

MEMORANDUM OF AGREEMENT

BETWEEN

U.S. DEPARTMENT OF ARMY, ARMY MATERIEL COMMAND

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

AND

SENECA COUNTY, NEW YORK

FOR COOPERATING AGENCY STATUS

ON THE SENECA ARMY DEPOT DISPOSAL AND REUSE EIS

This Memorandum of Agreement (MOA) is entered into between the United States Department of the Army, Army Materiel Command (AMC), the New York State Department of Environmental Conservation (NYDEC), and Seneca County, New York (County) and authorizes the NYDEC and the County to be Cooperating Agencies (CA) for the Seneca Army Depot (SEAD) Disposal and Reuse Environment Impact Statement (EIS).

I. PREAMBLE

a. The Base Closure and Realignment Act of 1990, Public Law 101-510, mandates a series of base realignments and closures known as BRAC. Implementing that law in 1995, the Defense Secretary's Commission on Base Closure and Realignment recommended the following action at Seneca Army Depot in its report to the President, dated 1 July 1995. The President transmitted the recommendation to Congress on July 13, 1995, and the 1995 BRAC recommendations became effective on September 28, 1995, not being rejected by Congress.

The Commission recommends the following: Close Seneca Army Depot, except an enclave to store hazardous material and ores.

b. Public Law 101-510 mandated that provisions of the National Environmental Policy Act (NEPA) apply to DoD actions during the process of property disposal. Therefore, an Environmental Impact Statement (EIS) on the disposal and reuse of SEAD will be prepared under the provisions of NEPA, the Council on Environmental Quality (CEQ) Regulations (40 CFR 1500 *et seq.*), Department of Defense (DoD) Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions, Army Regulation 200-2, Environmental Effects of Army Action, and Army guidance. Thus, the EIS for SEAD will assess the environmental and socioeconomic effects associated with the disposal and reuse of SEAD.

c. The CEQ regulations, 40 CFR 1506.2(a) require Federal agencies to “cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements....” New York State’s Environmental Conservation Law, sections 3-0301(1)(b), 3-0301(2)(m) and 8-0113 require compliance by Seneca County and the State of New York with the State Environmental Quality Review (SEQR) regulations at 6 NYCRR Part 617. Section 617.15(a) of those regulations allows the State of New York and Seneca County to utilize a Federal EIS to satisfy SEQR, so long as “the Federal EIS is sufficient to make findings under Section 617.11...,” including a finding that “from among the reasonable alternatives available, the action is one that avoid or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.”

d. The Secretary of the Army has designated the Assistant Secretary of the Army (Installations, Logistics and the Environment), (ASA(IL&E)), to serve as the Army’s responsible official for NEPA matters. The Army Materiel Command has been designed by the ASA (IL&E) to be the lead agency responsible for BRAC 1995 NEPA documentation for SEAD.

e. In disposing of SEAD, the Department of the Army must also comply with the U.S. Fish and Wildlife Coordination Act ( 16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and other applicable federal laws, including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, and various Executive Orders, including Executive Order No.12393, Environmental Justice, Executive Order No.11990, Protection of Wetlands, and Executive Order No. 13007, Indian Sacred Sites.

f. The Seneca County Board of Supervisors by a resolution, dated 24 October 1995, created a Local Redevelopment Authority (SLRA) to develop a final Redevelopment Plan (Plan) and oversee the implementation of an economic redevelopment strategy that addresses the employment, economic, and land use issues arising from the closing of SEAD.

g. Section 2838 of the National Defense Authorization Act for FY 1996, Pub. L. 104-106 provides that the NEPA environmental assessment of the closure or realignment of an installation shall treat the redevelopment plan submitted by the redevelopment authority for the installation as part of the proposed federal action for the installation. Section 2911 of Pub. L. 103-160, the National Defense Authorization Act for FY 1994, requires the Army to complete the NEPA environmental impact analysis with respect to a closed installation and with respect to the redevelopment plan, if any, within 12 months after the date of submittal of the redevelopment plan to the Secretary of Defense.

h. The County and the State of New York, through the NYDEC, have requested and are authorized to be Cooperating Agencies in the NEPA preparation and review process for the Seneca Depot Disposal and Reuse EIS.

i. In conformance with 40 CFR 1506.2, the Army, the NYDEC, and the County shall make every effort to cooperate to the fullest extent possible to reduce duplication between NEPA and the requirement of the SEQR.

j. It is in the interest of all parties to participate in the task of preparing the Seneca Army Depot Disposal and Reuse EIS. This will assist with the reduction in the duplication of staff efforts and sharing of existing staff expertise and information to meet the requirements of NEPA and SEQR. This will produce a more efficient environmental analysis and public review process.

k. Nothing in this agreement shall alter the responsibility assigned to AMC to develop an EIS that fulfills the Army's responsibilities under NEPA, DoD and Army guidance, the CEQ regulations, and the cited provisions of various National Defense Authorization Act. Nothing in this agreement impairs, alters, limits or in any way affects NYDEC's statutory or common law rights, including but not limited to its rights under the New York State Environmental Conservation Law. No statements made in this agreement shall be deemed an admission or position adopted by NYDEC with respect to the environmental or other situation at SEAD.

2. PURPOSE. This Memorandum of Agreement (MOA) is to establish and record agreed upon principles of mutual support, cooperation, and responsibilities in the preparation of the EIS for disposal and reuse of SEAD. It is in the interest of all parties identified to participate in this effort to develop a timely, accurate, thorough, complete and impartial analysis of the anticipated direct and indirect effects of the disposal and reuse of SEAD arising from the disposal of the installation, including potential effects from the County's Redevelopment Plan.

### 3. ORGANIZATION AND COORDINATION

#### a. GENERAL:

(1) To the maximum extent practicable, the parties agree to share all relevant information regarding environmental conditions pertaining to SEAD, its disposal, and reuse and to the region surrounding SEAD.

(2) When the term AMC is used in the MOA, it not only represent Army Materiel Command interests, but also represents the Industrial Operations Command (IOC), and Seneca Army Depot (SEAD) as participants in the development and review of the EIS.

(3) AMC, including SEAD and the Mobile District Corps of Engineers (MDCOE), the County, and NYDEC shall each appoint a project representative who will serve as its primary point of contact for that party in the SEAD EIS process. Each party may change its designated representative upon formal notice to the other party.

(a) AMC - James Davidson, phone (703) 617-5510

(1) Mobile District COE -

(2) SEAD -

(b) County -

(c) NYDEC -

(4) These representatives shall constitute the SEAD Disposal and Reuse EIS Primary Coordinating Team.

(5) The SLRA is preparing a Seneca Redevelopment Plan for SEAD, following extensive input and participation from the community, the region, and agencies of the State of New York. The Army and AMC support the development of a consensus redevelopment plan, recognizing that an approved redevelopment plan is a key factor in the successful reuse of a closing defense installation and is consistent with President Clinton's Five Point Plan for Revitalizing Base Closure Communities. AMC will cooperate with the SLRA and the County in the development of the redevelopment plan. The redevelopment plan, to the extent available, will be included and analyzed in SEAD Disposal and Reuse EIS.

(6) Frequent and continued coordination will be maintain among the parties. AMC, including the MDCOE and SEAD, NYDEC, and the County will participate in planning and progress review meetings, as mutually determined necessary, to assure consistent coordination of effort. The parties shall cooperate to ensure that to the maximum extent permissible with Federal law and NEPA, the EIS includes information and analysis that will assist NYDEC and the County in fulfilling their duties under Section 617.11 of the SEQR regulations, including the identification of practicable mitigation to identified adverse environmental impacts.

(7) A copy of all comments and correspondence regarding the EIS received by any Party from other agencies, organizations, or individuals will be provided to the other Parties.

b. AMC

(1) Is the lead agency for the preparation of the SEAD Disposal and Reuse EIS under the NEPA, CEQ regulations, DoD and Army guidance, and Army regulations

(2) Directed the U.S. Army Corps of Engineers, Mobile District to be responsible for preparation of the Disposal and Reuse EIS, consistent with the NEPA and the aims and objectives of the Parties to identify and assess the direct and indirect environmental impacts of the disposal and reuse of SEAD. The NEPA, Federal laws and regulations, Army regulations and applicable state environmental laws, such as SEQR, to the extent consistent with NEPA, will be followed for the final determination of the content of the EIS.

(3) Has sole responsibility for formal coordination with the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act, and for formal coordination with the Advisory Council and the State Historic Preservation Office pursuant to the National Historic Preservation Act.

(4) In furtherance of the objectives of this Agreement, AMC will

- (a) Establish formal points of communication with the NYDEC and the County.
- (b) Provide periodic in-process briefing on the development of the EIS.
- (c) Identify and provide access to and an opportunity to comment on all studies and analyses to be used in the environmental documentation.
- (d) Establish a centralized repository at SEAD of documents related to the EIS.
- (e) Provide information on the proposed disposal alternatives and reuse descriptions to be analyzed in the EIS.
- (f) Identify and discuss significant issues to be addressed in the EIS, including environmental impacts, possible mitigation measures, and recommended encumbrances.
- (g) Provide information on and discuss the proposed description of high, medium, and low intensity reuse alternatives ( Reuse Alternatives).
- (h) Provide the County and NYDEC a copy of the Administrative Draft EIS (ADEIS) and an opportunity to review and comment on the ADEIS prior to final review and release by the Army of the Draft EIS
- (i) Provide the NYDEC and the County with copies and an opportunity to comment on all comments received by the Army on the proposed disposal and reuse of SEAD, including comments received on the Draft EIS.
- (j) Provide the NYDEC and the County a copy of the Administrative Final EIS

(AFEIS) and an opportunity to review and comment on the AFEIS prior to release by the Army of the Final EIS.

b. New York Department of Environmental Quality

(1) Has the responsibility to work with the County in the development of a community consensus redevelopment plan for SEAD, which plan may include the identification of significant portions of the Depot to be transferred to the State of New York for wildlife or conservation purposes..

(2) The level of participation by the NYDEC shall be determined in accordance with available Department resources and consistent with agency priorities.

(3) In furtherance of the purposes of the MOA, the NYDEC will:

(a) Establish formal points of contact with AMC and the County for consultation on the SEAD NEPA process.

(b) Participate in joint working groups to exchange information, identify issues, and discuss analysis.

(c) Discuss, as necessary, with the SEAD NEPA process team the County consensus redevelopment plan and its anticipated environmental impact.

(d) Provide the Army access to any environmental documentation analyzing environmental conditions with relation to the Depot disposal or potential reuse in relation to or in support of the redevelopment plan.

(e) Provide the Army with access to correspondence received by the NYDEC related to environmental conditions or effects addressed in the EIS or in the redevelopment plan.

(f) Provide the Army with information on local or regional environmental conditions or development plans, to the extent known.

(g) Identify related proposals or developments which the Army should consider in assessing cumulative impact in the SEAD EIS.

(h) Identify significant environmental issues for consideration in the EIS, including issues known to be sensitive with the Seneca region.

(i) Provide comments to AMC respecting the description of intensity reuse alternatives (Reuse Alternatives) to be addressed in the EIS.

(j) Identify any particular environmental analysis concerns which need to be addressed under SEQR, which would not be addressed under NEPA.

(k) Provide information concerning the natural environment of the Seneca area, as well as information regarding socioeconomic impacts to the extent developed by the NYDEC.

(l) Will consolidate all comments from the State of New York in a comment review package from New York State agencies, for the following review, and provide a consolidated State comment to AMC:

[1] Administrative Draft EIS (ADEIS) - within 20 calendar days

[2] Draft EIS (DEIS)

[3] Administrative Final EIS (AFEIS) - within 20 calendar days

[4] Final EIS (FEIS)

c. Seneca County, New York

(1) Has the responsibility to approve a community consensus redevelopment plan for SEAD, as recommended and developed by the SLRA.

(2) In furtherance of the purposes of the MOA, the SLRA on behalf of the County will:

(a) Establish formal points of contact with AMC for consultation on the SEAD NEPA process.

(b) Participate in joint working groups to exchange information, identify issues, and discuss analysis.

(c) Prepare and submit a consensus redevelopment plan, and discuss, as necessary, such plan with the SEAD NEPA process team.

(d) Provide the Army access to all environmental documentation developed in relation to or in support of the redevelopment plan.

(e) Provide the Army with access to correspondence received by the County or the SLRA related to the environmental conditions or effects addressed in the redevelopment plan.

(f) Provide the Army with information on local or regional environmental, social and economic conditions or development plans, to the extent known.

(g) Identify related proposals or developments which the Army should consider in assessing cumulative impacts in the EIS.

(h) Identify significant environmental issues for consideration in the EIS, including issues known to be sensitive within the region.

(i) Provide comments to AMC respecting the description of intensity reuse alternatives (Reuse Alternatives) to be addressed in the EIS.

(j) Identify any particular environmental analysis concerns which need to be addressed under SEQR, which would not normally be addressed under NEPA.

(k) Provide information concerning the natural environment of the area, as well as information regarding socioeconomic impacts, to the extent developed by the County or the SLRA.

(l) Will consolidate all comments from local government in a comment review package from local or county agencies, for the following reviews, and provide consolidated comments to AMC:

[1] Administrative Draft EIS (ADEIS) - within 20 calendar days

[2] Draft EIS (DEIS)

[3] Administrative Final EIS (AFEIS) - within 20 calendar days

[4] Final EIS (FEIS)

#### 4. PUBLIC PARTICIPATION

a. The Notice of Intent (NOI) to prepare an EIS was published in the Federal Register, Vol. 60, Number 184, page 49263, September 22, 1995, as amended in the Federal Register, Vol. 61, No. 181, page 48920, September 17, 1996. The first scoping meeting was held on September 9, 1996, at the SEAD. Scoping of issues to be addressed in the EIS shall be an on-going process during the development of the DEIS.

b. AMC shall prepare a Public Involvement Plan as required by Chapter 7, AR 200-2. The NYDEC and County shall review and comment on the AMC Public Involvement Plan, and will cooperate in the development and implementation of the Public Involvement Program.

c. It is to the benefit of the Parties that all affected or interested persons or entities be aware of and participate in the SEAD NEPA process. The Parties shall cooperate in developing a master mailing list of agencies, institutions, organization, groups, and persons who will receive copies of the Draft and Final EIS and notices for public hearing and workshops.

d. All information developed or provided to AMC, which pertains to the EIS process or used as backup or supporting information or data, shall be available to the public at a SEAD NEPA Reading Room, to be located at SEAD, except where release of such information would pose a danger to sensitive resources or violate Army or DoD national security restrictions.

#### 5. DOCUMENT REVIEW AND PREPARATION

a. As part of or in addition to its review of information development by the Army, the NYDEC and the County may request that the Army perform additional environmental studies either deems reasonable and necessary to verify, corroborate, or supplement existing environmental information or studies.

b. If the Army declines to perform such studies, the NYDEC or the County may provide the information at its own cost, in which case the information will be included in the EIS analysis, provided it is timely provided to meet the Army's schedule for completing the EIS.

#### 6. DISPUTE RESOLUTION

a. The Parties shall attempt to timely discuss and resolve any difference of opinion or conflicts regarding the technical data, reports, or information supporting the EIS analysis.

b. Should the Parties be unable to resolve conflicts or differences of a scientific or technical nature during the EIS preparation process, the difference or conflict shall be noted in the EIS and any information, studies, or data furnished by the NYDEC or the County shall be included, or summarized, in the EIS as an Appendix, or otherwise referenced in the EIS.

c. AMC shall determine the scope of the EIS. Should AMC determine not to require detailed treatment of a significant issue or factor identified by the NYDEC or the County, the EIS shall clearly identify the criteria used to eliminate such issue or factor from detailed consideration.

#### 7. AGREEMENT, EFFECTIVE DATE, MODIFICATION AND TERMINATION

a. The Army, the NYDEC, or the County may terminate its participation in this agreement upon 30 days written notice served upon the other Parties. The Party electing to terminate the Agreement should demonstrate good cause and shall state in writing its reasons for desiring to terminate the Agreement.

b. The MOA is effective upon the last date of signature by authorized representatives of AMC, the NYDEC, and the County, and shall remain in force until 30 days after the Army issues a Record of Decision for the Disposal and Reuse of SEAD.

Signed and agreed to among the Parties, on the date indicated, as set forth below:

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MICHAEL C. SANDUSKY  
Chief, Special Analysis Office  
U.S. Army Materiel Command

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Director  
New York State Department of

Environmental Conservation

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Chairperson

Board of Supervisors

Seneca County, New York