

Chickamauga and Chattanooga
National Military Park
Georgia and Tennessee

National Park Service
U.S. Department of the Interior



PROPOSED BICYCLE USE JACKSON GAP AND JOHN SMARTT TRAILS



Environmental Assessment

DRAFT • May • 2019

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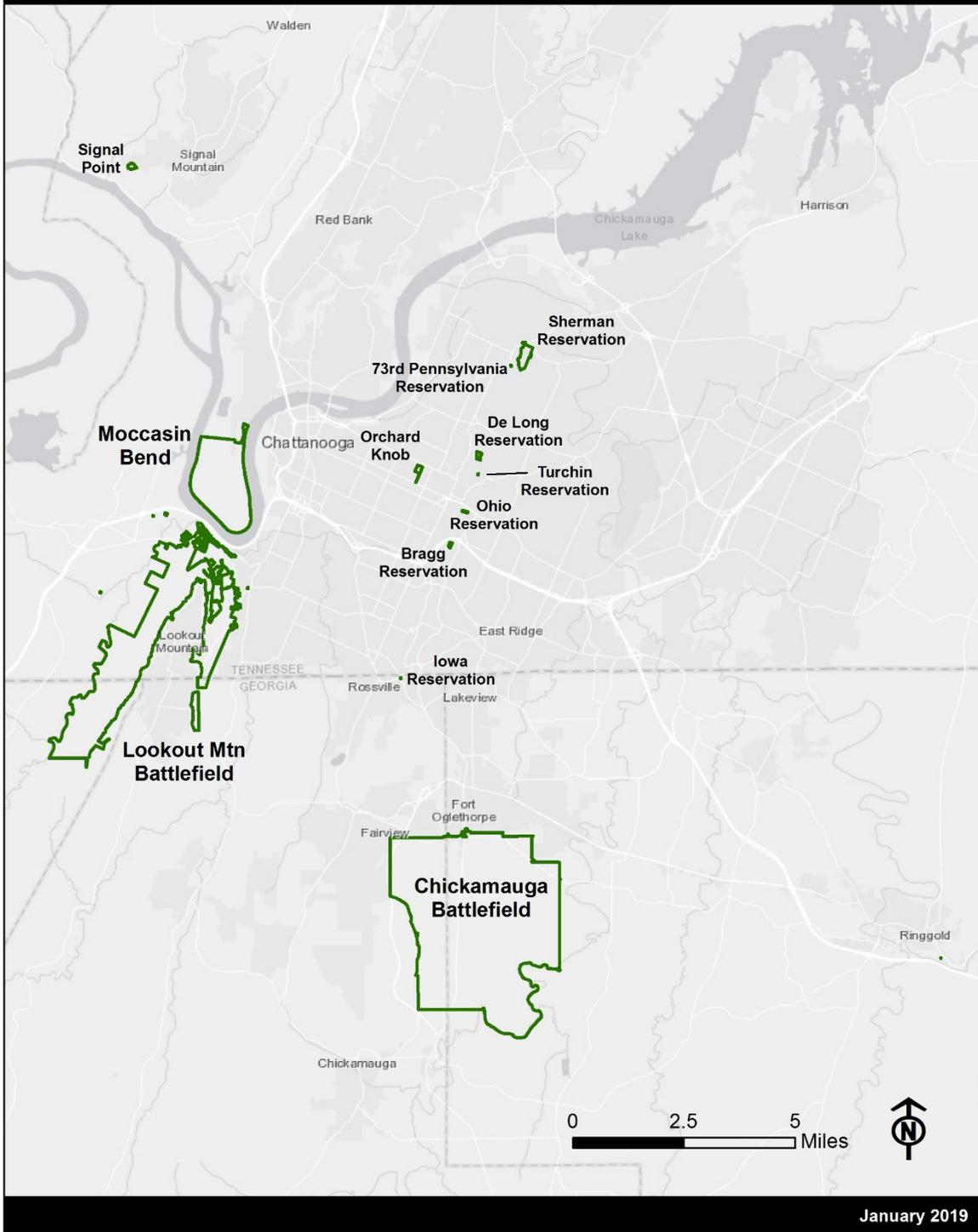
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National Military Park
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Chickamauga & Chattanooga National Military Park

National Park Service
U.S. Department of the Interior



January 2019

Figure 1

PURPOSE AND NEED FOR ACTION AND ISSUES ANALYZED

INTRODUCTION

This Environmental Assessment (EA) was prepared in accordance with the National Environmental Policy Act (NEPA) and implementing regulations, 40 CFR Parts 1500-1508; the NPS Director's Order 12 (DO-12) and NPS NEPA Handbook. Compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, is being conducted concurrently with the NEPA process. This EA is intended to be a concise public document that:

- Briefly provides sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI);
- Aids the NPS compliance with NEPA when no environmental impact statement is necessary;
- Facilitates preparation of an EIS, when one is necessary;
- Includes a list of agencies and persons consulted in preparation of the EA;
- Briefly discusses the need for the proposal, the alternatives to recommended courses of action (40 CFR 1507.2(d)), the environmental impacts of the proposed action, and the alternatives and the recommended and required mitigation of unacceptable impacts.

Chickamauga and Chattanooga National Military Park (park) was established by Congress in 1890 as the country's first national park set aside for its historic significance. At over 9,000 acres, it is also the largest federally protected Civil War battlefield, encompassing multiple units along the Tennessee–Georgia border and containing nearly 1,500 commemorative features such as monuments, markers, and tablets. The park is located in Catoosa, Dade, and Walker Counties in Georgia, and Hamilton County in Tennessee. The park received over 900,000 recreational visits during 2018 and has averaged around 1 million visitors in recent years.

Lookout Mountain Battlefield is the park's second-largest park unit, consisting of approximately 3,345 acres located predominantly in Hamilton County, Tennessee, with contiguous acreage extending south into Dade and Walker counties, Georgia. In 2015, the park completed the Lookout Mountain Battlefield General Management Plan Amendment (GMPA) and EA. During the scoping period for the GMPA, the park received a request to open the Jackson Gap Trail and upper section of the John Smartt Trail to bicycle use for connectivity to the regional trail system. Public comments received during the GMPA supported bicycle use on these two trails.

Currently bicycle use in Lookout Mountain Battlefield is limited to the Upper Truck Trail, which connects the park to the regional trail system on the Tennessee side of the park. The Upper Truck Trail connects to the Jackson Gap and John Smartt trails in the park; these trails connect to the regional trail system in Georgia. Currently the Jackson Gap and John Smartt trails

are open to hikers only. Bicyclists on the Upper Truck Trail essentially reach a dead end, requiring them to turn around and exit the park on the Tennessee side, or hike their bikes up the John Smartt and Jackson Gap trail to exit the park on the Georgia side. Currently only hikers have access through the park to the regional trail system in both Georgia and Tennessee. The park has received requests from stakeholders for bicycle access, through the park, to the regional trail system in Tennessee and Georgia.

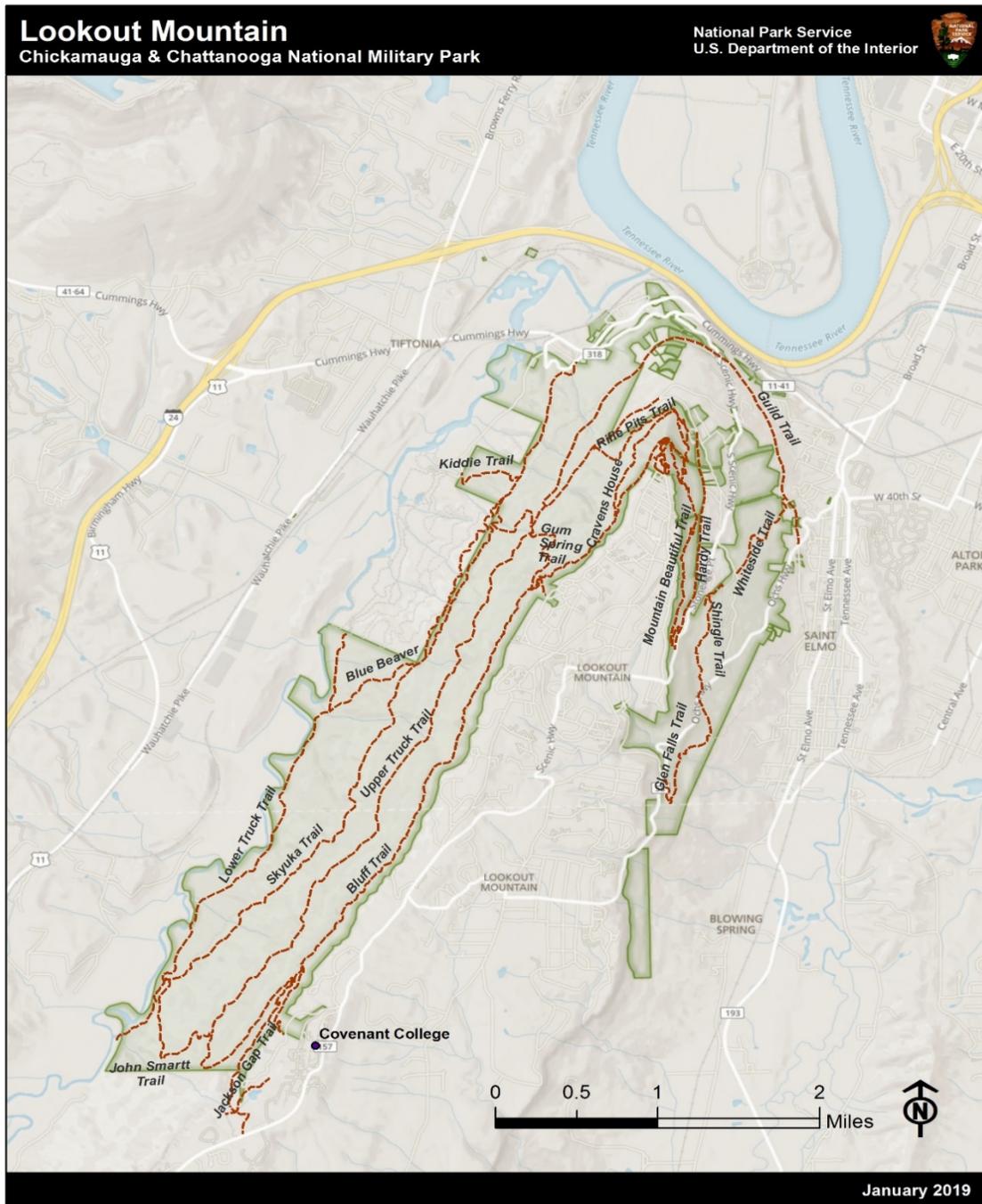


Figure 2

PURPOSE AND NEED FOR ACTION

The purpose of this EA is to evaluate whether to allow mountain bicycle use on the Jackson Gap Trail and the upper section of the John Smartt Trail within the park and whether such use can be accommodated without causing harm to park resources or conflicts among users. The Jackson Gap and John Smartt trails are located in the southeast section of Lookout Mountain Battlefield, adjacent to the boundary of the Covenant College campus. The regional multi-use trail system connects to the Jackson Gap Trail at the southern boundary of the park, which continues approximately 0.90 mile to the three-way intersection of Jackson Gap, Bluff and John Smartt trails. The John Smartt Trail continues for approximately one mile until its intersection with the Upper Truck multi-use trail. The Jackson Gap and John Smartt trails combined are a total of 1.91 miles. The trails are located in Dade County, Georgia and are part of the Lookout Mountain Battlefield Trail System.

The Jackson Gap and John Smartt trails are existing, well-constructed hiking trails within a natural zone of the park. They are single track with a width of 2-4 feet and have a natural trail surface. These trails have existed for many decades in good condition without a high frequency of maintenance. Other than infrequent maintenance to the trails, it is believed by current park staff that there have not been any ground-disturbing activities to this area of the park since the development of the trails in the 1930s.

The park receives ongoing feedback regarding its trail network. The park has received multiple requests to allow biking on park trails and specifically on the Jackson Gap Trail and the upper section of the John Smartt Trail. These requests have been made in person over the past several years. In response to the ongoing feedback and requests from the public, the park initiated this EA to consider opening the Jackson Gap Trail and part of the John Smartt Trail to bicycle use.

The proposed designation is consistent with the Lookout Mountain Battlefield GMPA, and the Jackson Gap Multiuse-Conversion Plan 2016, developed in partnership with the park, the Chattanooga chapter of the Southern Off Road Bicycle Association (SORBA) and Lookout Mountain Conservancy. The stakeholders envision the park as a critical centerpiece in a growing regional trail system that allows mountain bikers to ride from Chattanooga, Tennessee, to Cloudland Canyon State Park in Georgia. Currently only hikers have access to the full length of this two-state trail.

Bicyclists can access the Upper Truck Trail from the Guild Trail, which is part of this regional bicycle trail system owned by the Lookout Mountain Conservancy in Chattanooga, Tennessee. However, when they reach the end of the Upper Truck Trail, they must turn around and exit the park where they entered.

Mountain bikers starting at Cloudland Canyon State Park on the regional trail system in Georgia can ride from that park, along the Cloudland Connector Trail, to Nick-a-jack Road, to Hinkle Road, to Lulu Lake Road, to the Chattanooga Connector Trail. Currently, the Chattanooga Connector Trail terminates at Covenant College in Walker County, Georgia, on the park boundary. Covenant College recently constructed a trail on its property that links the

Chattanooga Connector with the Jackson Gap Trail. If bicycle access were allowed on the Jackson Gap Trail and the upper portion of the John Smartt Trail, riders would be able to ride the entire 21 miles from Cloudland Canyon State Park to Chattanooga, Tennessee.

In accordance with 36 CFR 4.30 (see Appendix A) the park superintendent may authorize by designation bicycle use on a hiking or horse trail that currently exists on the ground and does not require any construction or significant modification to accommodate bicycles. This EA has been prepared in support of this potential designation on the Jackson Gap and John Smartt trails.

At the conclusion of the EA and Section 106 process, if the NPS determines that no significant impact would occur with implementation of the bike rule, the Regional Director will sign a Finding of No Significant Impact. If the Regional Director determines that the addition of bicycle use on the Jackson Gap Trail and the upper section of the John Smartt Trail is consistent with the protection of the park area's natural, scenic and aesthetic values, safety considerations and management objectives, and would not disturb wildlife or park resources, then a special regulation would be promulgated that would authorize bicycle use. The process for promulgating a special regulation is called "rulemaking." The rulemaking process would immediately follow completion of the EA and Section 106 process. A description of the complete rulemaking process can be found in Appendix A.

ISSUES ANALYZED IN THIS ENVIRONMENTAL ASSESSMENT

This section identifies the impact topics that could be affected by the alternatives. Impact topics were derived from issues identified during internal and public scoping. The issues relevant to the proposed action were identified through evaluation of the proposed action with respect to the potential direct and indirect impacts to park resources as directed by the Department of Interior, Department Manual, Part 516 (DM 516), NPS Management Policies (NPS 2006), and NPS, DO-12 and NPS NEPA Handbook. When determining whether to retain an issue for more detailed analysis in the EA, the interdisciplinary team considered, among other things, whether or not:

- The environmental impacts associated with the issue are central to the proposal or of critical importance;
- A detailed analysis of environmental impact related to the issue is necessary to make a reasoned choice between alternatives;
- The environmental impacts associated with the issue are a big point of contention among the public or other agencies; or
- There are potentially significant impacts to resources associated with the issue.

Ultimately, it is important for decision makers and the public to understand the impact each of the alternatives considered would have on specific resources. Therefore, the NPS uses "impact topics" as headings to indicate which resources would be affected and to organize the discussion of the affected environment and environmental consequences section.

Impacts Topics carried forward for analysis in the EA include:

- Soils – The proposed actions in this EA have the potential to impact soils in the project area.
- Vegetation – The proposed actions in this EA have the potential to impact vegetation.
- Historic Structures – The proposed actions in this EA have the potential to impact historic structures in the project area.

IMPACT TOPICS CONSIDERED BUT DISMISSED

This section explains why some impact topics were not evaluated in more detail. Impact topics were dismissed from further evaluation either because the resource does not occur in the area or because implementing the alternatives would have no effect or only a negligible or minor effect on the resource or value. Negligible or minor effects are defined as follows:

- An effect would be negligible if the impact on the resource would be so small that it would not be detectable or measurable.
- A minor effect would be detectable or measurable, but would be of little importance.

Because there would be negligible or minor effects on the dismissed impact topics, an alternative's contribution toward cumulative effects for dismissed topics would be low or absent.

Air Quality

The proposed action and alternatives would not affect the attainment status of the airshed that encompasses the park and would not affect the airshed designation. This impact topic was therefore, dismissed from further analysis.

Ecologically Critical Areas or Other Unique Natural Resources

The proposed action and its alternatives being considered would not affect any designated ecologically critical areas, wild and scenic rivers, or other unique natural resources, as referenced in the Wild and Scenic Rivers Act, NPS Management Policies 2006, 40 Code of Federal Regulations [CFR] 1508.27, or the 62 criteria for national natural landmarks. Therefore, the topic was not retained for further analysis.

Floodplains

The proposed action does not involve development in the floodplain or modifications that could adversely affect the natural resources and functions of floodplains or increase flood risks. Therefore, a floodplains statement of findings is not required (Director's Order #77-2).

Water Quality

There are no surface waters within the project area. Therefore, water quality was not retained for further analysis.

Special Status Species

The Endangered Species Act of 1973 requires examination of impacts to all federally listed threatened, endangered, and candidate species. Section 7 of the Endangered Species Act requires all federal agencies to consult with the U.S. Fish and Wildlife Service to ensure that any action authorized, funded, or carried out by the agency does not jeopardize the continued existence of listed species or critical habitats. In addition, NPS Management Policies 2006 and Director's Order #77 Natural Resources Management Guidelines require the NPS to examine the impacts to federal candidate species, as well as state listed threatened, endangered, candidate, rare, declining, and sensitive species. Neither park records nor field surveys identified any individual species and/or habitat for any of the known special status species with the potential to occur within the vicinity of the project area. The U.S. Fish and Wildlife Service was consulted and determined the proposed action is not expected to significantly impact fish and wildlife resources under the jurisdiction of the U.S. Fish and Wildlife Service. Therefore, special status species were not retained for detailed analysis.

Cultural Landscapes

According to the NPS' Director's Order 28: Cultural Resource Management (NPS 1998), a cultural landscape is a reflection of human adaptation and use of natural resources and is often expressed in the way land is organized and divided, patterns of settlement, land use, systems of circulation, and the types of structures that are built. The character of a cultural landscape is defined both by physical materials, such as roads, buildings, walls, and vegetation, and by use reflecting cultural values and traditions.

According to the NPS cultural landscapes inventory database, no cultural landscapes have been identified within the project area. Therefore, cultural landscapes were dismissed from further analysis.

Museum Collections

Museum collections (prehistoric and historic objects, artifacts, works of art, archival material, and natural history specimens) would be unaffected by the implementation of either alternative. The park's museum collections would continue to be acquired, accessioned/cataloged, preserved, protected, and made available for access and use according to NPS standards and guidelines. Therefore, museum collections were dismissed as an impact topic.

Archeology

The Southeast Archeological Center (SEAC) conducted shovel test surveys and a metal detector survey within the area of potential effect and determined there was no potential for significant archeological resources to be harmed. Therefore, archeology was dismissed from further consideration.

Geology

The bedrock would not be disturbed by the proposed action or alternatives. This near-surface project would not alter any geologic features, and site geology would not affect implementation of the project. Therefore, geology was dismissed from further consideration.

Energy Requirements and Conservation Potential

The NPS reduces energy costs, eliminates waste, and conserves energy resources by using energy-efficient and cost-effective technology. Energy efficiency is incorporated into the decision-making process during the design and acquisition of buildings, facilities, and transportation systems that emphasize the use of renewable energy sources. Under any alternative, the NPS would continue to implement its policies of reducing costs, eliminating waste, and conserving resources by using energy-efficient and cost-effective technology (NPS 2006b). The proposed alternatives would not appreciably change the park's short or long-term energy use or conservation practices. The proposed action and alternatives would not result in detectable changes in energy consumption at a local or regional level; therefore, this impact topic was dismissed from detailed evaluation.

Socioeconomics

Section 1508.8 of the Council on Environmental Quality (1978) guidelines for implementing the National Environmental Policy Act establishes that "effects" include "ecological, aesthetic, historic, cultural, economic, social, or health." However, section 1508.14 clarifies that economic and social effects need to be considered only when they are interrelated with natural or physical environmental components regarding effects on the broader "human environment."

Socioeconomics were eliminated from detailed consideration because the alternatives would involve a minor effect in the economic and social conditions of Dade and Walker Counties in Georgia and neighboring Hamilton County, Tennessee, as more people use the trail.

Natural or Depletable Resource Requirements and Conservation Potential

As directed by NPS Management Policies 2006 (NPS 2006b), the NPS strives to minimize the short- and long-term environmental impacts of development and other activities through resource conservation, recycling, waste minimization, and the use of energy efficient and ecologically responsible materials and techniques. The proposed alternatives would not change the park's overall energy consumption, use of nonrenewable (depletable) resources, or conservation potential. Thus, this topic was eliminated from further analysis.

Wildlife

The NPS strives to maintain all components and processes of naturally evolving park unit ecosystems, including the natural abundance, diversity, and ecological integrity of animals. The proposed action and alternatives to the Jackson Gap Trail and the upper section of the John Smartt Trail would occur in areas that already receive frequent human visitation. Typically, wildlife avoid these areas during the daylight hours to avoid humans. While wildlife are likely to avoid these areas during the day, the addition of bicycle use on the Jackson Gap and John Smartt trails area could create a potential for wildlife–cyclist collisions, especially along curves of the trail. It is unlikely that large species such as deer would be impacted, but smaller wildlife such as snakes or lizards could be injured or killed by bicycle tires. The additional use on the trails could increase the risks of impacts to wildlife, but those risks would likely have minimal negligible adverse effects due to a likely low incidence rate of collisions. Therefore wildlife is dismissed from further analysis in this EA because these effects are negligible and would not likely result in any unacceptable effects.

ALTERNATIVES

The alternatives section provides a detailed description of the no action alternative and the proposed action / preferred alternative. The purpose of considering a no action alternative is to provide a basis for comparison of the proposed action and the associated potential environmental impacts. For the purposes of this EA, the no action alternative would mean that the proposed bike rule would not be pursued and the conditions within the project area would remain as they are today.

ALTERNATIVE A: NO ACTION (HIKING ONLY)

The no action alternative describes the continuation of the present management operation and condition; it does not imply or direct discontinuing the present action. The no action alternative provides a basis for comparing the management direction and environmental consequences of the other alternatives. Under the no action alternative, the 1.91-mile section of the Jackson Gap and John Smartt trails within the park would be managed as it is currently. Pedestrian use would continue to be allowed along the entire 1.91 mile of the Jackson Gap and John Smartt trails. The use of bicycles would not be permitted anywhere on Jackson Gap and John Smartt trails. The trails would continue to be between 2 to 4 feet wide, single track, with a natural trail tread.

Trail crews would continue to assess the Jackson Gap and John Smartt trails during annual condition assessments, regular patrols, and as reports are received concerning fallen trees or other hazards. Crews would continue to clean all drainages and culverts, remove loose rocks and debris, and trim/prune vegetation as deemed necessary by park staff. NPS would continue to monitor trail use and condition as appropriate, and would continue to take actions in the future when necessary to protect NPS resources.

ALTERNATIVE B: NPS PREFERRED ALTERNATIVE (ALLOW MOUNTAIN BICYCLE USE)

(Proposed Action/ NPS Preferred Alternative): Allow Mountain Bicycle Use on the Jackson Gap Trail and Upper Section of the John Smartt Trail.

Under alternative B the NPS would pursue a bike rule to allow bicycle use on the highlighted portion of Jackson Gap and John Smartt trails (refer to figure 3). The NPS would install signs at key locations for safety purposes and to alert users to avoid impacts to natural resources and historic structures. Trail width and trail tread would remain the same as they currently are on both trails: single-track trail with a width ranging from 2-4 feet with natural trail tread. The new trail designation would connect to the existing bike traffic on Upper Truck Trail, which has external bicycle access on the Tennessee side of the park, but is currently without a bicycle outlet on the Georgia side.

Due to the steep grade of these trails, it would have a “Black Diamond” designation. See Appendix B for criteria that have been developed by the International Mountain Biking Association (IMBA) for trails that are designated as Black Diamond trails. Due to this

designation and the steep overall grades, the anticipated bicycle use is anticipated to be relatively low (approximately 200 annual users).

Signs and educational materials would be made available at trailheads, at the intersection of the John Smartt Trail and Upper Truck Trail, and near switchbacks prior to allowing bicycle use on the trails. See Figure 3 for a map of the Lookout Mountain Trails and map of locations for proposed sign installation.

The signs and educational materials would provide guidance on proper trail etiquette. The intent of this action would be to proactively address the potential for user conflict and establish user norms. Signs would be installed at trailheads, trail intersections, and along the trails as needed to convey the trail regulatory and safety messages. These messages would inform visitors of route names, trail etiquette, and the designated trail users. The signs would also provide safety information including trail direction and appropriate practices for yielding to others. Trail signs would be small scale, low stature, natural metal, post-mounted with incised letters; scale and placement would minimally affect the natural landscape and installation would be in disturbed locations within the trail bed. Kiosks at trailheads would be based on standard NPS designs that are appropriate for the selected location and would be installed in strategic locations.

Park staff would continue to assess the Jackson Gap Trail and John Smartt Trail during annual condition assessments, on regular patrols, and as reports are received concerning fallen trees or other hazards. Crews would continue to clean all drainages and culverts, remove loose rocks and debris, and trim/prune vegetation as necessary. There would be monthly monitoring by volunteer trail rovers to assist in identifying any additional maintenance that may be required; however, significant changes to routine maintenance is not anticipated. Maintenance would continue on an as-needed basis.

Allowing bike use on the Jackson Gap Trail and the upper section of the John Smartt Trail would not set a precedent for allowing future bike use on other trails that are not designated for bicycle use. Any additional considerations for bicycle use on trails or trail sections within the park would be subject to a separate evaluation and compliance by the NPS.

Safety Sign Locations

Jackson Gap & John Smartt Trails, Lookout Mountain Battlefield, CHCH

National Park Service
U.S. Department of the Interior

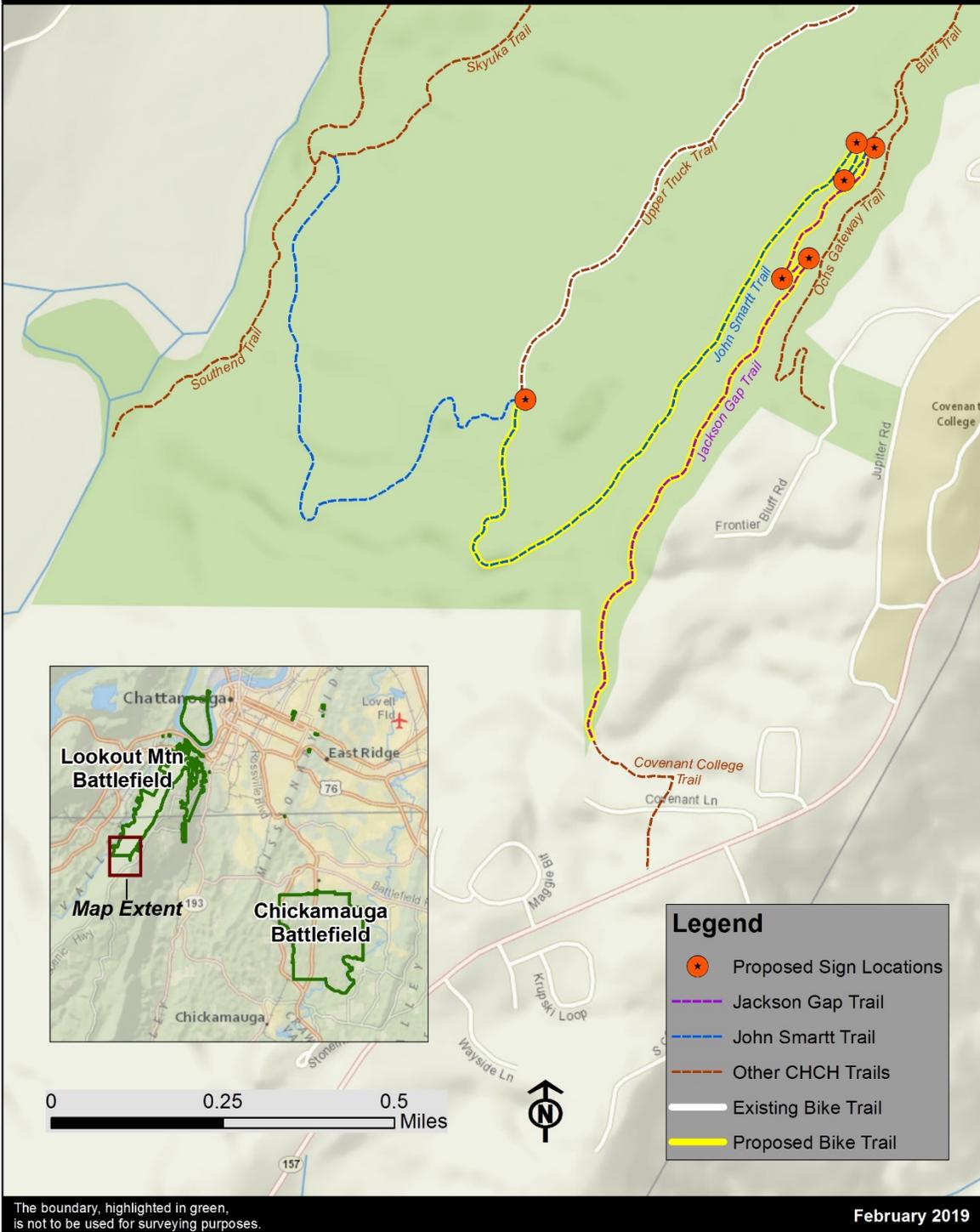


Figure 3

If trail users indicate that conflicts exist among users, the NPS would implement management strategies described below:

Management Strategies

Alternative B would incorporate monitoring and management strategies to address potential visitor use conflicts and resource impacts. Monitoring and evaluation are important in determining whether management actions are achieving objectives to minimize impacts to park resources and minimize user conflicts. For instance, if results from monitoring indicate that conflicts between bicyclists and hikers are increasing, management actions may be necessary to better educate visitors or to control use. Park management would use information as it becomes available to alter management actions. It is an iterative process that requires selecting and implementing management actions, careful monitoring, comparing results with objectives, and using feedback to make future management decisions. Park management recognizes the importance of continually improving management techniques through flexibility and adaptation instead of adhering rigidly to a standard set of management actions.

The management strategies framework for the Jackson Gap Trail and the upper section of the John Smartt Trail focuses on identifying and managing user conflicts and resource impacts that may arise from bicycle use. Following implementation, indicators of use and resource conditions would be monitored to track changes in conditions. Conditions would be assessed and compared to thresholds, as described below. Thresholds that are exceeded would trigger management changes to restore conditions and the desired state.

Indicator – Threshold – Management Action

The following management indicators and related actions are proposed to address any potential visitor use conflicts or resource impacts:

Indicator	Threshold	Management Action
Bicyclist Accident – involving bicyclist only with injuries	1st accident	Initiate an investigation to determine cause of accident, suspend bicycle use until cause determined.
Bicyclist Accident – involving bicyclist only with injuries	2nd accident within a year	Evaluate cause. If a pattern of similar cause, suspend bicycle use until investigation and recommendation can be made regarding appropriate corrective action. Increase education.
Bicyclist Accident – involving bicyclist only with injuries	3rd accident within a year	Evaluate root cause and take appropriate corrective action, which may include elimination of bicycle use.
Visitor Conflicts with Bicyclist – Accident involving bicyclist and hiker	1st accident	Park rangers initiate an investigation to determine the cause of all accidents reported. Depending on the situation, bicycle use may be suspended until cause is determined and investigation is complete.
Visitor Conflicts with Bicyclist – Accident involving bicyclist and hiker	2nd accident in same location of trail within the same year	Evaluate root cause and take appropriate corrective action. Increase education.
Visitor Conflicts with Bicyclist – Accident involving bicyclist and hiker	3rd accident in same location of trail within the same year	Initiate reduction of bicycle use days / alternate days of bicycle use with hiking only days. Recruit bicycle rovers to assist with education.
Visitor Conflicts with Bicyclist – Accident involving bicyclist and hiker	4th accident in the same section of the trail within the same year	Consider elimination of bicycle use.
Fatality to Bicyclist / Hiker	1st fatality	Evaluate root cause and take appropriate corrective action, which may include elimination of bicycle use.
Fatality to Bicyclist / Hiker	2nd fatality	Close trail to bicycle use. Revert to prior designation of hiking-only trail.
Written complaints from trail users about trail use conflicts with bicyclist	1) First verifiable complaint within a year	Each written complaint would be investigated by law enforcement to determine appropriate follow-up action which may include one or more of the following: Increase law enforcement staff presence on trail, request increase in trail rovers for monitoring, and/or increase education.
Written complaints from trail users about trail use conflicts with bicyclist	2) Third complaint occurs regarding same location of trail within a year	Increase law enforcement presence on trail, request for trail rovers presence on trail, and increase education with stakeholders, partners, and neighbors.
Written complaints from trail users about trail use conflicts with bicyclist	3) Five or more verifiable complaints within a year	Increase education, engage partners, and increase monitoring. Increase law enforcement by issuing warning citations, 2nd offense written citation with fee. Place trail advocates to increase presence on trail and increase monitoring.
Written complaints from trail users about trail use conflicts with bicyclist	4) Five or more verifiable complaints within three years	In addition to above education and enforcement actions, implement reduction of bicycle use days.

Indicator	Threshold	Management Action
Bicyclists in areas restricted from biking, including cyclists on the trail on non-bike days if alternate bike days are in effect	5 or more occurrences during the 1st year	Consider installation of additional signs. Issue written citations for off-trail use. Increase monitoring. Increase education. Enforce regulations. Barricade social trail with logs or rocks.
Bicyclists in areas restricted from biking, including cyclists on the trail on non-bike days if alternate bike days are in effect	5 or more occurrences during the 2nd year	Enforce regulation. Issue citations with fee. Increase education
Trail Damage / Loss of Trail Tread	Facility condition index exceeds 5-10% change	Harden trail with gravel or rocks. Request advocates' assistance with increased trail maintenance. Increase education and patrols with volunteers and staff. Close trail after inclement weather.
Resource Damage – Expansion of off-trail resource damage	Expansion exceeds 5 feet from initial bike trail configuration	Reevaluate trail design. Request trail advocates' assistance with establishing a defined trail edge by barricading shortcuts. Issue written citations for off-trail use. Increase monitoring and education. Enforce regulations.

The park superintendent will exercise discretion to temporarily close bicycle access to these trails following a rain event to address issues concerning erosion. Temporary trail closures would allow trails to return to sustainable conditions before allowing continued bicycle use.

ALTERNATIVE CONSIDERED BUT ELIMINATED FROM DETAILED STUDY

During initial discussions as part of the GMPA, the Ochs Gateway Trail was included in alternative B. However, the Ochs Gateway Trail was dismissed from further consideration because commenters suggested that the Ochs Gateway is on a dangerous road that cannot support additional traffic or parking. Widening the road or enlarging the parking area would detract from scenic and natural beauty of the area. There were also concerns that if the Ochs Gateway Trail was open for bicycle use; it would detract from the visitor experience of walkers and hikers. Therefore, the Ochs Gateway Trail was dismissed from further consideration.

AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

METHODOLOGY FOR ANALYZING IMPACTS

In accordance with Council on Environmental Quality regulations, direct, indirect, and cumulative impacts are described (40 CFR 1502.16). General definition for potential impacts are described as follows:

Direct: An effect that is caused by a proposed action and occurs in the same time and place of implementation (40 CFR 1508.8)

Indirect: an effect that is caused by a proposed action but is later in time or farther removed in distance from the action (40 CFR 1508.8)

CUMULATIVE IMPACTS ANALYSIS

As defined by NEPA regulations (40 CFR §1508.7), “Cumulative impacts result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.” Cumulative impacts are considered for all alternatives.

Cumulative impacts are determined by combining the impacts of the alternative with other past, present, and reasonably foreseeable future actions. However, the only past, present, or reasonably foreseeable future action identified in the project area for the Jackson Gap and John Smartt trails is maintenance and repair of the trail on an as-needed basis. Maintenance and repair of the trails are not expected to have any long-term adverse impacts on the area, so there are no cumulative impacts when the incremental impact of any alternative is added to the effects of maintenance of the trails.

SOILS

Current General Conditions of Soils

The park has 35 different soil series identified as occurring in the park, according to the NPS-SRI – Soil Survey Geographic (SSURGO) for the park. The data set is a digital soil survey and generally is the most detailed level of soil geographic data developed by the NPS and meets all standards of the National Cooperative Soil Survey. This data set was developed in conjunction with the U.S. Department of Agriculture, Natural Resources Conservation Service, and meets the standards and specifications on the NPS Soil Inventory and Monitoring Program, and is intended to serve as the official database for all agency applications regarding soils resources. The 35 different soil series consist mainly of older, highly weathered soils (Ultisols), clay rich forest soils (Alfisols), and younger stream terrace soils (Inceptisols).

Within the Lookout Mountain Battlefield unit, the soil series that are present include the Bouldin, Gilpin, Nella, Fullerton, and Hamblen series. The two largest mapping units are the

Bouldin–Gilpin complex (covering 48% of Lookout Mountain) and the Bouldin–Nella complex (covering about 14% of the park unit). These soils are found on 20% to 60% slopes. Bouldin and Nella soils are very deep, while the Gilpin soils are moderately deep to a root restrictive layer. These are well-drained soils with low potential for shrink-swell. However, the soils have a severe to very severe rating for erosion.

The soils of Dade County have developed in a humid region with an annual rainfall of slightly more than 51 inches and under moderate temperature. The soils support a growth of mixed hardwoods and pines, and this cover was not conducive to the accumulation of a large quantity of organic matter in the soils. In the virgin forests, a thin layer of partly decayed leaves and pine needles covered the surface, and the topmost 1 to 3 inches of the soil contain enough organic matter to give the soil a gray color. In many places on Lookout Mountain, the surface is so steep that the runoff of rainwater is very rapid.

The Jackson Gap Trail predominately goes through soils that are classified as Rock outcrop–Hector complex. The upper section of the John Smartt Trail was constructed on Bouldin–Nella complex soils. Both of these soil classifications are considered highly erodible. The soil is very compacted on these trails. Soils along the existing trail corridor are largely stable with evidence of erosion occurring in a few locations. These areas are typically in sections where wet weather drainages cross the trail.

The topography of the Jackson Gap and John Smartt trails is characterized by a series of switchbacks on the southwestern slope of Lookout Mountain. The trails range from between 1,968 to 1,312 feet in elevation, a difference of 656 feet. The highest spot is the trailhead at the top of Jackson Gap Trail and the low spot is at the John Smartt Trail intersection with the Upper Truck Trail. Existing water bars help direct runoff quickly off the trail.

Common impacts include soil compaction, erosion, muddiness, exposed tree roots, trail widening, uneven and rutted trail tread, and visitor-created side trails also known as social trails. Compacted soils are denser and less permeable to water, which can result in higher levels of water runoff. Compacted soils typically reduce risks of erosion and soil displacement and can provide a durable tread that will support traffic from hikers and/or bicyclists.

Effects on Soils of Alternative A – No Action (Hiking Only)

Under this alternative, there would be no changes in recreational use of the trail and current trends would continue. Soils may be disturbed through the possible development of social trails in the area. Social trails are unofficial trails created by trail users traveling off the established trails. Creation and use of social trails would result in erosion and trampling of soils in the general area. Soils associated with the social trails would be adversely impacted as they erode and are carried to lower elevations by wind, storm events, and continued trail use.

The Jackson Gap and John Smartt trails have existed for many decades in good condition without high frequency and maintenance. The soils on these trails are currently stable and maintenance would continue on an as-needed basis. The effects on soils for the no action

alternative would be in the form of minor erosion due to rain events. Over the long term, effects on soils due to erosion would depend on the frequency of rain events. The park's Fire Management Plan was recently updated in 2017. Fire events can increase erosion due to the removal of understory; however, prescribed burning was not recommended for the Lookout Mountain area, near Jackson Gap, and John Smartt Trail due to heavy fuels in the area. There would be no change in the baseline conditions and no effects on soils with in the proposed project area.

Cumulative Effects:

No cumulative impacts have been identified for this alternative.

Effects on Soils of Alternative B (Allow Mountain Bicycle Use)

Under alternative B, the Jackson Gap and John Smartt trails would continue to allow hiking and would open the two trails to mountain bicycle use. There may be increase in soils disturbance due to bicycle use and the potential for development of social trails in the area. Soils on trails are susceptible to a variety of impacts.

The effects on soil for alternative B would be minor erosion due to rain events. Over the long term, effects on soils due to erosion would depend on the frequency of rain events. The park would implement management strategies such as temporarily closing the trails for bicycle use following rain events to allow the stormwater to drain and the trail tread to dry out. Temporary trail closures to bicycle users would prevent ruts from developing and would allow the trail to return to sustainable conditions before allowing continued bicycle use.

Soils may be disturbed through the possible development of social trails in the area. Social trails are unofficial trails created by hikers or cyclists traveling off the established trail. Creation and use of social trails would result in erosion and trampling of soils in the general area. Soils associated with the social trails would be adversely impacted as they erode and are carried to lower elevations by wind, storm events, and continued trail use.

The proposed action of allowing mountain bicycles on the Jackson Gap Trail and the upper section of the John Smartt Trail would add approximately 200 bicycle users annually to the total number of recreational visitors on these trails. The increased impacts to soils from bicycle use on the trails are not anticipated to be significant based on the low anticipated usage.

Cumulative Effects:

No cumulative impacts have been identified for this alternative.

VEGETATION

Current General Conditions of Vegetation

Lookout Mountain is part of the Southern Table Plateaus subsection of the Southwestern Appalachian Ecoregion. The area is largely forested, particularly on the mid-to-lower slopes. The area generally appears to be covered by oak forest. Species composition varies depending on soil type, elevation, aspect, and geology. The primary hardwood tree species are oaks, hickories, and some red maple. Stands of mostly Virginia pine are scattered throughout the area, although some damage to the pine tracts was caused by a southern pine beetle outbreak during the early 2000s. Other tree species present include yellow poplar (*Liriodendron tulipifera*), basswood (*Tilia Americana*), buckeye (*Aesculus glabra*), birch (*Betula* sp.), and American beech (*Fagus grandifolia*). Although Lookout Mountain is mostly forested, it has a diversity of plant communities. Twenty-three different vegetation cover types have been identified in the area (Govus and White 2006). The two largest vegetation communities, covering approximately 64% of Lookout Mountain, are Interior Low Plateau Chestnut Oak – Mixed Oak Forest and Cumberland Plateau Dry-Mesic White Oak Forest. (GMPA 2015)

Interior Low Plateau Chestnut Oak – Mixed Oak Forest is the single largest, most widespread vegetation community on Lookout Mountain, covering about 1,559 acres (52% of the park unit). Chestnut oak (*Quercus prinus*) and black oak (*Q. velutina*) dominate this forest, often in association with white oak (*Q. alba*). Northern red oak (*Q. rubra*), red hickory (*Carya ovalis*), pignut hickory (*C. glabra*), and occasionally sand hickory (*C. pallida*) are prominent canopy species. Sub-canopy and understory species frequently present include sourwood (*Oxydendrum arboreum*), red maple (*Acer rubrum*), mockernut hickory (*C. alba*), black gum (*Nyssa sylvatica*), sassafras (*Sassafras albidum*), and flowering dogwood (*Cornus florida*). Shrub and herbaceous layers are generally sparse to patchy; although in more mesic areas, the herbaceous vegetation can be moderately well developed and diverse. The Jackson Gap Trail and the John Smartt Trail are located within this Interior Low Plateau Chestnut Oak – Mixed Oak Forest Community.

Effects on Vegetation of Alternative A – No Action (Hiking Use Only)

Under this alternative, there would be no changes in recreational use of the trails in the Lookout Mountain area, and Jackson Gap and John Smartt trails would remain hiking only. Use of the Jackson Gap and John Smartt trails under current conditions has a minimal effect on vegetation. Off-trail use from hikers may have an impact on individual plants; however, impacts to individual plants do affect the community composition or species diversity in any discernible manner. There is potential for vegetation to be affected by erosion as the soil matrix providing support could be undermined by runoff of rain events. The areas affected would be relatively small and localized to the trail area and the impacts would be temporary. The current use, by hikers, of the trails can introduce nonnative plant seeds; however, establishment of nonnative species along the trail is presently low. The park does not have an exotic plant management plan at this time.

The areas affected are relatively small and localized to the trail locations. There would be no change in the current conditions and no additional effects on vegetation within the proposed project area from current use of the trail. Over the long term, effects on vegetation due to erosion would depend on the frequency of rain events; however, the current condition of the vegetation would not be expected to change. There would be no additional increased impacts to vegetation anticipated under alternative A. The trails would remain open to hikers only.

Cumulative Effects:

No cumulative impacts have been identified for this alternative.

Effects on Vegetation of Alternative B: (Allow Mountain Bicycle Use)

Under alternative B the Jackson Gap Trail and John Smart Trail would continue to allow hiking and would open the Jackson Gap Trail and the upper section of the John Smartt Trail to mountain bicycle use. There may be an increased disturbance to vegetation due to bicycle use if bicycle users go off-trail; however, park staff will continue to monitor trail use and condition to ensure minimal effect to vegetation. Impacts to vegetation associated with the proposed action would be similar to those described for alternative A, but incrementally greater because of bicycle use of the trail.

Although individual plants may be affected if bicycle users go off-trail, there would be no impacts to vegetation at the community level as a result of alternative B. Given the steep and challenging terrain on this 1.9-mile trail section, park staff anticipates a relatively low increase of approximately 200 bicycle users on these trails annually; as such, a small, localized impact to vegetation is expected within the Lookout Mountain area. Allowing mountain bicycles on Jackson Gap and John Smartt trails would affect a small portion of the park.

The park would continue monitoring and implementing management strategies to minimize impacts that would include: issuing citations for off-trail use, increasing monitoring, increasing education, enforcement of regulations, increased number of hours the trail is closed to bicycle use following rain events.

Cumulative Effects:

No cumulative impacts have been identified for this alternative.

HISTORIC STRUCTURES

Current Historic Structures within the Jackson Gap and John Smartt Trail area

The park has 755 documented historic structures to preserve and maintain. Most of the park's cultural resources are monuments and markers that commemorate the troops that fought across

these landscapes during the two Civil War battles. However, none of these documented commemorative features is located along the Jackson Gap Trail or the upper John Smartt Trail.

Civilian Conservation Corps (CCC) personnel under the Emergency Conservation Works Administration were responsible for building most of the trails constructed on Lookout Mountain during the 1930s. The Jackson Gap Trail and the John Smartt Trail were most likely construction projects carried out by the CCC workers from either Camp Adolph Ochs or Camp Demaray, both located on Lookout Mountain. These trails have several dry laid retaining walls and wet weather drainage crossings that are constructed of native stone. These early 20th century historic structures have required low/infrequent maintenance by the park. (GMPA 2015)

Effects on Historic Structures of Alternative A – No Action (Hiking Only)

Under alternative A, the present management operation and conditions would continue. Monitoring of these retaining walls is conducted annually and maintenance is done on an as-needed basis. While hikers may venture off-trail at times, the continued use of these trails for hiking would not result in measurable impacts to historic structures.

Cumulative Effects:

No cumulative impacts have been identified for this alternative.

Effects on Historic Structures of Alternative B (Allow Mountain Bicycle Use)

The proposed action of allowing mountain bicycles on the Jackson Gap Trail and the upper section of the John Smartt Trail would add approximately 200 bicycle users annually to the total number of recreational visitors on these trails. However, park staff anticipates this increased use would not have a measurable impact on historic structures within this area. Although bicycle users may go off-trail, the Resource Management Division would monitor the retaining walls and drainages more frequently to ensure these resources are protected. The park would implement management strategies to minimize resources impacts that include: issuing citations for off-trail use, increasing monitoring, increasing education, enforcement of regulations, re-evaluating trail design, and/or requesting trail advocates' assistance with establishing a defined trail edge by barricading shortcuts.

Cumulative Effects:

No cumulative impacts have been identified for this alternative.

COORDINATION AND CONSULTATION

As part of this planning process, the park has contacted the State Historic Preservation Officer, relevant state agencies, and the U.S. Fish and Wildlife Service, federally recognized tribes, and other parties. See Appendix C for Agency coordination.

PUBLIC INVOLVEMENT

Chickamauga and Chattanooga National Military Park (park) prepared a General Management Plan Amendment (GMPA) for the Lookout Mountain Battlefield that included conversion of a one-mile segment of the hiking-only Jackson Gap Trail and a one-mile segment of the hiking-only John Smartt Trail to a multi-use hiking/biking trail that would allow bicycle users to connect to a regional network of biking trails.

The Regional Director signed a Finding of No Significant Impact (FONSI) for the project in November 2015. The Lookout Mountain Battlefield Unit General Management Plan Amendment, the FONSI, and a park planning document provide information and context for this compliance action, and can be found on the park's planning website at <https://parkplanning.nps.gov/chch>, select GMP Amendment for Lookout Mountain Battlefield » Document List » General Management Plan/Environmental Assessment – January 2015.

The draft EA will be available for public review and comment. If alternative B is selected for implementation, a special rule will be promulgated, also involving a public review and comment period.

TRIBES

Various laws, executive orders, and policies direct the NPS to consult with recognized Indian Tribes in the development of park management plans. The tribes the park routinely consults with are:

Absentee-Shawnee Tribe of Indians of Oklahoma

Alabama-Coushatta Tribe of Texas

Alabama-Quassarte Tribal Town

Catawba Indian Nation

Cherokee Nation

The Chickasaw Nation

The Choctaw Nation of Oklahoma

Coushatta Tribe of Louisiana

Eastern Band of Cherokee Indians

Eastern Shawnee Tribe of Oklahoma

Jena Band of Choctaw Indians

Kialegee Tribal Town

Miccosukee Tribe of Indians

Mississippi Band of Choctaw Indians

Muscogee (Creek) Nation

Pamunkey Indian Tribe

Poarch Band of Creeks

Quapaw Tribe of Oklahoma

Seminole Nation of Oklahoma

Seminole Tribe of Florida

Shawnee Tribe

Tuscarora Nation

Thlopthlocco Tribal Town

United Keetoowah Band of Cherokee Indians in Oklahoma

These tribes will be consulted in regard to this EA and the associated Section 106 consultation.

PLANNING TEAM PARTICIPANTS AND DOCUMENT PREPARERS

The key members in developing this management plan/environmental assessment included:

Brad Bennett, Superintendent, Chickamauga and Chattanooga National Military Park

Todd Roeder, Chief Ranger, Chickamauga and Chattanooga National Military Park

Jim Szykowski, Chief of Resource Management, Chickamauga and Chattanooga National Military Park

Anita Barnett, Environmental Protection Specialist, Southeast Regional Office

Beth Byrd, Regional Section 106 Coordinator, Southeast Regional Office

Ben West, Chief of Planning and Compliance Division Southeast Regional Office

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**APPENDIX A: A GUIDE TO THE RULE MAKING PROCESS AND
36 CFR 4.30**

A Guide to the Rulemaking Process

Prepared by the Office of the Federal Register¹

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¹ The material presented in this guide is necessarily general in nature and should not be used to make legal decisions. We use the terms "rule" and "regulation" interchangeably in the text. The guide is adapted from several major sources: the Cornell e-Rulemaking Initiative (CeRI) "Regulation Room," hosted by the Cornell Legal Information Institute (LII) at <http://regulationroom.org/learn-about-rulemaking/>; the "Reg Map" created by ICF Consulting with the cooperation of the General Services Administration's Regulatory Information Service Center at <http://www.reginfo.gov/public/reginfo/Regmap/index.jsp>; the Office of the Federal Register's tutorial: "The Federal Register: What it is and How to Use It" at <http://www.archives.gov/federal-register/tutorial/online-html.html#top>; and the Department of Transportation's "The Informal Rulemaking Process," which has more detailed information and examples on the rulemaking process. In addition, you may wish to consult DOT's "Rulemaking Requirements" (prepared by Neil Eisner, April 2009), which provides hyperlinks for easy access to the statutes, executive orders, guidance documents, memoranda, etc. that contain the actual legal requirements or provide guidance on the rulemaking process.

Before the Proposed Rule

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What gives agencies the authority to issue regulations?

Agencies get their authority to issue regulations from laws (statutes) enacted by Congress. In some cases, the President may delegate existing Presidential authority to an agency. Typically, when Congress passes a law to create an agency, it grants that agency general authority to regulate certain activities within our society. Congress may also pass a law that more specifically directs an agency to solve a particular problem or accomplish a certain goal.

An agency must not take action that goes beyond its statutory authority or violates the Constitution. Agencies must follow an open public process when they issue regulations, according to the Administrative Procedure Act (APA). This includes publishing a statement of rulemaking authority in the *Federal Register* for all proposed and final rules.

How does an agency decide to begin rulemaking?

Congress may pass a law that directs an agency to take action on a certain subject and set a schedule for the agency to follow in issuing rules. More often, an agency surveys its area of legal responsibility, and then decides which issues or goals have priority for rulemaking.

These are a few of the many factors that an agency may consider:

- New technologies or new data on existing issues;
- Concerns arising from accidents or various problems affecting society;
- Recommendations from Congressional committees or federal advisory committees;
- Petitions from interest groups, corporations, and members of the public;
- Lawsuits filed by interest groups, corporations, States, and members of the public;
- Presidential directives;
- "Prompt letters" from the Office of Management and Budget (OMB);
- Requests from other agencies;
- Studies and recommendations of agency staff.

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When can the public learn that an agency plans to start a rulemaking?

Agencies are required to publish a “Regulatory Plan” once a year in the fall and an “Agenda of Regulatory and Deregulatory Actions” in the spring and fall. The Regulatory Plan and the Regulatory Agenda are often referred to as the “Unified Agenda.” The Unified Agenda is how agencies announce future rulemaking activities update the public on pending and completed regulatory actions.

The Unified Agenda is posted on RegInfo.gov and Regulations.gov. Agencies also publish most of this material (their regulatory plans) in the *Federal Register*. The *Federal Register* version and a separate Unified Agenda collection are available on the Government Printing Office’s (GPO) Federal Digital system (FDsys.gov).

How does an agency involve the public in developing a proposed rule?

An agency may take some preliminary steps before issuing a proposed rule. They gather information through unstructured processes and informal conversations with people and organizations interested in the issues. If an agency receives a “Petition for Rulemaking” from a member of the public, it may decide to announce the petition in the *Federal Register* and accept public comments on the issue.

An agency that is in the preliminary stages of rulemaking may publish an “Advance Notice of Proposed Rulemaking” in the *Federal Register* to get more information. The Advance Notice is a formal invitation to participate in shaping the proposed rule and starts the notice-and-comment process in motion.

Anyone interested (individuals and groups) may respond to the Advance Notice by submitting comments aimed at developing and improving the draft proposal or by recommending against issuing a rule. Some agencies develop proposed rules through a negotiated rulemaking. In this process, an agency invites members of interested groups to meetings where they attempt to reach a consensus on the terms of the proposed rule. If the participants reach agreement, the agency may endorse their ideas and use them as the basis for the proposed rule.

What is the role of the President in developing a proposed rule?

Before a proposed rule is published in the *Federal Register* for public comment, the President, as head of the Executive branch, may take the opportunity to review the rule. The President is assisted by the Office of Information & Regulatory Affairs (OIRA), which analyzes draft proposed rules when they are “significant” due to economic effects or because they raise important policy issues. For significant rules, the agency must estimate the costs and benefits of the rule and consider alternate solutions.

If the proposed rule requires the public to provide information to the government, the agency must estimate the paperwork burden on the public and obtain permission to proceed from OIRA. In addition, the agency may be required to analyze a proposed rule's impact on: small businesses; state, local and tribal governments; families; federalism. It may also need to analyze issues of just compensation and unfunded mandates.

The Proposed Rule

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What is the purpose of the proposed rule?

The proposed rule, or Notice of Proposed Rulemaking (NPRM), is the official document that announces and explains the agency's plan to address a problem or accomplish a goal. All proposed rules must be published in the *Federal Register* to notify the public and to give them an opportunity to submit comments. The proposed rule and the public comments received on it form the basis of the final rule.

How is the proposed rule structured?

Proposed rules have preambles which contain a summary, date and contact information, and supplementary information. A proposed rule begins with a "Summary" of the issues and actions under consideration; it also states why the rule is necessary. Under the "Dates" and "Addresses" captions, the agency invites everyone to comment on the proposed rule, sets a date for comments to be submitted, and specifies various methods for conveying comments. Many agencies give several options for submitting comments, including U.S. mail, private courier, email, and the official federal electronic comment portal: Regulations.gov.

In the "Supplementary Information" portion, the agency discusses the merits of the proposed solution, cites important data and other information used to develop the action, and details its choices and reasoning. The agency must also identify the legal authority for issuing the rule.

Following the preamble, the agency usually publishes the regulatory text of the proposal in full. The regulatory text sets out amendments to the standing body of law in the Code of Federal Regulations. If the amendments are not set out in full text, the agency must describe the proposed action in a narrative form.

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What is the time period for the public to submit comments?

In general, agencies will specify a comment period ranging from 30 to 60 days in the "Dates" section of the *Federal Register* document, but the time period can vary. For complex rulemakings, agencies may provide for longer time periods, such as 180 days or more. Agencies may also use shorter comment periods when that can be justified.

Members of the public may request that the agency allow more time to submit comments, and agencies may consider late-filed comments, if their decision-making schedule permits it. Commentors should be aware that agencies generally are not legally required to consider late-filed comments. Agencies usually provide information in the proposed rule and/or their procedural rules indicating whether they will consider late-filed comments.

Why do agencies re-open comments or issue multiple proposed rules?

An agency may extend or re-open a comment period when it is not satisfied that it has enough high quality comments or when the public comments make a good case for adding more time.

Similarly, an agency may find that people have raised new issues in their comments that were not discussed in the initial proposed rule. As new issues or additional complexity arises, the agency may publish a series of proposed rules in the *Federal Register*.

Do agencies have additional options for gathering public comments?

During the comment period, an agency may also hold public hearings where people can make statements and submit data. Some agencies operate under laws that require rulemaking hearings. Others may hold public meetings to collect more information or to help affected groups get a better understanding of the proposed rule. Many agencies are beginning to use webcasts and interactive Internet sessions to broaden the audience attending public meetings.

After the comment period closes, an agency may establish a second period for reply comments (comments that respond to prior comments). A reply period is not required by law. The reply comment period enables people to respond to comments that agencies received at the end of comment period, creating more of a public dialog.

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Why should you consider submitting electronic comments?

Most agencies now prefer to receive comments electronically so that your input on a proposed rule or other document is more easily available to the public. Having electronic data helps agencies organize the comments by subject or in other ways to help the public and the agency make more effective use of them.

You can submit electronic comments to the agency docket site by following the instructions in the *Federal Register*. Many of the proposed rules and other documents on this site display a special button for submitting comments directly to the official electronic docket. For information on using the federal eRulemaking portal to submit comments, go to the Regulations.gov "Help" pages on submitting a comment.

Before the Final Rule

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How do public comments affect the final rule?

The notice-and-comment process enables anyone to submit a comment on any part of the proposed rule. This process is not like a ballot initiative or an up-or-down vote in a legislature. An agency is not permitted to base its final rule on the number of comments in support of the rule over those in opposition to it. At the end of the process, the agency must base its reasoning and conclusions on the rulemaking record, consisting of the comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages.

To move forward with a final rule, the agency must conclude that its proposed solution will help accomplish the goals or solve the problems identified. It must also consider whether alternate solutions would be more effective or cost less.

If the rulemaking record contains persuasive new data or policy arguments, or poses difficult questions or criticisms, the agency may decide to terminate the rulemaking. Or, the agency may decide to continue the rulemaking but change aspects of the rule to reflect these new issues. If the changes are major, the agency may publish a supplemental proposed rule. If the changes are minor, or a logical outgrowth of the issues and solutions discussed in the proposed rules, the agency may proceed with a final rule.

What is the role of the President in developing a final rule?

In the same way that the President and the Office of Information & Regulatory Affairs (OIRA) review draft proposed rules prior to publication, the President and OIRA analyze draft final rules when they are “significant” due to economic effects or because they raise important policy issues. The Presidential level review takes place before the final rule is published in the *Federal Register*. OIRA’s final analysis of estimated costs and benefits may take into consideration any comments and alternate solutions suggested in public comments.

Agencies may also use this review and analysis phase to consult with other agencies who share responsibility for issues covered by the rule. In some cases, interagency review is mandatory.

The Final Rule

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How is the final rule structured?

Final rules also have preambles, including the summary, effective date, and supplementary information. The final rule published in the *Federal Register* begins with a “Summary” of the societal problems and regulatory goals and explains why the rule is necessary.

Every final rule must have an “Effective Date.” However, any portions that are subject to later approval under the Paperwork Reduction Act or are subject to Congressional approval may be excepted from that effective date. The “Dates” caption in the *Federal Register* may also contain compliance or applicability dates.

The agency must state the “basis and purpose” of the rule in the “Supplementary Information” part of the preamble. This statement sets out the goals or problems the rule addresses, describes the facts and data the agency relies on, responds to major criticisms in the proposed rule comments, and explains why the agency did not choose other alternatives.

The agency must identify its legal authority for issuing the rule and publish the regulatory text in full. The regulatory text sets out amendments to the Code of Federal Regulations (CFR). Each amendment begins with instructions for changing the CFR.

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When do final rules go into effect?

When an agency publishes a final rule, generally the rule is effective no less than thirty days after the date of publication in the *Federal Register*. If the agency wants to make the rule effective sooner, it must cite "good cause" (persuasive reasons) as to why this is in the public interest.

Significant rules (defined by Executive Order 12866) and major rules (defined by the Small Business Regulatory Enforcement Fairness Act) are required to have a 60 day delayed effective date.

Can an agency issue a final rule without publishing a proposed rule?

Yes, the Administrative Procedure Act (APA) permits agencies to finalize some rules without first publishing a proposed rule in the *Federal Register*. This exception is limited to cases where the agency has "good cause" to find that the notice-and-comment process would be "impracticable, unnecessary, or contrary to the public interest." These situations may include emergencies where problems must be addressed immediately to avert threats to public health and safety, minor technical amendments and corrections where there is no substantive issue, and some instances where an agency has no discretion to propose a rule because Congress has already directed a specific regulatory outcome in a law. The agency must state its reasoning for finding good cause in the preamble of the final rule published in the *Federal Register*.

There are other exceptions to conventional notice-and-comment rulemaking. An agency may go straight to final rulemaking without a proposed rule when they issue internal agency procedures, rules that affect only federal employees, and rules that manage federal property and real estate. Even these types of rules can be subject to proposed rulemaking because of a special statutory requirement or because an internal agency rule also has a substantial effect on the public.

Agencies can also issue and enforce rules by using "actual notice," which requires direct notification of all affected persons and entities. Because it is difficult to pinpoint every person and entity affected by a rulemaking, this option is used mostly for rules that have a very narrow effect on known or readily definable persons or corporations.

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What are interim final rules & direct final rules?

Interim Final Rule: When an agency finds that it has good cause to issue a final rule without first publishing a proposed rule, it often characterizes the rule as an “interim final rule,” or “interim rule.” This type of rule becomes effective immediately upon publication. In most cases, the agency stipulates that it will alter the interim rule if warranted by public comments. If the agency decides not to make changes to the interim rule, it generally will publish a brief final rule in the *Federal Register* confirming that decision.

Direct Final Rule: When an agency decides that a proposed rule is unnecessary because it would only relate to routine or uncontroversial matters, it may publish a direct final rule in the *Federal Register*. In a direct final rule, the agency states that the rule will go into effect on a certain date, unless it gets substantive adverse comments during the comment period. An agency may finalize this process by publishing in the *Federal Register* a confirmation that it received no adverse comments. If adverse comments are submitted, the agency is required to withdraw the direct final rule before the effective date. The agency may re-start the process by publishing a conventional proposed rule or decide to end the rulemaking process entirely.

After the Final Rule

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How are final rules integrated into the Code of Federal Regulations?

Agencies must publish the changes to the Code of Federal Regulations (CFR) in the final rule, instructing how amendments add, revise, remove, or re-designate regulatory text. The CFR contains all of the generally applicable rules of the Federal government with current or future effect.

On the day a final rule is published in the *Federal Register*, Office of the Federal Register and GPO staff begin processing the material for codification into the CFR. Rules that are immediately effective are integrated into the “Electronic Code of Federal Regulations” (e-CFR) database (ecfr.gpoaccess.gov). Rules with delayed effective dates are placed in amendment files and linked from the main e-CFR database. The e-CFR is an unofficial, but authoritative editorial compilation published by the Office of the *Federal Register* and GPO. Users can check the update status of the e-CFR by consulting the home page.

The official annual editions of the CFR are assembled from the material published in the e-CFR. Each of the 50 subject matter titles are republished each year on a staggered, quarterly basis, and appear in print and online (<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>).

How is the Congress involved in reviewing final rules?

Under the Small Business Regulatory Enforcement Fairness Act (also known as the Congressional Review Act), new final rules must be sent to Congress and the Government Accountability Office for review before they can take effect. "Major rules" (ones that are economically significant and require OIRA review) must be made effective at least 60 days after the date of publication in the *Federal Register*, allowing time for Congressional review. In emergency situations, a major rule can be made effective before 60 days.

If the House and Senate pass a resolution of disapproval and the President signs it (or if both houses override a presidential veto), the rule becomes void and cannot be republished by an agency in the same form without Congressional approval. Since 1996, when this process started, Congress has disapproved only one rule.

Congress may also exercise its oversight in other ways, by holding hearings and posing questions to agency heads, by enacting new legislation, or by imposing funding restrictions.

Does the regulatory process continue after rules are published?

The regulatory process enters the compliance, interpretation, and review phase after a final rule is published. Individuals and industries affected by a rule, and the agency compliance officers and inspectors who must enforce a rule, may need guidance to better understand the regulatory requirements. Agencies may write compliance materials and technical assistance manuals to distribute to the public. These guidance materials may be posted on a website or published in the *Federal Register* as interpretive rules. See more about interpretive rules and policy statements below.

Based on its experience in enforcing a rule, an agency may decide to change a rule, remove it from the CFR entirely, or let it stand. A law or a Presidential directive may require a formal review process every few years. An agency may undertake a review based on a petition from the public. Its own experts may also begin a review process when conditions change and rules seem outdated. If an agency decides to amend or revoke a rule, it must use the notice-and-comment process to make the change.

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What are interpretive rules and policy statements?

Interpretive rules, policy statements, and other guidance documents may be issued anytime after a final rule is published to help the public understand to how a regulation applies to them and affects their interests. An agency may explain how it interprets an existing regulation or statute, how a rule may apply in a given instance, and what things a person or corporation must do to comply.

There is a key distinction between an interpretive rule and a final “legislative” or “substantive” rule. The interpretive rule or policy statement must not set new legal standards or impose new requirements. Guidance documents do not contain amendments to the CFR and are not subject to the notice and comment process. But in some cases, agencies choose to request comments on interpretive rules and other guidance documents to improve the quality and clarity of the material. Interpretive rules and policy statements that have broad applicability are often published in the *Federal Register*, but some may only appear on agency websites.

When do the courts get involved in rulemaking?

Individuals and corporate entities may go into the courts to make a claim that they have been, or will be, damaged or adversely affected in some manner by a regulation. The reviewing court can consider whether a rule: is unconstitutional; goes beyond the agency’s legal authority; was made without following the notice-and-comment process required by the Administrative Procedure Act or other law; or was arbitrary, capricious, or an abuse of discretion. An agency head can also be sued for failing to act in a timely manner in certain cases.

If a court sets aside (vacates) all or part of a rule, it usually sends the rule back to the agency to correct the deficiencies. The agency may have to reopen the comment period, publish a new statement of basis and purpose in the *Federal Register* to explain and justify its decisions, or re-start the rulemaking process from the beginning by issuing a new proposed rule.

[Go to Top](#)



National Park Service, Interior

§ 4.30

use of radiomicrowaves or other electrical devices are not required.

§ 4.22 Unsafe operation.

(a) The elements of this section constitute offenses that are less serious than reckless driving. The offense of reckless driving is defined by State law and violations are prosecuted pursuant to the provisions of section 4.2 of this chapter.

(b) The following are prohibited:

(1) Operating a motor vehicle without due care or at a speed greater than that which is reasonable and prudent considering wildlife, traffic, weather, road and light conditions and road character.

(2) Operating a motor vehicle in a manner which unnecessarily causes its tires to squeal, skid or break free of the road surface.

(3) Failing to maintain that degree of control of a motor vehicle necessary to avoid danger to persons, property or wildlife.

(4) Operating a motor vehicle while allowing a person to ride:

(i) On or within any vehicle, trailer or other mode of conveyance towed behind the motor vehicle unless specifically designed for carrying passengers while being towed; or

(ii) On any exterior portion of the motor vehicle not designed or intended for the use of a passenger. This restriction does not apply to a person seated on the floor of a truck bed equipped with sides, unless prohibited by State law.

§ 4.23 Operating under the influence of alcohol or drugs.

(a) Operating or being in actual physical control of a motor vehicle is prohibited while:

(1) Under the influence of alcohol, or a drug, or drugs, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided however, that if State law that applies to operating a motor vehicle while under the influence of alcohol establishes more restrictive limits of alcohol con-

centration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(b) The provisions of paragraph (a) of this section also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(c) *Tests.* (1) At the request or direction of an authorized person who has probable cause to believe that an operator of a motor vehicle within a park area has violated a provision of paragraph (a) of this section, the operator shall submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(d) *Presumptive levels.* (1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

[52 FR 10683, Apr. 2, 1987, as amended at 68 FR 46479, Aug. 6, 2003]

§ 4.30 Bicycles.

(a) The use of a bicycle is prohibited except on park roads, in parking areas

§4.31

and on routes designated for bicycle use; *provided, however*, the superintendent may close any park road or parking area to bicycle use pursuant to the criteria and procedures of §§1.5 and 1.7 of this chapter. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources.

(b) Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations.

(c) A person operating a bicycle is subject to all sections of this part that apply to an operator of a motor vehicle, except §§4.4, 4.10, 4.11 and 4.14.

(d) The following are prohibited:

(1) Possessing a bicycle in a wilderness area established by Federal statute.

(2) Operating a bicycle during periods of low visibility, or while traveling through a tunnel, or between sunset and sunrise, without exhibiting on the operator or bicycle a white light or reflector that is visible from a distance of at least 500 feet to the front and with a red light or reflector visible from at least 200 feet to the rear.

(3) Operating a bicycle abreast of another bicycle except where authorized by the superintendent.

(4) Operating a bicycle while consuming an alcoholic beverage or carrying in hand an open container of an alcoholic beverage.

§4.31 Hitchhiking.

Hitchhiking or soliciting transportation is prohibited except in designated areas and under conditions established by the superintendent.

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

- Sec.
- 5.1 Advertisements.
- 5.2 Alcoholic beverages; sale of intoxicants.
- 5.3 Business operations.
- 5.4 Commercial passenger-carrying motor vehicles.
- 5.5 Commercial photography.
- 5.6 Commercial vehicles.

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- 5.7 Construction of buildings or other facilities.
- 5.8 Discrimination in employment practices.
- 5.9 Discrimination in furnishing public accommodations and transportation services.
- 5.10 Eating, drinking, or lodging establishments.
- 5.11–5.12 [Reserved]
- 5.13 Nuisances.
- 5.14 Prospecting, mining, and mineral leasing.

AUTHORITY: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

SOURCE: 31 FR 16660, Dec. 29, 1966, unless otherwise noted.

§5.1 Advertisements.

Commercial notices or advertisements shall not be displayed, posted, or distributed on federally owned or controlled lands within a park area unless prior written permission has been given by the Superintendent. Such permission may be granted only if the notice or advertisement is of goods, services, or facilities available within the park area and such notices and advertisements are found by the Superintendent to be desirable and necessary for the convenience and guidance of the public.

§5.2 Alcoholic beverages; sale of intoxicants.

(a) The sale of alcoholic, spirituous, vinous, or fermented liquor, containing more than 1 percent of alcohol by weight, shall conform with all applicable Federal, State, and local laws and regulations (See also §2.35 of this chapter.)

(b) No such liquor shall be sold on any privately owned lands under the legislative jurisdiction of the United States within Glacier, Lassen Volcanic Mesa Verde, Denali, Mount Rainier, Olympic, Rocky Mountain, Sequoia-Kings Canyon, Yellowstone, or Yosemite National Parks, unless a permit for the sale thereof has first been secured from the appropriate Regional Director.

(1) In granting or refusing applications for permits as herein provided, the Regional Directors shall take into consideration the character of the neighborhood, the availability of other liquor-dispensing facilities, the local laws governing the sale of liquor, and

APPENDIX B
INTERNATIONAL MOUNTAIN BIKE ASSOCIATION

The IMBA Trail Difficulty Rating System is a basic method used to categorize the relative technical difficulty of recreation trails. The IMBA Trail Difficulty Rating System can:

- Help trail users make informed decisions
- Encourage visitors to use trails that match their skill level
- Manage risk and minimize injuries
- Improve the outdoor experience for a wide variety of visitors
- Aid in the planning of trails and trail systems

This system was adapted from the International Trail Marking System used at ski areas throughout the world. Many trail networks use this type of system, most notably resort-based mountain biking trail networks. The system best applies to mountain bikers, but is also applicable to other visitors such as hikers and equestrians. These criteria should be combined with personal judgment and trail-user input to reach the final rating.

Trail Difficulty Rating System

	Easiest White Circle 	Easy Green Circle 	More Difficult Blue Square 	Very Difficult Black Diamond 	Extremely Difficult Dbl. Black Diamond 
Trail Width	72" or more	36" or more	24" or more	12" or more	6" or more
Tread Surface	Hardened or surfaced	Firm and stable	Mostly stable with some variability	Widely variable	Widely variable and unpredictable
Average Trail Grade	Less than 5%	5% or less	10% or less	15% or less	20% or more
Maximum Trail Grade	Max 10%	Max 15%	Max 15% or greater	Max 15% or greater	Max 15% or greater
Natural Obstacles and Technical Trail Features (TTF)	None	Unavoidable obstacles 2" tall or less Avoidable obstacles may be present Unavoidable bridges 36" or wider	Unavoidable obstacles 8" tall or less Avoidable obstacles may be present Unavoidable bridges 24" or wider TTF's 2' high or less, width of deck is greater than 1/2 the height	Unavoidable obstacles 15" tall or less Avoidable obstacles may be present May include loose rocks Unavoidable bridges 24" or wider TTF's 4' high or less, width of deck is less than 1/2 the height Short sections may exceed criteria	Unavoidable obstacles 15" tall or greater Avoidable obstacles may be present May include loose rocks Unavoidable bridges 24" or narrower TTF's 4' high or greater, width of deck is unpredictable Many sections may exceed criteria

APPENDIX C
AGENCY COORDINATION



GAES Assistance, FW4 <gaes_assistance@fws.gov>

Fwd: T&E Species

GAES Assistance, FW4 <gaes_assistance@fws.gov>
 To: Jim Szykowski <jim_szykowski@nps.gov>

Tue, May 8, 2018 at 4:37 PM

Hi Jim,

The only other listed species in the area is Virginia spiraea (found about 2 miles away in 2013), but it occurs along streams, with periodic high velocity floods or similar disturbance that eliminates competition from trees and other woody vegetation. I didn't see any habitat like that in your photos. So, if no trees are being cut during the bat maternity period, I think you could go either with the categorical exclusion, or reach/document a No Effect Section 7 determination. Or, if NPS is risk averse, I can put our sticker saying the project will not impact FWS resources on the email you sent.... Whichever you prefer.

Robin

We have changed our address:

Robin Goodloe, Ph.D., Georgia Ecological Services
 US Fish and Wildlife Service
 RG Stephens, Jr. Federal Building
 355 East Hancock Avenue, Room 320
 Athens, GA 30601



U. S. Fish and Wildlife Service
 RG Stephens, Jr. Federal Building
 355 E. Hancock Ave., Rm 320, Box 7
 Athens, GA 30601 ; 706-613-9493

FWS Log No.

16-18-149-DADE

Based on the information provided, the proposed action is not expected to significantly impact fish and wildlife resources under the jurisdiction of the U.S. Fish & Wildlife Service.

Donald W. Imm
 Donald W. Imm, Ph.D., Field Supervisor

5/22/18

Date

----- Forwarded message -----

From: **Goodloe, Robin** <robin_goodloe@fws.gov>
 Date: Fri, May 4, 2018 at 8:30 AM
 Subject: Fwd: T&E Species
 To: "GAES Assistance, FW4" <gaes_assistance@fws.gov>

Our office is moving into the Athens Federal Building May 2-11. Our new mailing address is:

Georgia Ecological Services
 US Fish and Wildlife Service
 RG Stephens, Jr. Federal Building
 355 East Hancock Avenue, Room 320
 Athens, GA 30601

----- Forwarded message -----

From: **Szykowski, Jim** <jim_szykowski@nps.gov>
 Date: Fri, May 4, 2018 at 8:05 AM
 Subject: T&E Species
 To: robin_goodloe@fws.gov

Robin,

Chickamauga and Chattahoochee National Military Park would like to convert about 2-miles of hiking trails to multi-use trails (opening them to mountain bike use). These trails (the Jackson Gap Trail and John Smartt Trail) are located in Dade County, Georgia and are part of the Lookout Mountain Battlefield Trails System.

5/22/2018

DEPARTMENT OF THE INTERIOR Mail - Fwd: T&E Species

Before we can proceed, we would like for a trail crew to rehabilitate these trails. Attached are maps of the area and a slide show of photos showing the different sections of the trail that will be improved. Although most of the work will be completed within the tread of the trail, there are a few areas where work would occur just outside of the tread. These areas of disturbances would occur at the switchbacks.

We did not find any large-flowered skullcap in these areas.

Also the project work will not remove any trees; therefore no potential bat nesting sites will be effected.

Are there any other T&E species that we need to consider? Do you need any additional information or do you have any questions? Would you or a member of your staff like to visit the site?

Can we use the categorical exclusion for trail maintenance and repair, or would you recommend a consultation?

Thank you for your help.

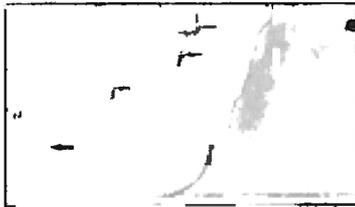
Sincerely,

Jim

--

Jim Szykowski
Chief of Resource Management
Chickamauga and Chattanooga NMP
3370 LaFayette Road
Ft. Oglethorpe, GA 30742

3 attachments



Map of Jackson Gap and John Smartt Trails.jpg
1520K

 **Proposed Work on Jackson Gap and John Smartt Trails.pptx**
7740K

 **LOM Trails Map.pdf**
253K



United States Department of the Interior



NATIONAL PARK SERVICE
Chickamauga and Chattanooga National Military Park
3370 Lafayette Rd.
Fort Oglethorpe, GA 30742

April 2, 2019

Donald W. Imm. Ph.D., Field Supervisor
US Fish and Wildlife Service
RG Stephens Jr. Federal Building
355 East Hancock Avenue, Room 320
Athens, GA 30601

Reference: Jackson Gap and John Smartt Trails Use at Chickamauga and Chattanooga National Military Park in Dade County, Georgia

Dear Dr. Imm,

Chickamauga and Chattanooga National Military Park would like to initiate consultation with your office as we plan to implement one element of the 2014 Lookout Mountain Battlefield General Management Plan. The National Park Service (NPS) is proposing to allow mountain bike access on two park trails in order to complete the connection between two other regional mountain bike trails. This would allow mountain bikers to ride from Cloudland Canyon State Park in Georgia to the City of Chattanooga, Tennessee.

The proposed Area of Potential Effect for this action is the Jackson Gap Trail and upper portion of the John Smart Trail, both located in Dade County, Georgia. Your office has reviewed a project that prepared these trails for mountain bike use. (FWS Log No. NG-18-149-Dade). We are currently working on an environmental assessment to analyze whether the impacts of this proposed activity will constitute impairment of park natural resources and values.

Should you have any questions or need additional information, please contact Jim Szykowski by phone at (706) 866-9241 x 121 or by email at jim_szykowski@nps.gov.

Sincerely,



Jon Bradley Bennett
Superintendent

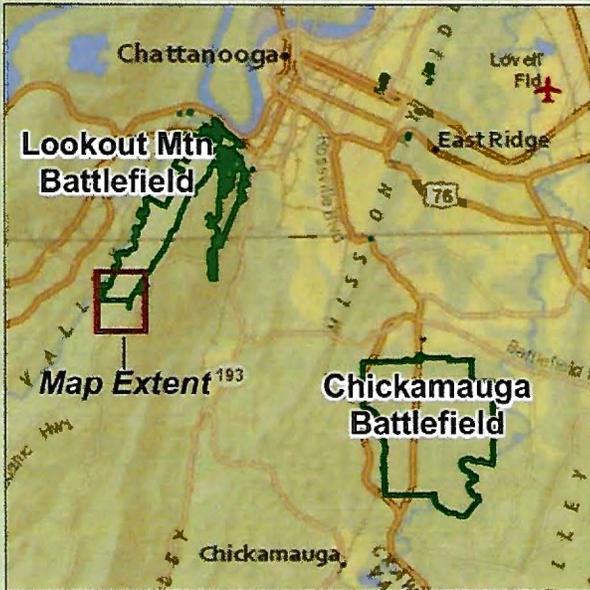
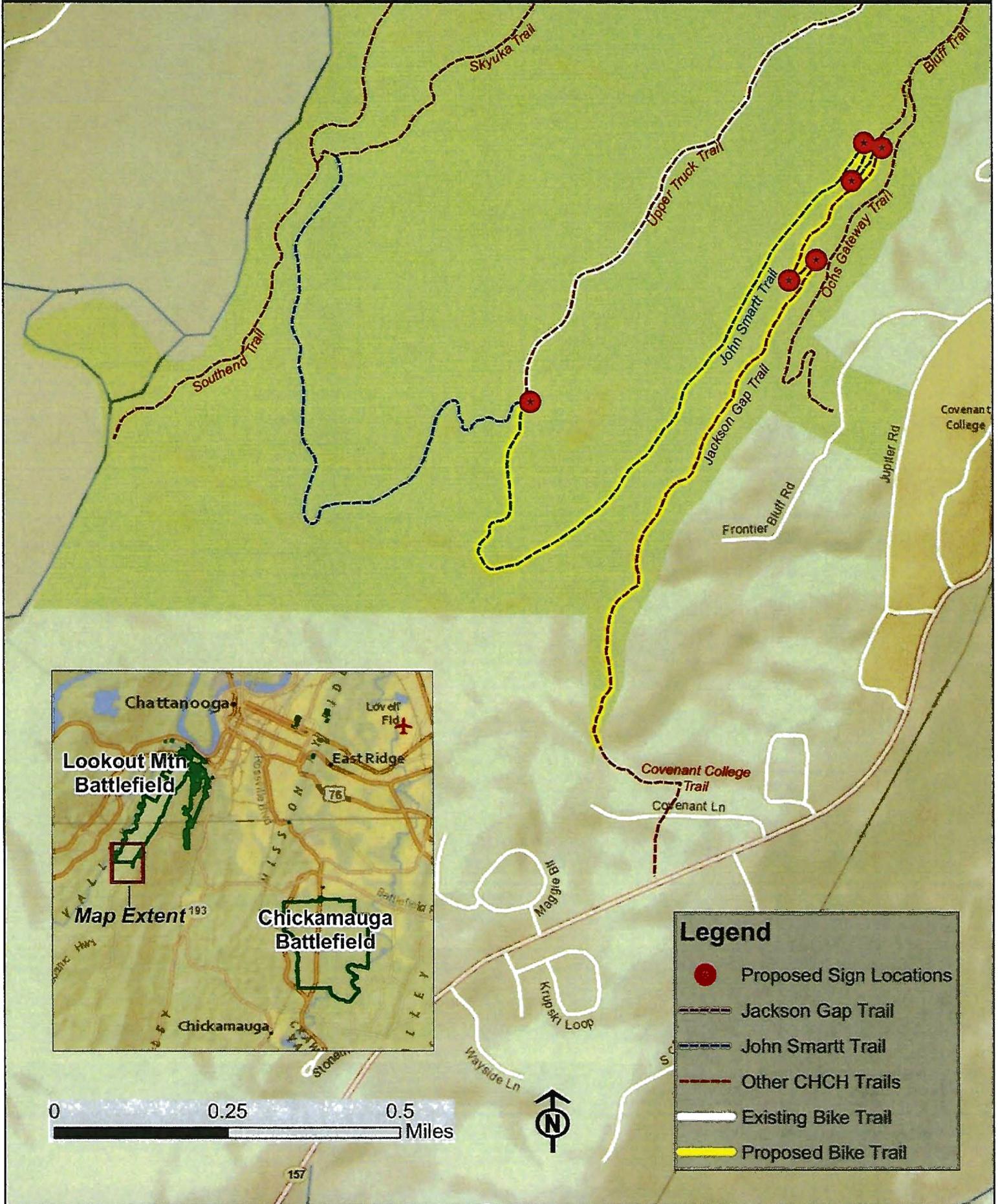
Enclosure



Safety Sign Locations

Jackson Gap & John Smartt Trails, Lookout Mountain Battlefield, CHCH

National Park Service
U.S. Department of the Interior



Legend

- Proposed Sign Locations
- Jackson Gap Trail
- John Smartt Trail
- Other CHCH Trails
- Existing Bike Trail
- Proposed Bike Trail



The boundary, highlighted in green, is not to be used for surveying purposes.



As the nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering sound use of our land and water resources; protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of our national parks and historic places; and providing for the enjoyment of life through outdoor recreation. The department assesses our energy and mineral resources and works to ensure that their development is in the best interests of all our people by encouraging stewardship and citizen participation in their care. The department also has a major responsibility for American Indian reservation communities and for people who live in island territories under U.S. administration.

May 2019

