

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE**  
**U.S. ARMY CORPS OF ENGINEERS AND THE**  
**AMERICAN CHESTNUT FOUNDATION**

**I. PURPOSE**

This Memorandum of Understanding (MOU) establishes a framework by which the U.S. Army Corps of Engineers (USACE) and The American Chestnut Foundation (TACF) agree to coordinate their respective efforts and work cooperatively to restore American chestnut (hereinafter sometimes referred to as "AC") by studying and evaluating the planting of AC seedlings on USACE lands. American chestnut was historically a major component of eastern hardwood forests from Maine to Georgia, and from the Piedmont to the Ohio Valley and the Great Lakes region. The tree succumbed by 1950 as a result of the introduction of *Chryphonectria parasitica*, an exotic fungus, in the 1900s. Currently, only sprouts are found within its range. The USACE and TACF believe that it is in the best interests of the American people to cooperate in AC restoration efforts which will be continued until termination by either party in writing.

**II. AUTHORITIES**

USACE enters into this agreement and any subsequent agreements with TACF pursuant to the provisions of 33 U.S.C. §2328, 33 U.S.C. §2325, 16 U.S.C. §460d, and the general administrative authority of the Secretary of the Army to enter into leases and licenses of real property.

**III. THE PARTIES**

A. The USACE is the steward of nearly 12 million acres of public lands and waters at water resources development projects. The mission of the stewardship program is to manage and conserve natural resources consistent with ecosystem management principles and project purposes, while providing quality public outdoor recreation experiences to serve the needs of present and future generations. The management of natural resources by utilizing a stewardship concept ensures the conservation, preservation, or protection of USACE land and water resources.

B. The TACF is a Virginia-based not-for-profit corporation with one overarching goal, namely "the restoration of the American chestnut throughout the forests of the eastern United States." TACF desires to use USACE lands to test and evaluate the results of its breeding program for use in restoration across the former native range of chestnut. TACF believes that the breeding of disease resistant chestnut material, that otherwise has all the superior characteristics of the American chestnut, to the eastern hardwood forest within the tree's native range through scientific research and breeding of blight resistant trees may take 100 years or

more. TACF is very concerned about insuring its efforts result in chestnut material that, while disease resistant, is essentially "American chestnut" in character and in ability to survive and flourish in the forests of the United States. Accordingly, TACF is taking a number of steps to test its materials on a long-term basis.

#### **IV. RESPONSIBILITIES**

A. The USACE, subject to the availability of funds and in accordance with applicable laws, regulations, and Army policies, will seek to:

1. Subject to the approval of the USACE District Engineer responsible for administering the designated lands, USACE will strive to make USACE managed lands available for the furtherance of this project.
2. Ensure that activities such as planting comply with all environmental laws and regulations and are in accordance with approved NEPA documents. Environmental analysis for AC planting will be incorporated and developed in conjunction with other management activities.
3. Assist TACF by planning, implementing and monitoring of project or research work undertaken pursuant to subsequent implementing agreements, licenses, leases or other real estate instruments entered into under this MOU.

B. The TACF, subject to the availability of resources and in accordance with applicable laws and TACF policies will seek to:

1. Provide material (chestnuts, seedlings, and/or pollen or other propagules) from resistant or potentially resistant American chestnut trees for use in evaluating products of TACF's chestnut breeding efforts for possible eventual use in restoration efforts on USACE lands.
2. Periodically, meet with representatives of USACE to review projects and agree on guidelines for new activities to meet the purposes of this MOU.
3. Make available to the Corps the list of project proposals using USACEs lands and develop strategies to work together on these projects.
4. Provide an interim report of accomplishments by July 1 of each year and a final report of accomplishments by November 15.

## **V. IMPLEMENTING ARRANGEMENTS**

A. The USACE and TACF understand and agree that separate agreements with local projects will identify the processes and procedures for planting and nursery level care.

B. The details and terms of all proposed projects under this MOU will be established in written implementing arrangements entered into as determined appropriate by the District Commander responsible for administering the designated lands.

C. Implementing arrangements will be in accordance with chapters 9-12, as applicable, of ER 1130-2-500 and EP 1130-2-500. Further, the TACF may be granted a license or other real estate interest, as appropriate, in accordance with ER 405-1-12.

## **VI. MUTUAL UNDERSTANDINGS**

A. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds or transfer of anything of value between TACF and the USACE will be handled in accordance with applicable laws, regulations, and procedures. Any such endeavor shall be made in writing in a separate document and shall be independently authorized by appropriate statutory authority. Furthermore, this MOU does not provide such authority.

B. All chestnut materials planted on USACE lands will become USACE property. However, USACE understands and agrees that none of the chestnut materials will be sold, offered for sale, given (by gift or otherwise), or in any manner transferred or distributed to any third party without first being covered by a specific written consent from TACF.

C. This MOU may be modified or amended by mutual agreement of each Party in writing.

D. This MOU may be terminated at any time by mutual written agreement of the Parties, or by each party upon 30 calendar day's written notice to the other Party. Otherwise, this MOU will remain in effect indefinitely. Upon termination of this MOU by either party, the USACE will negotiate with TACF removal or destruction of chestnut material that TACF believes is necessary to protect its rights toward restoration of AC in forests of the eastern United States. The USACE will allow TACF enough time (up to 545 days or as much thereof as is determined by TACF to be necessary) following the date of termination to remove and/or destroy any chestnut material deemed necessary. The right of removal will include the access to USACE projects lands necessary to remove the trees planted as a result of this MOU.

E. This MOU in no way restricts the Parties from participating with other Federal, State, and/or private interests or from accepting contributions for the improvement, development, administration, operation, and maintenance of TACF areas on USACE project lands.

F. Nothing in this MOU shall be construed as affording TACF preferential treatment, exclusive rights, or privileges. Specifically, this MOU does not establish authority for

noncompetitive award to TACF of any contract or other agreement. Any contract for any services must fully comply with all applicable requirements for competition. Further, nothing in this MOU shall be construed as an official endorsement of TACF, its policies, or practices by the U.S. Department of the Army or by the USACE.

**VI. POINTS OF CONTACT**

The following individuals will be the points of contact for this MOU:

**THE AMERICAN CHESTNUT FOUNDATION**

Bryan Burhans  
President & CEO  
160 Zillicoa Street, Suite D  
Asheville, NC 28801  
828.281.47

**US ARMY CORPS OF ENGINEERS**

Elizabeth A. Kimmerly  
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441 G St., NW  
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202.761.4704

**VII. EFFECTIVE DATE**

The Parties have executed this MOU as of the last date indicated below.

**THE AMERICAN CHESTNUT FOUNDATION**

**US ARMY CORPS OF ENGINEERS**



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BRYAN BURHANS  
PRESIDENT & CEO  
THE AMERICAN CHESTNUT FOUNDATION



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MG MERDITH W.B. TEMPLE  
MAJOR GENERAL, US ARMY  
DEPUTY COMMANDING GENERAL  
FOR CIVIL AND EMERGENCY OPERATIONS

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