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**PROGRAMMATIC AGREEMENT
AMONG
THE TOBYHANNA ARMY DEPOT,
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICE, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING CONSTRUCTION, MAINTENANCE, AND OPERATIONS
ACTIVITIES AT THE TOBYHANNA ARMY DEPOT,
COOLBAUGH TOWNSHIP, MONROE COUNTY, PENNSYLVANIA**

WHEREAS, the Department of the Army oversees operations, management, and administration at the Tobyhanna Army Depot (TYAD) in Coolbaugh Township, Monroe County, Pennsylvania; and

WHEREAS, TYAD is a federally owned and operated facility, and TYAD plans to carry out federally funded Projects, thereby making the operations, maintenance, and Project undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 United States Code (USC) § 470f, and its implementing regulations, 36 Code of Federal Regulations (CFR) Part 800; and

WHEREAS, TYAD has determined the Area of Potential Effects (APE) for this Programmatic Agreement (PA) to be all lands within the TYAD boundary (Attachment A); and

WHEREAS, TYAD has determined that the undertakings may have adverse effects on historic properties, which are eligible for listing in the National Register of Historic Places (National Register), and has consulted with the Pennsylvania State Historic Preservation Officer (SHPO), pursuant to 36 CFR Part 800; and

WHEREAS, TYAD has consulted with seven federally recognized tribes (Tribes) in development of this PA to determine if they attach traditional religious and/or cultural significance to lands TYAD occupies that may be affected by future undertakings: the St. Regis Mohawk Tribe, the Delaware Tribe of Indians, the Onondaga Nation of New York, the Tonawanda Band of Seneca Indians of New York, the Seneca Nation of New York, the Cayuga Nation of New York, and the Tuscarora Nation of New York, and has invited them to sign this PA as concurring parties; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(2)(ii), TYAD provided the public an opportunity to participate in the development of the PA by placing a notice in local newspapers and making the PA available for review and comment at the Pocono Mountain Public Library in Tobyhanna, Pennsylvania; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), TYAD has notified the ACHP of its adverse effect determination, providing the required documentation, and the ACHP has chosen to participate in accordance with 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, TYAD maintains an Integrated Cultural Resources Management Plan that assists TYAD personnel in making informed decisions that are consistent with sound principles of cultural resources stewardship and management; and

WHEREAS, TYAD, in consultation with the SHPO, has conducted archaeological surveys over the years and only one archaeological site has been identified to date and it was determined not eligible for listing in the National Register, and no Traditional Cultural Places (TCPs), or sacred sites have been identified at the installation; and

WHEREAS, in consultation with the SHPO, TYAD completed a Phase IA Archaeological Assessment in May 2012 to determine archaeological sensitivity for unsurveyed portions of TYAD, and the assessment concluded archaeological sensitivity is generally considered low due to moderate to severe ground disturbance; however, four areas, identified as Ground Disturbance Areas 2, 4, 9, and untested portions of Ground Disturbance Area 10, are considered to be archaeologically sensitive as shown in Attachment B; and

WHEREAS, in consultation with the SHPO, the TYAD completed an Architectural Inventory in May 2012 that determined TYAD is not eligible for listing in the National Register as a historic district due to a loss of integrity, and no buildings, structures, or objects within TYAD are individually eligible for listing in the National Register; and

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

Stipulations:

TYAD shall ensure that the following measures are carried out:

I. ADMINISTRATION

- A. The TYAD Commander serves as the "Agency Official," as defined in 36 CFR Part 800 and is responsible for installation compliance with the NHPA and its regulations. The Commander will designate a Cultural Resources Manager (CRM), who will handle the day-to-day compliance with the PA, including preparing and coordinating all required correspondence and notifications, and maintaining all required records.
- B. All citations to pertinent federal and state historic preservation laws and regulations are current as of the date of this PA. Should newer versions of these standards and guidelines be adopted after the execution date of this PA, the Army shall carry out its programs under these newer versions of the appropriate laws and regulations.

- C. The CRM shall retain copies of all reports and studies performed under the terms of this PA in its administrative files at TYAD. The CRM shall also retain copies of any correspondence, including memoranda, to the file that documents actions taken under this PA. These documents shall be made available to any of the signatories to this PA upon written request.

II. PROFESSIONAL QUALIFICATIONS

- A. All historic property surveys carried out pursuant to this PA will be conducted by or under the direct supervision of an individual who meets, at a minimum, the professional qualification standards specified in *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983, as amended and updated).
- B. All technical reports prepared pursuant to this PA will be consistent with federal standards entitled *Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983, as amended and updated) and the *Guidelines for Preparing Identification and Evaluation Reports for Submission Pursuant to Sections 106 and 110, National Historic Preservation Act*, as well as SHPO's *Guidelines for Archaeological Investigations in Pennsylvania* (November 2008).

III. SECTION 106 PROJECT REVIEW PROCESS

- A. Determine the Undertaking
 - 1. The CRM shall determine if the proposed project is an undertaking as defined in 36 CFR § 800.16(y).
 - a) If the CRM determines the proposed project is not an undertaking as defined in 36 CFR § 800.16(i), the CRM shall document this determination for inclusion in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.
 - b) If the CRM determines the proposed project is an undertaking, the CRM will continue on in the Section 106 Project Review Process.
- B. Define the Area of Potential Effects and Identify Historic Properties

1. The CRM shall determine and document the project APE for each specific undertaking, appropriate to the scope and scale of the undertaking, and considering direct, indirect, and cumulative effects.
2. If the CRM determines that the APE does not include Ground Disturbance Areas 2, 4, or 9, or the untested portion of Ground Disturbance Area 10 (see Attachment B), the CRM may make a finding of "No Historic Properties Affected" and document this determination for those undertakings for inclusions in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.
3. The CRM shall determine if cultural resources surveys are required for the APE only if the APE includes Ground Disturbance Areas 2, 4, or 9, or the untested portion of Ground Disturbance Area 10, and only if the undertaking involves ground disturbing activity.
 - a) The CRM shall determine the level of cultural resources survey necessary to the extent practical by gathering sufficient information to evaluate the eligibility of those resources for listing in the National Register; however, identification and evaluation efforts may be limited as a result of the potential presence of unexploded ordnance.
 - b) Information shall be obtained through cultural resources survey to the extent feasible, archival research, or other appropriate investigations.
4. Evaluation of Surveyed Cultural Resources
 - a) Surveys that identify inventoried areas with no archaeological sites, isolated features or artifacts, or historic properties will be defined as negative surveys.

- (1) Reports of negative surveys will be provided to SHPO for review and concurrence. SHPO will provide a response to TYAD findings within 30 calendar days of receipt of all pertinent documentation. If no comments are received within that time, the CRM will make a second attempt to contact the SHPO for comments before assuming concurrence with TYAD findings. If the SHPO responds that they do not concur with the findings, and if TYAD and SHPO cannot resolve the disagreement within 30 calendar days, then TYAD shall forward the dispute to the Keeper of the National Register for resolution at the conclusion of the 30 calendar day period.
- (2) Reports of negative surveys will be provided to Tribes before finalizing the report. The Tribes are under no obligation to provide comments on the negative surveys; however, if they wish TYAD to consider their comments regarding the negative surveys, Tribes should submit comments in writing within 30 calendar days of receipt. TYAD will take any tribal comments received into consideration before finalizing the survey report and will notify the SHPO of any tribal concerns and the TYAD response to those concerns. If Tribes identify properties of traditional religious and cultural significance and/or TCPs, TYAD will proceed to Stipulation II(C).
 - b) All newly identified cultural resources and any previously identified but unevaluated cultural resources that could be affected by an undertaking, will be evaluated by TYAD in accordance with 36 CFR Part 63 and bulletins, guidance, and documents produced by the National Park Service (NPS), in consultation with SHPO, to determine if they are historic properties.

(1) SHPO will provide a response to TYAD eligibility determinations within 30 calendar days of receipt of all pertinent documentation. If no comments are received within that time, the CRM will make a second attempt to contact the SHPO for comments before assuming concurrence with TYAD determinations. If SHPO responds that they do not concur with the eligibility determinations, and if TYAD and SHPO cannot resolve the disagreement within 30 calendar days, then TYAD shall forward the dispute to the Keeper of the National Register for resolution at the conclusion of the 30 calendar day period.

5. If the CRM does not identify any historic properties within the APE after a survey and in concurrence with the SHPO, the CRM shall document a determination of “No Historic Properties Affected” for inclusion in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.
6. If the CRM identifies a historic property that may be directly, indirectly, or cumulatively affected within the APE, the CRM shall continue on in the Section 106 Project Review Process.

C. Evaluate Effects of the Undertaking

1. The CRM shall assess the effects of the proposed undertaking on historic properties, including direct, indirect, and cumulative effects, using the criteria of adverse effects (36 CFR § 800.5(a)(1)) and will make one of the following determinations:
 - a) “No Effect to Historic Properties”: if the CRM determines that historic properties present in the APE will not be affected by the undertaking, the CRM shall document this determination for those undertakings for inclusions in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.
 - b) “No Adverse Effect to Historic Properties”: if the CRM determines that historic properties present in the APE will not be adversely affected by the undertaking, the CRM shall continue on in the Section 106 Project Review Process.

- c) “Adverse Effect to Historic Properties”: if the CRM determines that historic properties present in the APE will be adversely affected by the undertaking, the CRM shall continue on in the Section 106 Project Review Process in accordance with Stipulation III(D).
2. For those undertakings with a finding of “No Adverse Effect to Historic Properties” the CRM will provide the SHPO and Tribes with a packet of information, via certified mail, including, but not limited to, the following:
 - a) project description, to include depth and amount of ground disturbance anticipated;
 - b) APE map showing the location of the project and of any identified historic properties;
 - c) description of the historic properties affected;
 - d) any photos, as necessary; and
 - e) finding of effect and request for concurrence on “No Adverse Effect to Historic Properties” finding from SHPO.
3. Tribes are under no obligation to provide comments on the effect determination; however, if they wish TYAD to consider their comments regarding the effect determination, Tribes should submit comments in writing within 30 calendar days of receipt. TYAD will take any tribal comments received into consideration before concluding the consultation and will notify the SHPO of any tribal concerns and the TYAD response to those concerns.
4. If the SHPO concurs with the no adverse effect finding, the CRM will document this concurrence for inclusion in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.
5. If the SHPO does not concur with the finding of no adverse effect, the CRM will consult with the SHPO for no more than a total of 30 calendar days, upon receipt of SHPO notification of non-concurrence, to attempt to resolve concerns as identified by the SHPO.

- a) If, at the end of the 30 calendar days, the SHPO concurs with the finding of no adverse effect, the CRM will document this concurrence for inclusion in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.
- b) If, at the end of the 30 calendar days, the SHPO does not concur with the finding of no adverse effect, the CRM may accept the SHPO's comments and continue on in the Section 106 Project Review process in order to address the adverse effects pursuant to Stipulation III(D), below.

D. Resolution of Adverse Effects

- 1. The CRM shall notify Consulting Parties, except the ACHP, within 10 calendar days of receiving the SHPO's concurrence of an adverse effect finding for an undertaking and include the following information:
 - a) project description, to include depth and amount of ground disturbance anticipated;
 - b) APE map showing the location of the project and of any identified historic properties;
 - c) description of the historic properties affected;
 - d) any photos, as necessary;
 - e) the explanation for the finding of adverse effects;
 - f) steps taken or considered by TYAD to avoid or minimize the adverse effects;
 - g) SHPO concurrence on "Adverse Effect" finding; and
 - h) an invitation to participate in a consultation to resolve adverse effects, and the proposed date for a Consulting Parties meeting.
- 2. The CRM will send the notification package via certified mail to the Consulting Parties.

3. The CRM shall post a notice of the adverse effects finding on the official TYAD website, within 10 calendar days of receiving the SHPO's concurrence of an adverse effects finding, to include information as outlined under Stipulation III(D)(1), and an invitation to provide written comment to the CRM on the adverse effects finding within 30 calendar days of posting
4. Upon receipt of the notification package, Consulting Parties have 30 calendar days to provide a written response to the CRM accepting the invitation to participate in the consultation. Consulting parties are under no obligation to provide comments on the effect determination; however, if they wish TYAD to consider their comments regarding the effect determination, Consulting Parties should submit comments in writing within 30 calendar days of receipt. TYAD will take any comments received into consideration before concluding the consultation and will notify the SHPO of any concerns and the TYAD response to those concerns.
5. The CRM shall organize a consultation meeting, to include the SHPO, 45 calendar days after notifying Consulting Parties, to discuss alternatives to avoid, minimize, or mitigate the adverse effects. Additional meetings shall be scheduled as needed.
6. If, through consultation with the SHPO and Consulting Parties, the undertaking avoids or minimizes the adverse effects, the CRM will document the alternatives utilized in an attempt to reduce the effects of the undertaking to a no adverse effects finding in consultation and in concurrence with Consulting Parties and include them in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.
7. If through consultation with the SHPO and Consulting Parties the adverse effects are avoided, the measures agreed to by TYAD and Consulting Parties can be specified in a letter agreement referencing the administrative stipulations in this PA and signed by TYAD, SHPO, and any other party that may have a responsibility outlined in the letter agreement (see Attachment C for a sample letter agreement). All Consulting Parties will receive a copy of the executed letter agreement. The letter agreement will be included in the Annual Report (Stipulation VII), and TYAD has no further obligations under this Stipulation.

8. If, through consultation with the SHPO and Consulting Parties, the adverse effects are minimized and/or mitigated, but TYAD or the SHPO requires more thorough documentation than a letter agreement, then the measures agreed to by TYAD, the SHPO, and Consulting Parties will be specified in a Memorandum of Agreement in accordance with 36 CFR § 800.6(c) and filed with the ACHP upon execution.
9. The ACHP will only participate in the resolution of adverse effects for individual undertakings if a written request is received from TYAD or the SHPO.

IV. CURATION

- A. All archaeological materials and appropriate field and research notes, maps, drawings, plans, and photographic records collected as part of an undertaking pursuant to this PA (with the exception of human skeletal remains and items protected under the Native American Graves Protection and Repatriation Act [NAGPRA]) will be cared for in the Pennsylvania Historical and Museum Commission's (PHMC) repository, which meets the requirements in 36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections.

V. POST REVIEW DISCOVERIES

- A. In the event of a post review discovery of a historic property or an unanticipated adverse effect, TYAD shall follow the steps to address said post review discovery in accordance with 36 CFR § 800.13(b).

VI. HUMAN REMAINS

- A. TYAD shall ensure that human skeletal remains and associated funerary objects encountered during the course of actions taken as a result of this PA shall be treated as follows:
 1. The TYAD Commander shall ensure that activities have ceased at the discovery site and that the site has been secured from human and natural forces.
 2. The CRM shall notify the SHPO of the discovery.

3. The CRM shall visit the location of the discovery within one calendar day of the find. The services of appropriate technical experts such as archaeologists, specialists in human osteology, and forensic anthropologists will be retained to participate in the field visit to certify the remains.
- B. In the event that Native American burials are discovered, TYAD shall seek to avoid direct and indirect impacts to the site(s) as the primary mitigation alternative. Treatment of sites containing human remains, funerary objects, sacred objects, or objects of cultural patrimony shall proceed according to NAGPRA of 1990 (Pub. L. 101-601; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058).

VII. ANNUAL REPORT

- A. TYAD shall prepare an annual report and distribute it to all Consulting Parties, except the ACHP, on this PA within 60 calendar days of each new fiscal year via certified mail.
- B. The report will include the following:
1. Activities performed in that fiscal year;
 2. A list of surveys with identified cultural resources;
 3. A list of newly identified historic properties;
 4. A list of undertakings that were reviewed but had no effect on historic properties;
 5. A list of undertakings that were reviewed but had no adverse effect on historic properties;
 6. A list of undertakings that had an adverse effect on historic properties along with their mitigation;
 7. A list of all inadvertent discoveries;
 8. Proposed activities or changes;
 9. A list of any newly proposed undertakings; and
 10. Any changes TYAD might consider toward improvement in implementation of any stipulations.

- C. The Consulting Parties may request an annual meeting within 30 calendar days of receiving the annual report. The meeting shall provide an opportunity to discuss the successes and shortcomings of the PA, its general implementation, and any proposed changes, including consideration of exempting activities that result in a finding of no adverse effect.

VIII. DISPUTE RESOLUTION

- A. Should any signatory or concurring party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, TYAD shall consult with such party to resolve the objection. If TYAD determines that such objection cannot be resolved, TYAD will:
 - 1. Forward all documentation relevant to the dispute, including TYAD's proposed resolution, to the ACHP. The ACHP shall provide TYAD with its opinion on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, TYAD shall prepare a written response that takes into account any timely opinion or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. TYAD will then proceed according to its final decision.
 - 2. If the ACHP does not provide its comments regarding the dispute within the 30 calendar day time period, TYAD may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, TYAD shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the PA, and provide them and the ACHP with a copy of such written response.
- B. The responsibilities of TYAD to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.
- C. At any time during implementation of the measures stipulated in this PA, should an objection pertaining to this PA or the effect of an undertaking on historic properties be raised by a member of the public, TYAD shall notify the parties to this PA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this PA to resolve the objection.

IX. AMENDMENTS

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

X. TERMINATION

- A. If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation IX, above. If within 30 calendar days an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.
- B. Once the PA is terminated, and prior to work continuing on undertakings, TYAD must either (a) execute a Memorandum of Agreement pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. TYAD shall notify the signatories as to the course of action it will pursue.

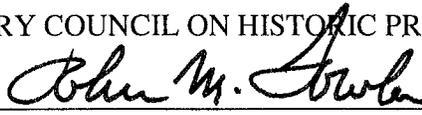
XI. DURATION OF AGREEMENT AND SUNSET CLAUSE

- A. This PA will continue in full force and effect until 10 years after the date of the last signature. At any time in the one-year period prior to such a date, the TYAD may request the signatory parties to consider an extension or modification of this PA. No extension or modification will be effective unless all parties to the agreement have agreed with it in writing in accordance with Stipulation IX. If an extension or modification to this PA is executed, the Army, in consultation with the SHPO, will determine the need for an updated inventory of historic property based on new information or the passage of time.

The execution of this PA by the Army, the SHPO, the ACHP and implementation of its terms evidences that TYAD has taken into account the effects of undertakings at TYAD on historic properties and afforded the ACHP an opportunity to comment.

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AMONG
THE TOBYHANNA ARMY DEPOT,
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICE, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING CONSTRUCTION, MAINTENANCE AND OPERATIONS
ACTIVITIES AT THE TOBYHANNA ARMY DEPOT;
COOLBAUGH TOWNSHIP, MONROE COUNTY, PENNSYLVANIA**

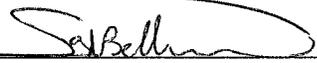
ADVISORY COUNCIL ON HISTORIC PRESERVATION

By:  Date: 1/20/15
John M. Fowler
Executive Director

DEPARTMENT OF THE ARMY, TOBYHANNA ARMY DEPOT

By:  Date: 3.11.2014
Gerhard P.R. Schröter
Colonel, U.S. Army
Commanding

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By:  Date: Dec 24, 2014
Serena Georgia Bellew
Deputy State Historic Preservation Officer

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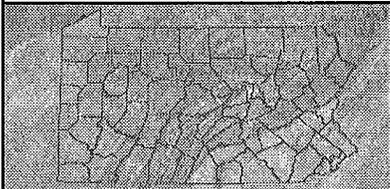
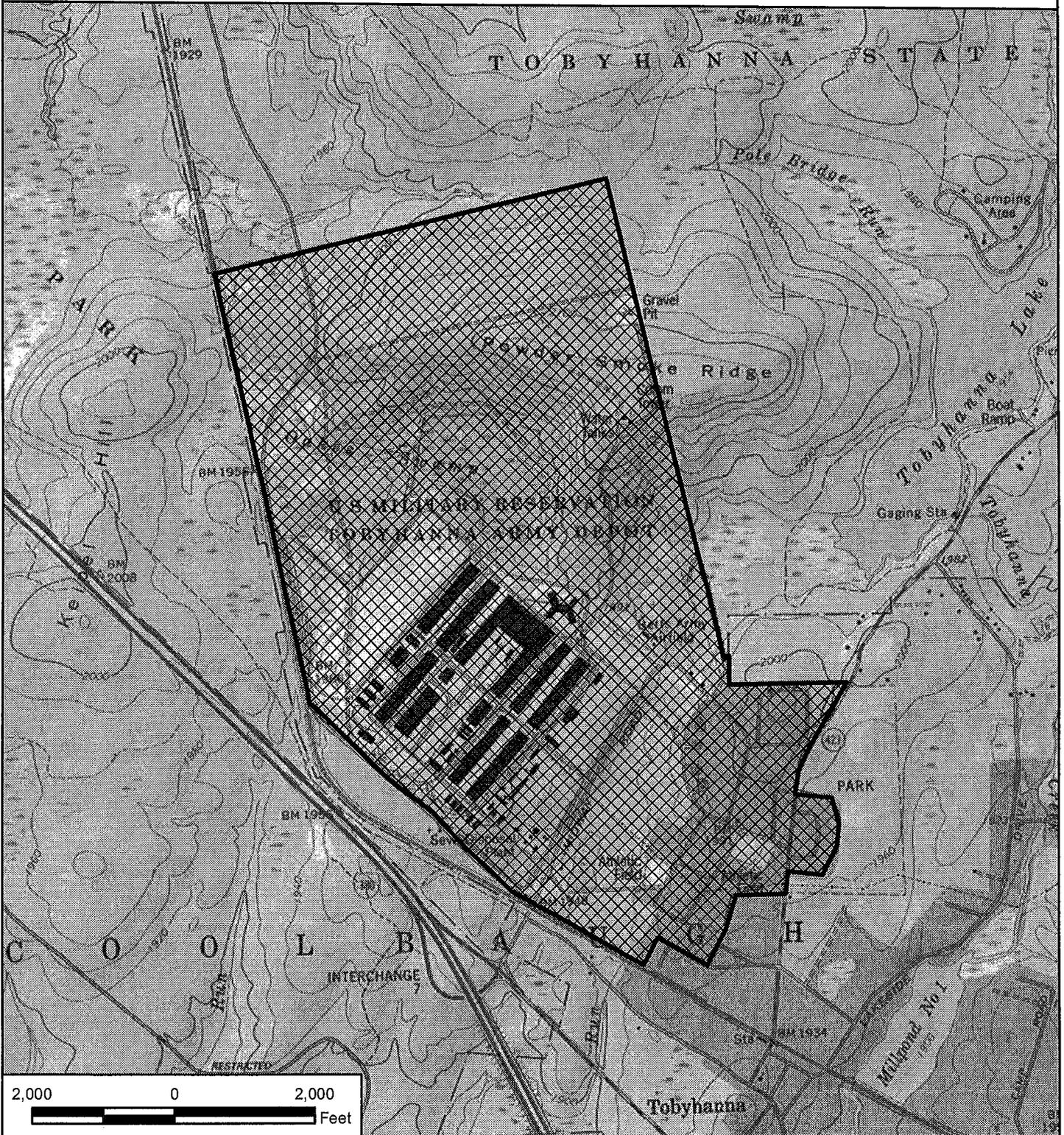
[OTHER SIGNATORIES, INCLUDING FEDERALLY RECOGNIZED TRIBES]

Attachment A: Area of Potential Effect

Attachment A

Area of Potential Effects

Tobyhanna Army Depot
Coolbaugh Township, Monroe County, Pennsylvania



 Area of Potential Effects (APE)

Map Source: © 2009 National Geographic Society

P:\GIS\Projects\1212CW\XD\Hivero\Programs\Agreement\Attachments\Map February 17, 2014 By: JB, AJS

Attachment B: Ground Disturbance Areas

***Minimization and/or Mitigation Measure Modification Regarding
[INSERT THE NAME OF THE UNDERTAKING]
In Accordance with the
PROGRAMMATIC AGREEMENT
AMONG
THE TOBYHANNA ARMY DEPOT,
THE PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICE, AND
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ACTIVITIES AT THE TOBYHANNA ARMY DEPOT,
COOLBAUGH TOWNSHIP, MONROE COUNTY, PENNSYLVANIA
(Agreement)***

WHEREAS, the Agreement was executed on [INSERT MONTH AND YEAR OF EXECUTION]; and

WHEREAS, in the course of project review [INSERT THE NAME OF THE UNDERTAKING] was found to have an adverse effect and through consultation between Tobyhanna Army Depot (TYAD), the Pennsylvania State Historic Preservation Office (SHPO), and [INSERT OTHER IDENTIFIED PARTIES IS APPROPRIATE], minimization and/or mitigation measures to modify the undertaking were identified and concurred on in accordance with Stipulation XXX; and

WHEREAS, TYAD will send a copy of this executed minimization and/or mitigation modification to the ACHP as part of the annual report in accordance with Stipulation XXX;

NOW THEREFORE, in accordance with Stipulation XXX of the Agreement, TYAD and SHPO agree to implement the following minimization and/or mitigation measures as follows:

1. [insert the minimization and/or mitigation measure]

[AND/OR]

2. [insert the minimization and/or mitigation measure]

[Repeat #1 and 2 as necessary]

SIGNATORIES:

DEPARTMENT OF THE ARMY, TOBYHANNA ARMY DEPOT

By: _____ Date: _____

[Name and title of signer]

PENNSYLVANIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____
[Name and title of signer]