedule of tribal schools to include one monitoring rotation per term, i.e. fall, winter, spring, summer, as well as after storm events that have passed over the site.
2. Develop a digital monitoring form that photos and measurements can be captured and stored for further evaluation.

Placement and Stability of Erosion Control Elements

It is expected that some displacement of straw wattles and erosion control blankets may occur. Monitoring these temporary structures will be necessary. When displacement occurs the structures need to be secured before the next rain event.

Procedure:

1. Identify a location suitable for a visual examination of the structures at each feature. Establish a photo point via GPS, determine the height and angle of the photo, as well as the specifications related to photography standards such as dpi, color saturation etc.
2. Determine measurable triggering conditions that necessitate maintenance strategies.
3. Develop a communications procedure with the monitoring agents, and the Cherokee NF.
4. Establish maintenance response protocols that include securing the erosion control measures.

Maintenance of Temporary Structures

Maintaining the temporary erosion structures will likely entail very little work if the trail is closed during the remediation period. The structures are expected to be effective for two

years. In the event of a tremendous storm event, some structures may need to be re-staked back into place. If the structures are needed for a longer time period for full vegetation growth, then replacement would be required.

The erosion control blankets are also expected to be effective for two years. However, in places where mulch is utilized, there may need to be periodic replacement.

Sediment Displacement and Deposition

Sediment displacement and deposition is expected in various degrees along the route depending on the grade, soil types and vegetative cover. The acceptable degree of displacement and deposition needs to be determined. The development of rills is the beginning of erosion features that need to be addressed before progressing further. Deposition of sediment behind straw wattles is a sign of successful displacement management, but if the deposition is greater than expected, it can render the wattles ineffective. Measuring and evaluating both displacement and deposition is essential to the remediation effort.

Procedure:

1. Identify a location suitable for visual examination of the areas between each erosion control structure, and the area directly above/behind the straw wattles. Establish a photo point as identified above.
2. Measure depth and width of noticeable rills every two feet along the length of the rill. Record the measurements on the digital form, and compare with previous measurements and photos.
3. Determine measurable triggering conditions that necessitate additional temporary erosion control measures.

Temporary Erosion Control Measures

Rills and small gullies can be addressed with additional wattles installed where needed.

Evaluation of Motor Vehicle Closure Effectiveness

Vehicular use may occur if the closures become ineffective. Other means of addressing prohibited vehicular use should include education and interpretation. Interpretation of the site should be used to increase the value and care of the site.

Develop interpretive messages with the Tribes. These messages should be used for interpretive panels, educational segments in local schools, and at other events.

Vehicular use is prohibited to maintain the historical nature of the trail, and to conserve the trail tread. Monitoring for vehicular use is as simple as looking for tire tracks and identifying what type of vehicle by the width of the tracks and the width between the tracks. Monitoring the condition of the closures should also take place to determine maintenance needs.

Procedure:

1. Visually survey the route, looking for tire tracks. Take photos of the tracks using a yard stick to determine scale and width of the tracks.
2. Identify any soil displacement caused by vehicular use such as ruts or kicking soil out of place.
3. Identify compaction by measuring the depth of the tire tracks every 12' and taking an average depth. Record photos and measurements on the digital form.
4. Tire tracks is an indicator of closure failure, and require steps to remedy the failure. Identify where the vehicle entered and how it was possible.
5. Take photos of the closure gate to determine damage, displacement or failure to close.
6. Look for evidence of entering the site other than through the closures and take photos of the entry location.

Closure Repair

Road closure fencing should be periodically inspected for stability and soundness. Damage should be repaired within a week of notification.

Walking Surface and Potential Erosion

A walking path will not be constructed on the roadway, but it is expected that a trail/path may be created by users. It may be that use may cause soil disturbance and potentially erosion. This shall be a monitoring item to be evaluated on a yearly basis. If areas of disturbance are occurring, then hardening the areas may need to be considered.

Condition of Cultural Resources

The trail itself is a cultural resource and significant historic property. In addition there are five known archaeological sites within or immediately adjacent to the trail bed. It is possible that erosion, burrowing animals and insects, unauthorized vehicular use, etc. could expose artifacts and/or impact those portions of the historic trail with intact sidewalls.

Procedure:

1. A professional archaeologist should lead this portion of the monitoring efforts.
2. Establish photography datum points focused on the sidewalls of the entrenched portions of the historic trail at the locations of Berms 4, 5, 6, 7, and in the area of the Peels Branch bottom Berms 18, 19, 20, and 129 as described in the report by Shumate and Riggs (2017) on pages 47, 25 (Figure 12), and 28-31 (Table 1).
 - a. Take photographs at these points of the sidewalls and creek bottom before, during, and immediately after trail remediation and provide to the consulting Tribes and SHPO.

- b. Take photographs at these points of the sidewalls and creek bottom every six months for a minimum of five years to assess condition and provide to the consulting Tribes and SHPO.
 - c. After five years, reassess the use of this procedure in consultation with the consulting Tribes, SHPO, and NPS.
 3. Visually inspect the trail bed and the sidewalls of the entrenched portions of this historic trail for any damage and/or displaced artifacts. Document any damage and displaced artifacts using archaeological methods for mapping and measuring disturbance and provide to the consulting Tribes and the SHPO.
 4. Collect and curate only diagnostic displaced artifacts.
 5. In consultation with the Tribes, SHPO, and NPS, determine measurable triggering conditions that necessitate additional stabilization measures and consultation under Section 106 of the National Historic Preservation Act.

DETERMINATION OF REMEDIATION

At a period of two years, the remediation effort will need to be evaluated as to whether further measures are needed.

Indicators of further maintenance and monitoring:

1. Areas where vegetation is not fully established
 - a. Bare soils
2. Areas where erosion is still occurring
 - a. Rilling
 - b. Gullies

All of the temporary erosion control elements are biodegradable and do not require removal.

Once the remediation is complete, no exposed soils are a potential erosion concern, the trail can be opened for pedestrian use.

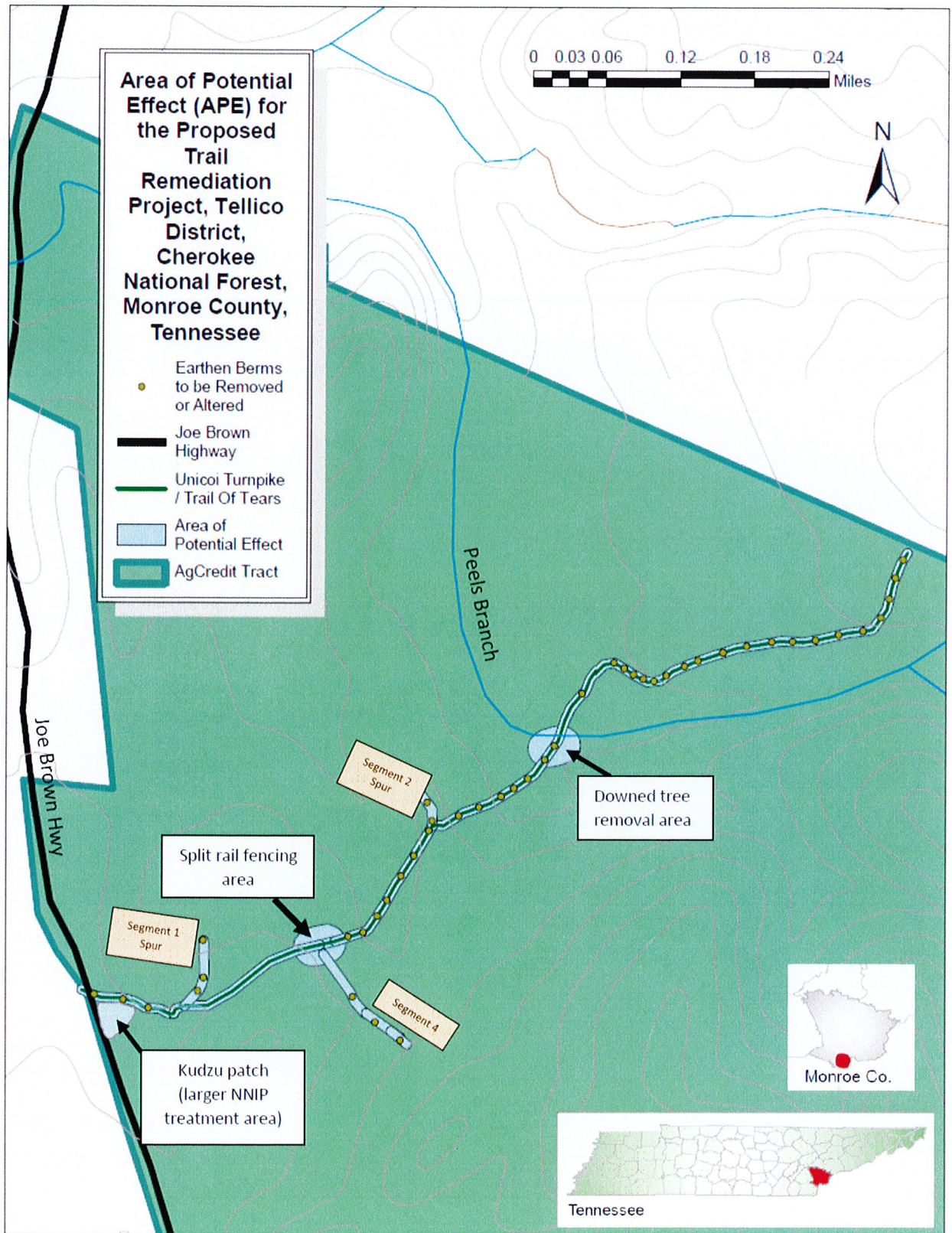
Engineering Drawings

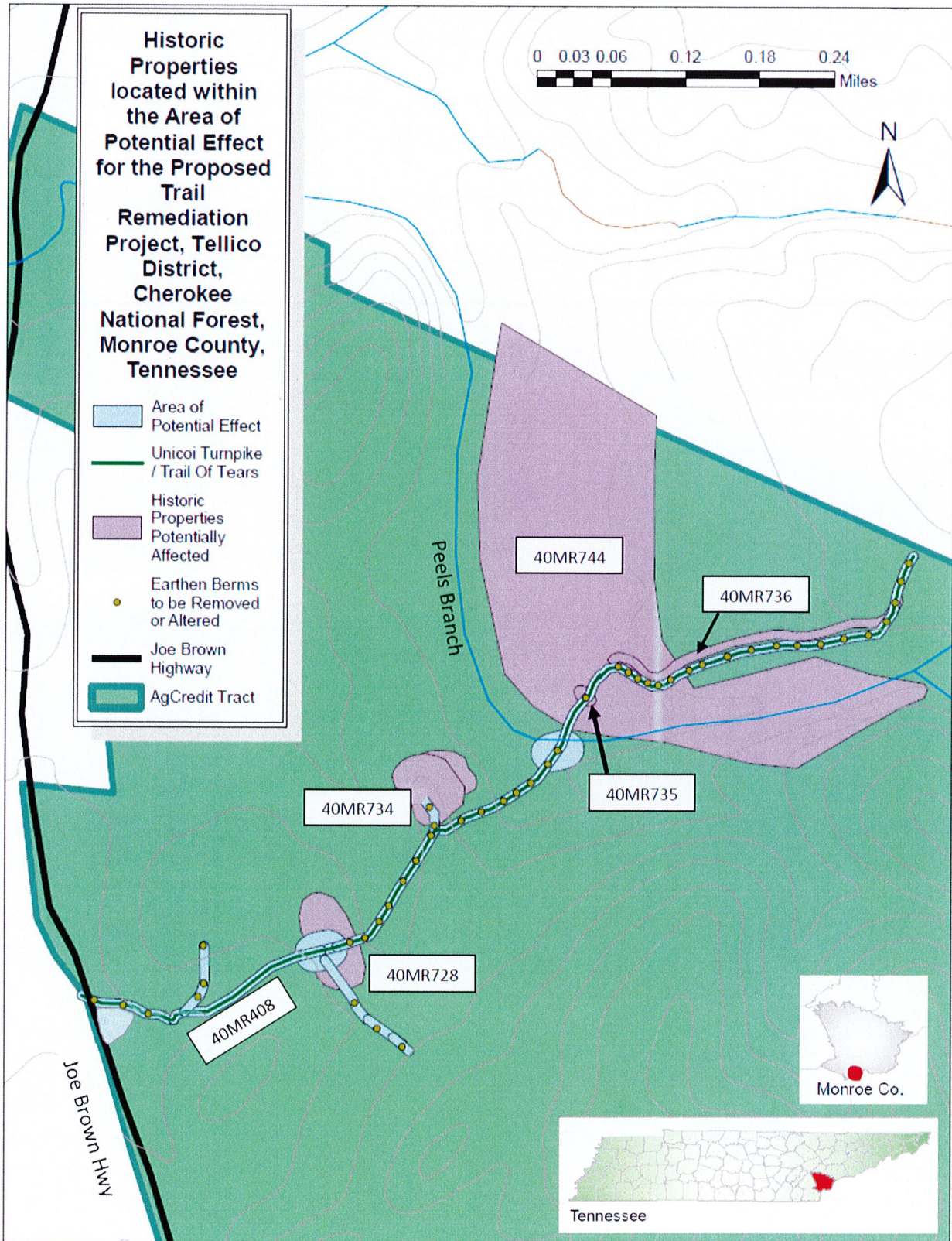
for Trail Remediation are in a Separate Document

ATTACHMENT B

Map of the Area of Potential Effect (APE) for the Trail Remediation Project







ATTACHMENT C

Operating Plan for Archaeological Support for Remediation of a Damaged Portion of the Trail of Tears National Historic Trail and Unicoi Turnpike on the Cherokee National Forest

OPERATING PLAN

FOR

**ARCHAEOLOGICAL SUPPORT FOR REMEDIATION OF
A DAMAGED PORTION OF THE TRAIL OF TEARS
NATIONAL HISTORIC TRAIL AND UNICOI TURNPIKE
ON THE CHEROKEE NATIONAL FOREST**

**USDA Forest Service
Southern Region, Regional Office**

1.0 Introduction

1.1 Required Reading – Background Information:

Shumate, Scott and Brett Riggs

2017 Archaeological Damage Assessment and Survey along a Portion of the Trail of Tears National Historic Trail, Tellico Ranger District, Cherokee National Forest, Monroe County, Tennessee. Report submitted to U.S. Forest Service, Southern Region.

U.S. Forest Service

2018 Trail of Tears, Trail Remediation for AgCredit, Region 8, Cherokee National Forest. A plan developed by the Forest Service Trails Enterprise Team.

1.2 Archaeological Investigation and Data Recovery Prior to Trail Tread Remediation

In the 2017 report titled “Archaeological Damage Assessment and Survey along a Portion of the Trail of Tears National Historic Trail, Tellico Ranger District, Cherokee National Forest, Monroe County, Tennessee (Shumate and Riggs 2017: 47-48) eight of the thirty-six berms located on the damaged portion of the Trail of Tears / Unicoi Turnpike in the AgCredit tract were identified as being located in sensitive areas. Seven of these berms need to be removed using archaeological methods, and a representative sample (i.e. 10% of volume) screened for artifacts. These are berms 4, 6, 7, 18, 19, 20, and 129 (see attached Figure 12 from Shumate and Riggs 2017:25). Berm 5, the eighth berm, will need to remain in place and be modified into a rolling dip feature in order to ensure proper erosion control on the trail tread. In addition, the 2017 archaeological damage assessment report identified the need to archaeologically control the re-exposure of the original Unicoi Turnpike sidewalls for the remaining 28 berms in those locations where one or both ends of berms are anchored against the sidewall(s). With the exception of berms 2, 9, 10, 14, 16, 27, and 33, a section (or sections) of the berm extending 30 centimeters from the original sidewall will be excavated archaeologically by hand to expose the original sidewalls and ensure no further impacts to the road banks will occur. Like berm 5, berms 2, 9, 10, 14, 16, 27, and 33 need to remain in place and be modified into a rolling dip feature by the Trails Enterprise Team.

- Sediments constituting berms 4, 6, 7, 18, 19, 20, and 129 potentially derive from archaeological site matrices and should be sampled for content. Professional archaeologists and Tribal monitors will hand excavate a cross section to the base of each of these berms, and will remove and screen 10% of the total berm volume to recover artifact content.
 - If this sample indicates substantial artifact content, with potential to inform with regard to site function, date of occupation or site structure, the remainder of the berm soils will be hand excavated and screen sorted for artifact recovery.
- The archaeologically excavated berm soils will be screened through ¼ inch hardware mesh adjacent to the hole corresponding with the berm, preparatory to refilling and soil compaction by the Trails Enterprise Team.

- 21 of the remaining berms will have the original Unicoi Turnpike sidewalls re-exposed by hand by professional archaeologists and Tribal monitors. These are berms 1, 3, 8, 11, 12, 13, 15, 17, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 34, and 35.
- This fieldwork needs to be completed at least one week (but no earlier than three weeks) prior to the trail tread remediation work to be performed by the Trails Enterprise Team.
- The modifications of berms 2, 5, 9, 10, 14, 16, 27, and 33 into rolling dip trail erosion control features needs to be monitored by professional archaeologists and Tribal monitors while the work is being performed by the Trails Enterprise Team.
- Tribal monitors will be on site during all phases of the work. All of the ten consulting Tribes will be given the opportunity to provide Tribal monitors for this project.

All work will strictly comply with all Native American Graves Protection and Repatriation Act (NAGPRA) regulations as they apply to the inadvertent discovery of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony (43 CFR 10.4). Upon the inadvertent discovery of Native American human remains, the onsite Tribal monitor and professional archaeologist shall call a halt to all work in the immediate area, leave the human remains *in situ* but protected, and provide immediate telephone notification of the discovery to the Trail of Tears Coordinator who will notify the Forest Archaeologist and Law Enforcement. No photographs of human remains shall be taken by anyone associated with the remediation project. Photography is only permitted by law enforcement or coroner, if required by state law. The Forest Archaeologist will immediately (within 24 hours) notify the consulting tribes via email and telephone of the discovery and begin consultation on the disposition of the human remains. Work associated with the remediation (including the archaeological data recovery work) will not continue in the immediate area until tribal consultation is complete and a plan for disposition/reinternment is in place.

Authority. The services performed under this Operating Plan / Scope of Work are initiated and influenced by a number of Federal requirements. These requirements include, but are not limited to National Historic Preservation Act of 1966, as amended (NHPA); the National Environmental Policy Act (NEPA); Executive Order 11593 (Protection and Enhancement of the Cultural Environment); the National Trails System Act; the Archeological and Historic Preservation Act of 1974; the Native American Graves Protection and Repatriation Act (NAGPRA); the Archeological Resources Protection Act Of 1979, as amended (ARPA); and Executive Order 13007 (Indian Sacred Sites).

2.0 General Requirements.

2.1 Prohibition on subsurface testing. With the exception of the berms themselves, no subsurface testing is permitted within the road/trail bed of 40Mr408 (the Trail of Tears) or within the area 20 meters from the edge of either side of the road/trail bed. Limit all ground disturbance to cleaning or dressing existing soil profiles within the road bed of 40Mr408 using a spade, shovel, or trowel.

2.2 Key Personnel. WCU shall assign to this project key personnel who meet the minimum criteria established in the Department of Interior's Guidelines for Professional Qualifications and/or Archeological Resources Protection Act of 1979 (as amended) and/or Office of Personnel

Managements X-118 Qualifications. The proposal must include full curriculum vitae for the Principal Investigator and the Field Director in support of their academic qualifications and experience. If consultants have not been identified at the time of proposal, vitae on these positions may be omitted until such time as they are identified. Employment under the terms of this agreement for all individuals not identified at the time of the proposal is subject to approval of the U. S. Forest Service Program Manager (Program Manager).

During the performance of the agreement, WCU shall make no substitutions of personnel without prior approval of the Program Manager. WCU shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Program Manager. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Program Manager will notify WCU after receipt of all required information of the decision on substitutions. The agreement will be modified to reflect any approved changes of key personnel.

For all projects, WCU must insure all personnel performing the work meet the following:

- **Principal Investigator**: The minimum professional qualifications for the Principal Investigator are: 1) a graduate degree in anthropology with an archaeology emphasis; 2) demonstrated ability to carry out research to completion as evidenced by timely completion of previous contracts undertaken within the past three years and no current contracts which are past their completion dates; 3) one year of full-time professional experience in archaeological administration, research or management relevant to Southern Appalachian archeology; 4) supervisory field and analytical experience; 5) meet any current requirements of the appropriate State Historic Preservation Officer (SHPO) for a person functioning as a Principal Investigator;
- **Field Supervisors/Crew Chiefs**: A minimum of a bachelor's degree in anthropology, archaeology, history, or a closely related field with a minimum of six months general archaeological field experience including a field school *and* one year of previous field archeological supervisory experience conducting similar work;
- **Field or Laboratory Crew**: Completion of or satisfactory progress toward a bachelor's degree in anthropology, archeology, history or a closely related field, or six months previous experience in archeological field or laboratory work. Completion of an archeological field school is considered satisfactory qualification for an initial position (first archeological job) if that individual will be constantly supervised by a higher qualified individual;

2.3 Tribal Archaeologist / Tribal Archaeological Technician / Tribal Heritage Paraprofessional / Tribal Monitor / Tribal Cultural Specialist. An employee of one of the ten consulting Tribes will be incorporated into each field crew and on site during all fieldwork. WCU will bear the cost for the salary, travel, and per diem of this/these Tribal employees. Travel shall be IAW Federal Travel Regulations.

2.4 Tribal Consultation. *The Forest Service will conduct all government-to-government tribal consultation.* WCU shall **not** represent the U.S. Forest Service for purposes of tribal consultation.

2.5 Dissemination of Information. WCU shall await tribal consultation and consensus and written approval from the Regional Forester prior to disseminating any information resulting from this project to entities or individuals outside of the U.S. Forest Service.

2.6 Collections Treatment. All artifacts recovered from work performed under this agreement shall be treated in accordance with 36 CFR 79.4. WCU shall provide for and bear all costs associated with the preparation of artifacts and records for permanent curation of all materials, including any curation fees. WCU will service as the repository of all artifacts and associated records for this project. All curated artifacts and associated records remain the property of the U.S. Forest Service.

2.7 Ancillary Documents Disposition. All ancillary documents expressly associated with work performed under this agreement, such as, but not limited to, field notes, maps, drawings, photographs with negatives and/or digital media, or 3D laser scanning electronic files shall become the property of the Forest Service along with the artifact collections. In accordance with 36 CFR 79.4, WCU shall curate these materials with the artifact collections.

3.0 Deliverables.

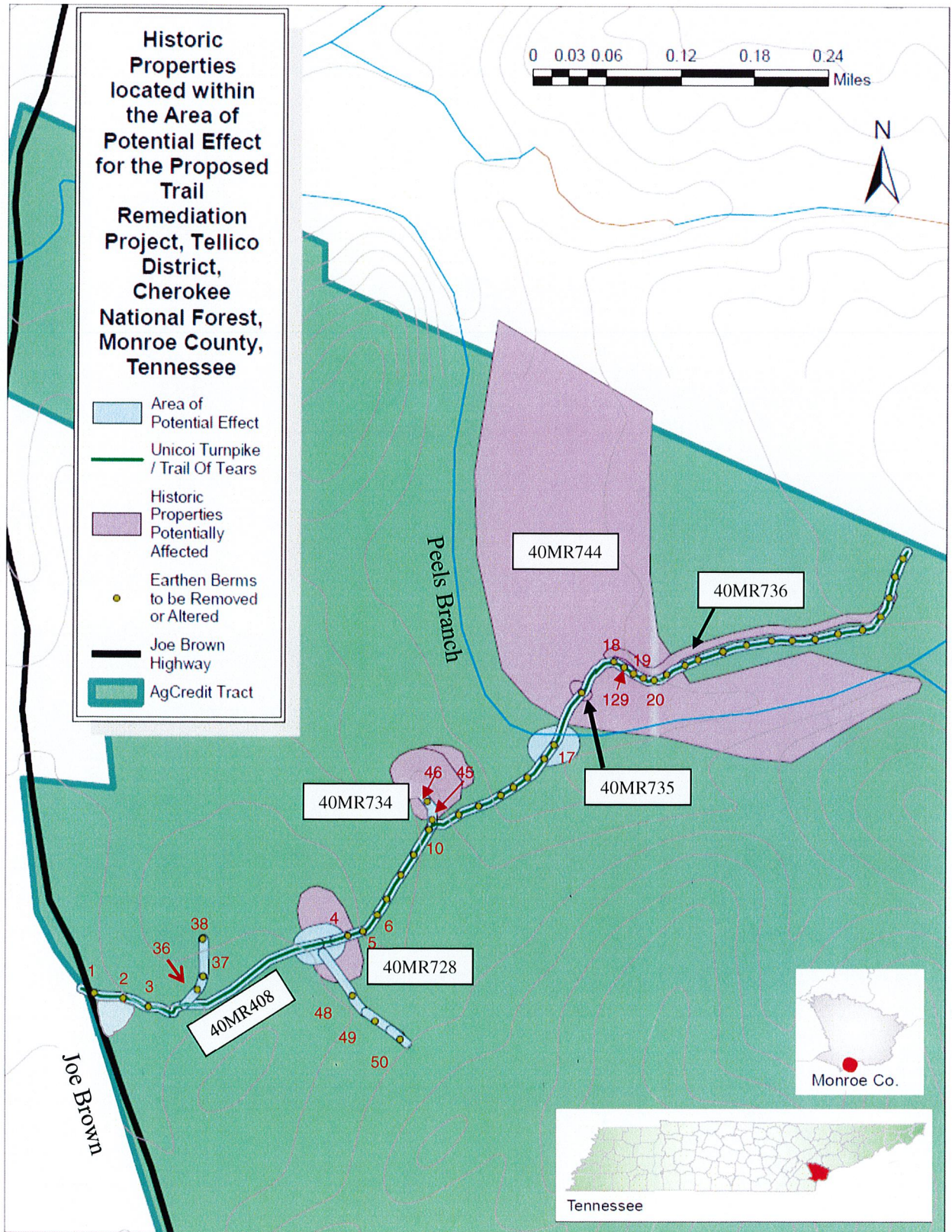
3.1 Draft Archaeological Report. WCU will provide the U.S. FOREST SERVICE one electronic version of the draft archaeological report for the project for review within six months of completing the fieldwork. After making edits suggested by the U.S. Forest Service, WCU shall submit five (5) paper copies and 1 electronic copy to the U.S. Forest Service (see COR for specific submittal addresses) to forward to the SHPO and consulting Tribes for review.

3.2 Final Archaeological Report. The final report (15 paper copies and 1 electronic copy) should be submitted within three months of receiving comments and edits from the U.S. Forest Service that were received from the consulting parties.

3.3 Indexed Photo Log. WCU will provide an indexed photo log of all digital and other photographs taken.

3.4 New and Updated Site Records. WCU will complete new and/or updated archaeological site records and submit them for review and approval to the Tennessee Division of Archaeology for all sites investigated during studies related to this Plan.

4.0 Confidential Nature of Information. WCU shall not divulge, and shall take all reasonable steps to ensure that no member of its staff or organization divulges, information on specific sites or their locations to any person other than a duly authorized representative of the Forest Service unless otherwise authorized in writing by the Regional Forester after consultation with the Federally recognized Cherokee and Creek tribes. The results of this research may be used for theses, dissertations, research projects, and papers and publications subject to the prior, written, approval of the Regional Forester after consultation with the federally recognized Cherokee and Creek tribes. Copies of reports may not be made accessible over the internet without first receiving written approval of the Regional Forester after consultation with the federally recognized Cherokee and Creek tribes to ensure that sensitive site locational information is not revealed.





Aerial view of AgCredit tract, Segment 1, Segment 1 Spur, Segment 2, Segment 2 Spur, C-1, with numbered berm locations indicated in yellow.

ATTACHMENT D
EBCI Treatment Guidelines for Human Remains and Funerary Objects

EBCI Treatment Guidelines for Human Remains and Funerary Objects (Survey, Excavation, Laboratory/Analysis, and Curation Guidelines)

It is the wish of the EBCI that whenever possible, human interments be left in situ, unstudied, and protected from current and future disturbance. However, when these parameters cannot be met, the following guidance shall apply:

Archeological Surveys: The EBCI requests that in the event human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered, no photographs of such items be taken. Detailed drawings are permissible, however.

Excavations: The EBCI requests that in the event human remains, funerary objects, sacred objects, or objects of cultural patrimony are encountered, no photographs of such items be taken. Detailed drawings are permissible, however. Also, if after consultation with the SHPO and culturally affiliated, federally recognized tribes, the lead agency determines that the excavation of these items is required, the EBCI requests that only the lead archaeologist and a physical anthropologist participate in the removal of these items. The EBCI also requests that, in the case of full excavation of human remains, the entire burial matrix be removed and curated for future reburial. Lastly, EBCI requests to be sent the proposals and research designs that will be provided to the SHPO and State Archaeologist for review and approval prior to the initiation of any excavation activities.

Laboratory Treatment/Analysis: The EBCI requests that any human remains, funerary objects, sacred objects, and/or objects of cultural patrimony not be unnecessarily washed or cleaned, and that only dry brushing be consistently used. Again, we request that no photographs be taken of such objects for documentation or curation purposes, however detailed drawings are acceptable. Furthermore, in terms of human remains, we require that no destructive analyses be permitted, and we would like to have discussions and agreements about the kind of analyses, if any, that will be permitted.

Curation: The EBCI requests that in all cases where it is remotely feasible, that human remains, associated funerary objects, and the burial matrix be stored together. Furthermore, we ask that these type of objects, as well as sacred objects and objects of cultural patrimony, be removed from public viewing or public handling and that researchers not automatically be granted access to such items. Research requests should be submitted to the EBCI Cultural Resources office in the event someone wishes to study such items.

Avoidance/Preservation in Place/Excavation/Reburial: Remember, our preference is always avoidance/preservation in place. Unless there are very good reasons as to why this is not possible, we will not immediately enter into discussions of excavation, removal, study, reburial, etc. That being said, if remains must be moved, it is always our preference that they be out of the ground for only as long as it takes to move them to their new resting place, which should be as close to the original resting place as possible (within line of sight). Sometimes, we do allow minimal study of the remains, especially if it can be done with the remains in situ. If longer study is needed, we prefer a field lab to sending them off some distance to be studied in a lab. The bottom line is that the less time they are exposed to the air, the better it is for the people involved and the Tribe. If reburial is the only option, the most efficient/time sensitive reburial process is preferred. Also, capping of the burials is not typically problematic, especially if there is ample fill dirt between the individual and the foreign capping material.