

**MEMORANDUM OF AGREEMENT
AMONG THE NATIONAL PARK SERVICE
WASHITA BATTLEFIELD NATIONAL HISTORIC SITE,
OKLAHOMA STATE HISTORIC PRESERVATION OFFICER
AND THE
OKLAHOMA ARCHEOLOGICAL SURVEY
REGARDING IMPROVEMENTS AT THE OVERLOOK AND LOOP TRAIL**

WHEREAS, the Washita Battlefield/The Battle of the Washita National Historic Landmark (NHL), located within WABA, was designated by the Secretary of the Interior on January 12, 1965 (see Attachment C); and

WHEREAS, the project area is located within Roger Mills County, specifically SE1/4; SW1/4; NE1/4; S12; T13N; R24W, as depicted in Attachment A; and

WHEREAS, the NPS is the lead federal agency for the purposes of compliance with Section 106 of the National Historic Preservation Act and the National Environmental Policy Act Washita Battlefield National Historic Site (WABA); and

WHEREAS, the Superintendent of WABA has authority to serve as the agency official as defined in 36 CFR 800.2(a) for the purposes of undertakings at WABA; and

WHEREAS, the National Park Service (NPS) plans to replace the existing overlook facilities with new facilities that meet design criteria for complying with the Architectural Barrier Act (ABA) and the Uniform Federal Access Standards; and

WHEREAS, the undertaking consists of the dismantling the existing picnic shelters, parking lots, pavilion, and the hardening of the currently mowed trail. The new accessible facilities would include a viewing structure, waysides, vault toilet, concrete walkways, and a paved loop parking lot. Vault toilets with storage would be solar-powered for lighting and electricity. The new shade structure would be a CMU block structure similar to the Visitor Center; and

WHEREAS, the upgraded facilities would be placed within the existing development zone as identified in the park's *General Management Plan*; and

WHEREAS, the NPS has determined that the introduction of the upgraded facilities, hardened trail surface, grading of the topography, and changes to parking circulation will have an adverse effect on the feeling, association, and setting of the landscape of the NHL; and

WHEREAS, the NPS has defined the undertaking's area of potential effects (APE) as the geographic area where direct or indirect impacts may be ground disturbance, construction, repair, or rehabilitation activities. This includes all areas of construction staging, and the entire extent of Washita Battlefield National Historic Site (WABA) Overlook Area and associated trail features to consider the project's direct and indirect effects on historic properties. The overlook is approximately 390 feet east/west and 150 feet north/south and the length of trail within the undertaking is approximately 3,032 feet; and

WHEREAS, the SHPO concurred on February 27, 2017 that the picnic structures, pavilion, and parking lots are not contributing features to the NHL; and

WHEREAS, there was anecdotal evidence of two individuals buried within the APE, one individual of Native American descent and one United States Cavalryman; and

WHEREAS, NPS has made a reasonable and good faith effort to locate and identify historic properties listed in, or eligible for, the National Register of Historic Places through background and field investigations in accordance with 36 CFR 800.4(b)(1) (Haecker 2000; Lees 1996; NPS 2017; NPS 2018); and

WHEREAS, one burial was confirmed to exist through these identification efforts, however insufficient information was obtained to identify the remains; and

WHEREAS, in accordance with the wishes of the Cheyenne and Arapaho Tribe, no additional data recovery, testing, or treatment will occur within the APE to identify the found remains nor locate the second burial; and

WHEREAS, the NPS has consulted with the Oklahoma State Historic Preservation Officer pursuant to 36 CFR Part 800; and

WHEREAS, in accordance with 36 CFR 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (ACHP) on November 1, 2018 of the adverse effect determination and their intention to develop this MOA pursuant to 36 CFR Part 800.14(b)(1)(ii) and the ACHP has chosen not to participate the in consultation pursuant to 36 CFR Part 800.6(a)(1)(iii); and

WHEREAS, in accordance with 36 CFR 800.10(a)(c), the NPS has notified the Secretary of the Interior of the adverse effect involving a National Historic Landmark and has declined to participate in this consultation; and

WHEREAS, SHPO is authorized to enter this agreement in order to fulfill its role of advising and assisting Federal agencies in carrying out Section 106 responsibilities under the following federal statutes: Sections 101 and 106 of the National Historic Preservation Act of 1966, as amended (54 USC 306108), and pursuant to 36 CFR Part 800, regulation implementing Section 106, at 800(c)(1)(i), and 800.6(b); and

WHEREAS, the NPS has consulted with the Cheyenne and Arapaho Tribe and invited them to sign this Agreement as a concurring party; and

WHEREAS, the SHPO and the Oklahoma Archeological Survey (OAS) operate under a cooperative agreement (approved by the National Park Service) through which OAS formally participates in the Section 106 process; and

WHEREAS, through that cooperative agreement the OAS is a signatory to this agreement; and

WHEREAS, the NPS has involved the public through the National Environmental Policy Act, as amended (NEPA) process associated with the WABA *General Management Plan and Environmental Impact Statement*.

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

STIPULATIONS

NPS shall ensure that the following measures are carried out:

I. TRIBAL CONSULTATION

- A. During design development, the NPS invited the Cheyenne and Arapaho Tribe (Tribe) to discuss the undertaking and historic properties within the APE. These consultations included at least one NPS-sponsored site visit for tribal representatives. Future consultation and site visits are encouraged and the number of and schedule for these visits will be developed by the NPS in consultation with the Tribe; it is expected that a minimum of one meeting and one site visit will occur.
- B. The NPS prepared, in consultation with the Tribe an Inadvertent Discovery Plan (IDP) pursuant to NAGPRA to address any discoveries of Native American human remains and/or cultural items encountered as a result of the construction-related ground disturbance associated with the undertaking. A final signed version of the IDP is found in Attachment D.
- C. If, as a result of these consultations, any ideas are generated that could lead to avoidance of or a reduction in the potential for adverse effects of the undertaking on historic properties, the NPS will share these with all signatories to this agreement, and consider these ideas further as part of the design development process and consultation.
- D. The NPS will document the date, location, and topics discussed during these consultation in such a manner as to protect any sensitive information from disclosure, will provide records of these consultation to SHPO as they occur, and will retain the records in the park's permanent archive.

II. MINIMIZATION TECHNIQUES FOR CONSTRUCTION IMPLEMENTATION

Design, scale, massing, shape, materials, etc. are all described in the construction documents within Attachment B. To maintain ABA accessibility throughout the site, it will not be possible to maintain slopes no greater than 5% in the overlook area, nor keep steeper slopes less than 8%. To obtain grades

shallower than 5 and 8%, the reorganization of the facilities would have a greater impact on the setting, feeling, and views from the overlook.

Specific elements to minimize adverse effects to the cultural landscape and the NHL are described here:

A. Trail Design

1. The trail from the Overlook to the Black Kettle Site near the river is being reduced from a proposed width of 6 feet to 4 feet. The shoulders of the trail would be mowed an additional 2 feet. This reduces the overall construction footprint by 33%.
2. The eastern portion of the trail would remain a mowed path and will not be hardened.
3. The trail leading to the Pony Kill site would be paved since this is a popular area with high visitation volumes. The hardening of the surface will address erosion, social trailing, and ABA accessibility.
4. An integral dyed concrete would be used that closely matches the surrounding landscape. Concrete test sample would be made, selected, approved by the NPS prior to installation during construction. This treatment is appropriate to reduce the visual impacts to the cultural landscape, a contributing element to the NHL.
 - a) Consulting parties shall have 14 calendar days from date of receipt of CMU blocks to provide review and comment.

B. Shade Structure Design

1. The CMU blocks will be reversed of color palette of the Visitor Center so the tan color is predominate with reddish accents. This color arrangement reduces the visual impact of the structure to not make it the center of attention in the area.
 - a) Consulting parties shall have 14 calendar days from date of receipt of CMU blocks to provide review and comment.
2. The CMU roof support columns have been removed to a simple metal post, powder coated blueish grey to match the Visitor Center color scheme and to reduce the “heaviness” of the structure on the landscape. Ultimately this reduces the scale and massing of the new structure.

C. Parking Lot

1. An integral dyed concrete would be used that closely matches the surrounding landscape. Concrete test samples would be made, selected, approved by the NPS prior to installation during construction. This treatment is appropriate to reduce the visual impacts to the cultural landscape, a contributing element to the NHL.
 - a) Consulting parties shall have 14 calendar days from date of receipt of concrete samples to provide review and comment.

D. Demolition

1. To determine the treatment of the sidewalk within the “Area of No Disturbance” the following treatment measures may be taken:
 - a) The concrete will removed using drills and hooks that would not extend deeper than the known level of disturbance;
 - b) The concrete would be broken by hand or mechanized tools and then removed with hand carts to an staging area for haul away;
 - c) The concrete sidewalk could be slid away and pulled into the parking lot area.

2. Treatments identified in II.D.1(a-c) will be tested in areas outside of the “Area of No Disturbance” to determine which is the least impactful to potential subsurface deposits. Should any of these techniques fail, consultation under Section 106 would reopen to determine another method of either concrete extraction or modified use.

III. CONSTRUCTION MONITORING

- A. Actions involving ground disturbance within or adjacent to the boundaries of known archeological sites will be conducted with a professionally qualified archeologist and/or osteologist with experience identifying human remains present to monitor and ensure that construction actions do not result in unanticipated damage to archeological resources, and where feasible, to document anticipated discoveries of archeological materials.
- B. Native American monitoring will be conducted pursuant to Stipulation I.
- C. All workers will be informed of appropriate site etiquette and about the penalties for illegally collecting artifacts or intentionally damaging any archeological or historic property.

IV. POST-REVIEW DISCOVERIES

- A. NPS recognizes that historic properties may be discovered or unanticipated effects on historic properties may be identified after the completion of the Section 106 process. Upon such a discovery during project implementation, the NPS will follow these procedures in accordance with 36 CFR Part 800.13:
 1. The SHPO, Tribe, OAS, and other consulting parties will be notified by NPS within forty-eight (48) hours upon discovery that archeological deposits have been discovered during the undertaking.
 - a) The initial notification shall be completed by phone call or email, with the expectation that additional documentation will be provided via email attachment(s). Such additional documentation must include (but is not limited to): text-based description of the nature, location, and context of the inadvertent discovery; photographs of the materials discovered (in-situ if possible); approximation of project completion; and current status of the project.
 - b) The relevant Points of Contact (POC) for each party is listed below:
 - (1) SHPO
 - (a) Cate Wood, Historical Archaeologist
Section 106 Program Coordinator
Oklahoma Historic Preservation Office
Phone: (405)521-6381
Email: cwood@okhistory.org
 - (2) OAS
 - (a) Kary L. Stackelbeck, State Archaeologist
Oklahoma Archeological Survey
University of Oklahoma
Phone: (405)325-7213
Email: kstackelbeck@ou.edu
 - (3) Cheyenne and Arapaho Tribe of Oklahoma
 - (a) Fred Mosqueda, NAGPRA and Sand Creek Representative

P.O. Box 233
416 S.E. 4th
Geary, Oklahoma 73040
Email: fmosqueda@c-a-tribes.org

- c) If a POC cannot be reached via phone or email, arrangements shall be made to determine the preferred communication method.
 2. If the undertaking has not been completed at the time of the effect is discovered, all activities within one hundred (100) feet of the discovery shall cease, and reasonable efforts shall be taken to avoid or minimize further damage.
 3. A qualified-heritage professional will evaluate the discovery, assess the effects, develop possible treatment recommendations and implement additional protection measures as necessary until the re-opened consultation process has been completed.
 - a) The qualified professional must meet or exceed the Secretary of the Interior's Professional Qualification Standards for archeology, which may be found at: https://www.nps.gov/history/local-law/arch_stnds_9.htm.
 - b) The resulting assessment shall be provided via email to the POCs for the SHPO, OAS, Tribe and other consulting parties, unless other communication methods have been specified.
 4. When NPS and consulting parties agree that historic properties are not affected, the NPS will document the decision and the project may proceed as planned.
 5. When NPS and consulting parties agree that historic properties are affected, NPS and consulting parties will develop a Memorandum of Agreement (MOA) to mitigate adverse effects to historic properties. The Advisory Council on Historic Preservation (ACHP) will be invited to participate in the development of the MOA.
 - a) In this scenario, the consultation process shall include consideration regarding the extent to which elements of the project may proceed upon approval by all consulting parties with appropriate provisions in place to guard against further impacts to the historic property.
 6. When the NPS and consulting parties do not agree that historic properties are affected, the NPS shall seek a formal NRHP-eligibility determination from the Keeper and then revisit items #4 and #5 above with consulting parties.
- B. If the inadvertent discovery includes human remains, funerary objects, and/or materials associated with a burial:
1. All construction activities within three hundred (300) feet of the discovery will cease and steps will be taken to secure the location.
 2. NPS will notify the appropriate law enforcement agency with jurisdiction within forty-eight (48) hours. If the remains are confirmed to be human, law enforcement will determine whether they are of forensic interest or otherwise associated with a crime scene, in which case they would assume responsibility for ensuring treatment measures.
 3. Upon determination that the discovered human remains are not of forensic interest, NPS shall evaluate the potential to leave the remains in place and avoid further disturbance to the burial(s) and associated objects.
 4. NPS shall then notify the State Archeologist (OAS), SHPO, and any interested Tribes who may assert affiliation with the remains. The evaluation of avoidance shall be

included as part of the notification of discovery to the SHPO, OAS, and Tribes and request for further consultation per Stipulation IV.A.1-6.

5. If it is not possible to avoid further disturbance to the remains and associated materials, then NPS shall consult with SHPO, OAS, and Tribes to determine the appropriate treatment measures.
6. Consultation shall not continue in the area until an appropriate plan is executed.

V. STANDARDS

- A. **Definitions.** All terms used herein are defined in 36 CFR 800.16.
- B. **Professional Qualification Standards.** All historic preservation activities implemented pursuant to this Agreement will be carried out by or under the direct supervision of individuals meeting the Secretary of Interior's Professional Qualification Standards (48 FR 44738-39) for the discipline appropriate to the activity.
- C. **Curation Standards.** Curation of materials and records resulting from actions stipulated by this Agreement will be in accordance with 36 CFR 79.
- D. **Confidentiality of archeological site information.** The signatories to this Agreement acknowledge that historic properties covered by this Agreement are subject to the provisions of Section 304 of the National Historic Preservation Act, as amended, relating to the disclosure of archeological site information. All actions and documentation prescribed by this Agreement must be consistent with these sections.

VI. REPORTING

No later than March 1 of each year following the execution of this MOA, or until it expires or is terminated, NPS shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Reports will be sent to the signatories via the United States Postal Service. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NPS's efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the NPS shall notify the other parties and consult with such part for not more than 30-days to resolve the objection. If the NPS determines that such objection cannot be resolved, the NPS will:

- A. Forward all documentation relevant to the dispute, including the NPS proposed resolution, to the Council. The Council shall provide the NPS with its advice on the resolution of the objection within 30-days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. The NPS will then proceed according to its final decision.
- B. If the Council does not provide its advice regarding the disputes within the 30-day time period, the NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the NPS shall prepare a written response that takes into account any timely

comments regarding the dispute from the signatories and concurring parties to the Agreement, and provide them and the Council with a copy of such written response.

- C. The NPS's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

VIII. AMENDMENTS

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

IX. TERMINATION

- A. If any signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII. If within 30-days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate this Agreement upon written notification to the other signatories.
- B. Once the Agreement is terminated, and prior to work continuing on the undertaking, the NPS must either (a) execute a new agreement pursuant to 36 CFR 800.6; or (b) request, take into account, and respond to the comments of the Council under 36 CFR 800.7. The NPS shall notify the signatories as to the course of action it will pursue.

X. DURATION

Unless terminated pursuant to Stipulation XIII, the duration of this Agreement is five (5) years from the date of ACHP execution or until the Undertaking is complete, whichever is shorter.

XI. CITATIONS

Haecker, Charles M.

2000 Cultural Resource Survey of Black Kettle National Grasslands Unit 102, Roger Mills County, Oklahoma. National Park Service, Santa Fe.

Lees, William B

1996 Preliminary Synopsis of Archaeological Findings: Washita Battlefield National Historic Landmark, Roger Mills County, Oklahoma.

National Park Service

2017 Trip Report - Magnetic survey of Overlook and Trails at Washita Battlefield National Historic Site, Roger Mills County, Oklahoma. Midwest Regional Office; Omaha.

2018 Archeological Testing for South Overlook Pavilion & Interpretive Trail Project, Roger Mills County, Washita Battlefield National Historic Site; Santa Fe.

EXECUTION of this Agreement by NPS and SHPO and implementation of its terms evidence that the NPS has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

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National Park Service



Mark Schubert

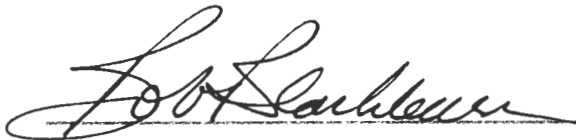
Acting Superintendent, Washita Battlefield National Historic Site

3/2/19

Date

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Oklahoma State Historic Preservation Officer



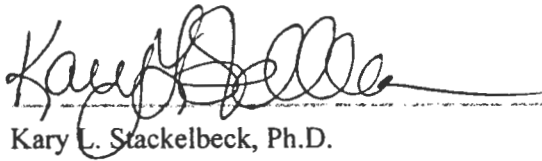
Dr. Bob Blackburn
State Historic Preservation Officer

3-5-19

Date

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Oklahoma Archeological Survey



Kary L. Stackelbeck, Ph.D.
State Archaeologist

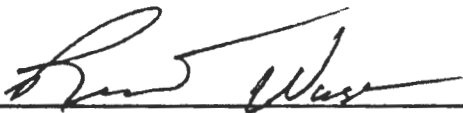
3/7/2019

Date

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CONCURRING PARTIES:

Cheyenne and Arapaho Tribes



Reggie Wassana
Governor

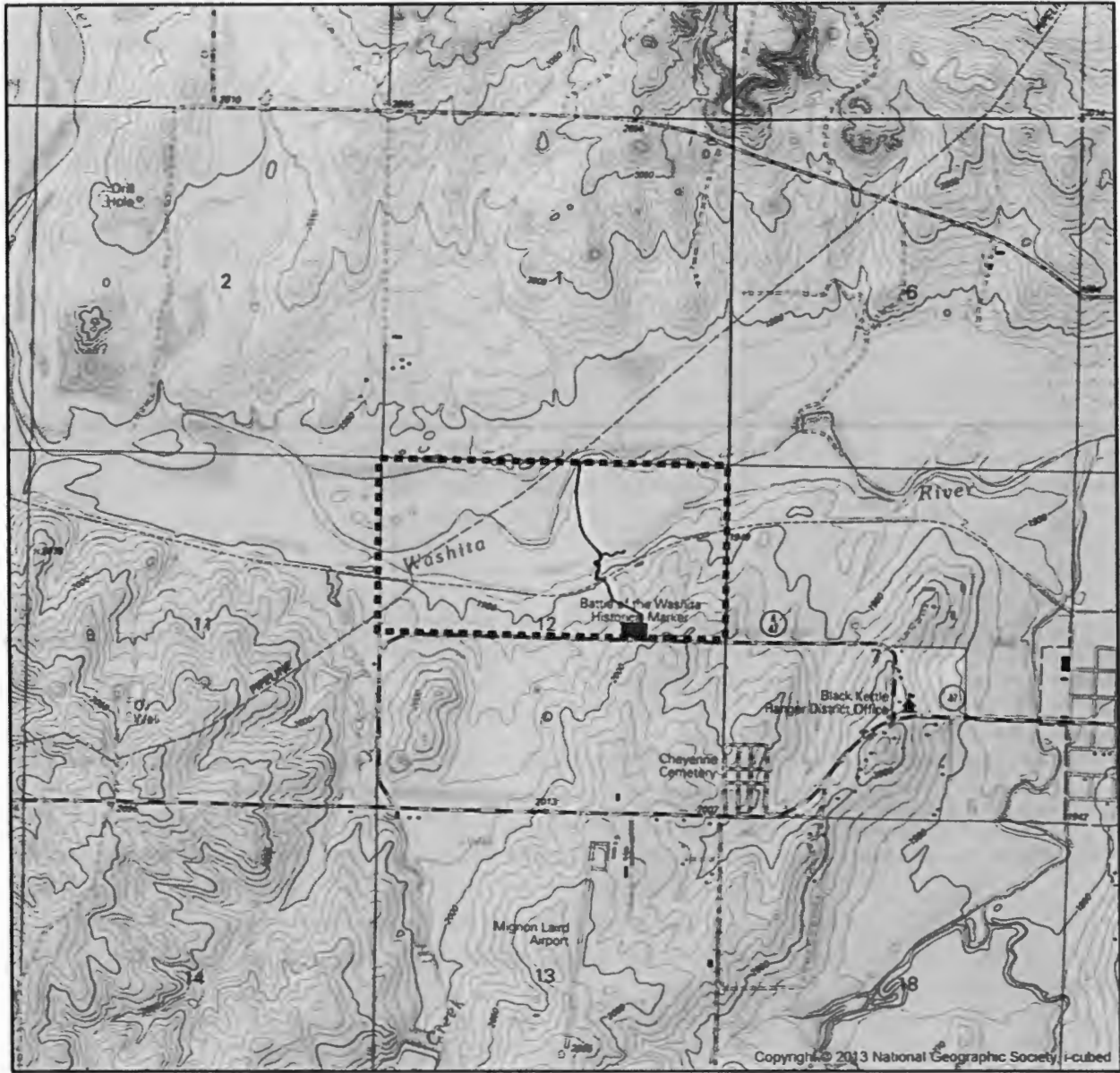
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Date

ATTACHMENT A
Area of Potential Effect



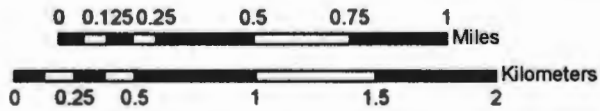
Area of Potential Effect



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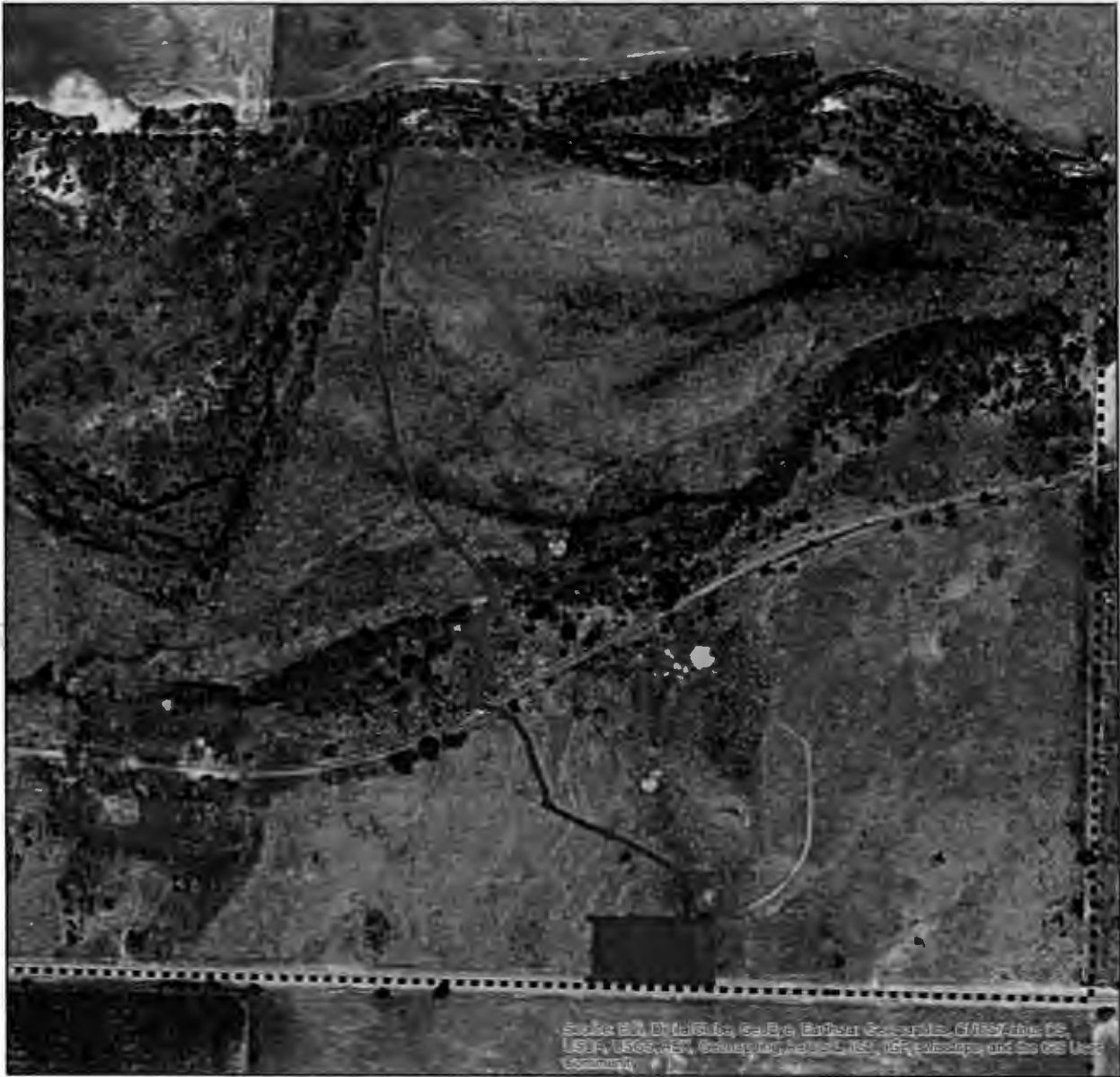
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- Project_APE

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Area of Potential Effect



Legend

- NPS Boundary
- Project APE

