

**PARKWIDE PROGRAMMATIC AGREEMENT AMONG
THE NATIONAL PARK SERVICE AT ROCKY MOUNTAIN NATIONAL PARK,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE COLORADO STATE HISTORIC PRESERVATION OFFICER
REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC
PRESERVATION ACT FOR ROUTINE OPERATIONS, MANAGEMENT AND
ADMINISTRATIVE UNDERTAKINGS OCCURRING WITHIN
ROCKY MOUNTAIN NATIONAL PARK**

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WHEREAS, the National Park Service (NPS) at Rocky Mountain National Park (ROMO in reference to NPS staff managing the National Park System unit; Park in reference to the National Park System unit proper), located in Larimer, Boulder, and Grand Counties, Colorado, is responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 USC § 306108), and its implementing regulations, 36 CFR § 800; and

WHEREAS, the responsibilities of the Colorado State Historic Preservation Officer (SHPO) under Section 106 of the NHPA are to advise, assist, review, and consult with Federal agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies' requests within a specified period of time; and

WHEREAS, the NPS has determined that the implementation of undertakings in the park may have an effect upon properties eligible for or included in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted with the Colorado SHPO pursuant to 36 CFR § 800.14(b); and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (ACHP) of the development of this Programmatic Agreement (PA), and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, the NPS has defined the undertaking's area of potential effect (APE) as comprising all lands administered by ROMO within the boundary of the Park; and

WHEREAS, the 2008 *Programmatic Agreement Among the National Park Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers for Compliance with Section 106 of the National Historic Preservation Act* (2008 Nationwide PA) does not fully cover the range of routine ROMO operations, management, and administration activities in the Park; and

WHEREAS, the NPS has determined that the effects on historic properties cannot be fully evaluated prior to the approval of all undertakings due to the large geographic extent of the Park, limited preexisting identification and evaluation of historic properties throughout much of the Park, and high volume and pace of project implementation; and has developed this supplemental

Parkwide PA to establish a parkwide process to supplement the 2008 Nationwide PA for complying with Section 106 of the NHPA in accordance with 36 CFR § 800.14(b)(1); and

WHEREAS, the general consultation provisions outlined in the 2008 Nationwide PA (Section II.C) are not altered by implementation of the Parkwide PA; and

WHEREAS, the NPS has consulted with the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne and Arapaho Tribes, Oklahoma; Comanche Nation, Oklahoma; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Shoshone Tribe of the Wind River Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, and Utah; and each have been invited to sign this Parkwide PA as concurring parties; and

WHEREAS, the NPS has consulted with Boulder County, Grand County, Larimer County, the Town of Estes Park, and the Town of Grand Lake; and each have been invited to sign this Parkwide PA as concurring parties; and

WHEREAS, the NPS has consulted with additional stakeholders to include the Colorado Council of Professional Archaeologists, the Grand Lake Area Historical Society, and the Rocky Mountain Conservancy; and each have been invited to sign this Parkwide PA as concurring parties; and

WHEREAS, the administrative record of written correspondence with potential stakeholders and draft review comments regarding this Parkwide PA is retained in the NPS Planning, Environment & Public Comment database; and

WHEREAS, pursuant to the consultation under 36 CFR § 800.14(b), the signatories have developed this Parkwide PA in order to establish an efficient and effective program alternative for taking into account the effects of undertakings on historic properties in the Park and for affording the ACHP a reasonable opportunity to comment on undertakings covered by this Agreement; and

NOW, THEREFORE, the NPS, SHPO, and ACHP agree that additional routine maintenance and operational undertakings in the Park shall be administered according to the following stipulations in order to take into account the effect of these undertakings on historic properties.

PURPOSE AND NEED

The 2008 Nationwide PA was implemented to provide “an efficient process for compliance with Section 106 for daily NPS park operations, management, and administration activities,” delineating a Streamlined Review Process for “designated undertakings that meet established criteria”; a Standard Review Process “for all other undertakings”; and “programmatic procedures

and guidance for other activities related to the Section 106 compliance process, including identification of resources, consultation, and planning.”

According to criteria established under the 2008 Nationwide PA (Section III.A), that Streamlined Review Process may only be utilized when a proposed undertaking falls under at least one of 16 defined “streamlined activities”; “identification and evaluation of all types of historic properties within the project area of potential effect” has been “previously undertaken, sufficient to assess effects on those resources”; and the Effect Finding is “No Historic Properties Affected” or “No Adverse Effect”.

Recognizing that the defined “streamlined activities” do not adequately encompass all routine activities across all National Park System units, the 2008 Nationwide PA also encourages the development of “supplemental programmatic agreements for park undertakings that would otherwise require numerous individual requests for comments” (Section IX.A).

Rocky Mountain National Park encompasses over 265,761 acres of mountainous terrain, with elevations ranging between 7,600 and 14,259 feet across a diversity of ecosystems. It includes 249,339 acres of designated wilderness, 355 miles of hiking trails, 120 miles of roads, and a multitude of archeological and built-environment cultural resources imbued with the histories of Native Americans, explorers, hunters, homesteaders, miners, ranchers, and National Park development. Annual visitation averages exceeding 4.5 million have accelerated routine wear and tear to resources, while seasonal limitations and a high operational tempo coupled with staffing and budgetary constraints impede ROMO’s ability to both effectively meet mission requirements and complete the standard Section 106 review process for many routine activities necessary for successful resource stewardship. Although the 2008 Nationwide PA provides a sufficient Streamlined Review Process for the majority of routine operations, ROMO also undertakes a number of repetitive, low-impact activities that are not fully defined under “streamlined activities” and/or occur in areas where historic properties have not been fully identified and evaluated in advance.

The purpose of this supplemental Parkwide PA is to augment the 2008 Nationwide PA in two ways. First, to establish criteria for the implementation of a Parkwide Streamlined Review Process for qualifying undertakings that includes areas where historic properties have not previously been identified and evaluated. Second, to describe additional repetitive, low-impact activities that qualify for Parkwide Streamlined Review. If an undertaking fully qualifies to be streamlined under the 2008 Nationwide PA, that agreement will be used. If an undertaking does not meet the criteria for the 2008 Nationwide PA, but fully qualifies to be streamlined under the Parkwide PA, that agreement will be used. If an undertaking does not fully qualify for either the 2008 Nationwide PA or the Parkwide PA, then the Standard Review Process applies in accordance with 36 CFR § 800.

STIPULATIONS

The NPS shall ensure that the following measures are carried out:

I. PARK-LEVEL RESPONSIBILITIES, QUALIFICATIONS, AND STANDARDS

- A.** To ensure the Park Superintendent meets historic preservation responsibilities as the responsible agency official and the requirements of the 2008 Nationwide PA, Park-level roles and responsibilities identified in this Parkwide PA shall conform to the provisions outlined in Appendix A of this document.
- B.** All work activities under this Parkwide PA will be performed or supervised by qualified individuals and/or teams that meet either the provisions of the *Secretary of the Interior's Professional Qualification Standards* (62 FR 33708, June 20, 1997) for non-NPS specialists or *NPS Director's Order 28: Cultural Resource Management Guidelines* for NPS staff.
- C.** All work activities directly involving historic properties will adhere to *The Secretary of the Interior's Standards for the Treatment of Historic Properties*. For the purposes of this agreement, the terms "repairs" and "in-kind replacements" shall be defined in accordance with Rehabilitation Standard #6, which states: "Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence."
- D.** Any identification, documentation, or treatment of historic properties pursuant to implementation of this Parkwide PA shall meet the provisions of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716, September 29, 1983), as amended, and *NPS Director's Order 28: Cultural Resource Management Guidelines*.
 - 1.** To ensure standards for identification and documentation of historic properties are consistently met, ROMO will utilize either Colorado SHPO Cultural Resource Survey Forms, available at www.historycolorado.org, or the ROMO Cultural Resource Documentation Forms in Appendix B of the Parkwide PA. The appended forms have been reviewed and accepted by the SHPO for ROMO use and submission. Should ROMO amend the current forms or develop new ones, any substantive changes must be accepted by the SHPO, and documented in an amended and signed Parkwide PA, prior to usage by ROMO.

II. CRITERIA FOR USING THE PARKWIDE STREAMLINED REVIEW PROCESS

- A.** The proposed undertaking must be an activity eligible for Parkwide Streamlined Review, listed as a streamlined activity in the Appendices of this PA.

- B.** A cultural resources assessment must have been prepared by the Park Section 106 Coordinator and approved by the Cultural Resource Management (CRM) Team as per stipulation Section I.A of the nationwide programmatic agreement.
- C.** Provided that the undertaking is eligible for being streamlined under Section IV.B of this PA, identified historic properties and any prehistoric or historic site, district, building, structure or object, including traditional cultural property, that do not have a consensus determination of eligibility and are located within the activity APE will be treated as historic properties and subject to avoidance measures and/or best management practices.
- D.** The Park Section 106 Coordinator, in coordination with the CRM Team, must have reviewed the activity and certified that the effects of the proposed activity on historic properties will not be adverse based on criteria in 36 CFR Part 800.5, including consideration of direct, indirect, and cumulative effects. The Effect Finding must be "No Historic Properties Affected" or "No Adverse Effect".
- E.** ROMO will undertake formal survey efforts of streamlined activity project areas subject to the availability of appropriated funds. ROMO will ensure that any survey undertaken conforms to the Secretary of the Interior's Standards for Identification and Documentation of historic properties.

III. PROJECT PLANNING AND PARKWIDE STREAMLINED REVIEW

- A.** ROMO will identify planned activities meeting the Parkwide PA stipulations for streamlining to be conducted within a one year period of time with an annual work plan.
 - 1.** Should any unplanned projects meeting the stipulations of this Parkwide PA arise during the subsequent calendar year, ROMO will notify Federally recognized Indian Tribes and the SHPO in as timely a manner as possible.
- B.** The Park Section 106 Coordinator will prepare a cultural resources assessment for review and approval by the CRM Team. One assessment will be prepared for all anticipated undertakings meeting the Parkwide Streamlined Review qualifications for the upcoming year.

The Cultural Resources Assessment will:

- 1.** Evaluate whether proposed activities have the potential to cause direct, indirect and cumulative effects on historic properties and whether the activities qualify for Parkwide Streamlined Review. If the activities do not meet the criteria for Parkwide Streamlined Review, the undertaking must

be accomplished through the Standard Review Process in accordance with 36 CFR § 800;

2. Define the project APE, taking into account direct, indirect and cumulative effects on historic properties;
3. Identify potential historic properties within the APE by consulting with the Park Section 106 Coordinator and members of the CRM Team to identify the location and significance of cultural resources within the APE. If cultural resources within the APE have not yet been documented or evaluated for eligibility for listing on the NRHP, the CRM Team will determine whether archeological surveys are needed by considering the following:
 - i. The results of the file and literature search and whether adequate survey has already occurred and/or there is no potential for historic properties (i.e., previous disturbance or developed area);
 - ii. Whether the proposed activity is ground disturbing and has the potential to affect historic properties;
 - iii. Whether identified or potential historic properties within the APE can be avoided through measures;
 - iv. Whether the undertaking would qualify for Parkwide Streamlined Review;
 - v. Comments received during the CRM Team consultation process.
 - vi. Where the Park Section 106 Coordinator, in coordination with the CRM Team, determines criteria per the Parkwide PA are met for a proposed undertaking and a mapped location of the undertaking is provided to Federally recognized Indian Tribes for review and copied to SHPO, no further consultation is required prior to implementation, unless otherwise specifically requested by the Federally recognized Indian Tribes or representative THPOs within 30 days.
4. Assess potential effects on historic properties from the undertaking by applying the Criteria of Adverse Effect set forth in 36 CFR § 800.5(a)(1);
5. If the Park Section 106 Coordinator determines no historic properties are within the APE, or the proposed undertaking would result in a determination of “no historic properties affected” or “no adverse effect,” no further consultation is required prior to the undertaking, and the Park Section 106 Coordinator will document the following:

- i. Consultation conducted with the public and with Federally recognized Indian Tribes and/or descendants as defined by Park affiliation studies needed to identify the presence or absence of sites of cultural or religious interest;
 - ii. Any proposed protection measures of archeological sites to follow 36 CFR § 68;
 - iii. An annual report of all undertakings reviewed using the Parkwide Streamlined Review Process, to include a list of properties not yet evaluated for NRHP eligibility.
- C. The annual report of all undertakings reviewed during the preceding calendar year using the Parkwide Streamlined Review will be transmitted to the SHPO in conjunction with the Nationwide Streamlined Review annual report by or before March 31 of the following year. Reporting may also include any proposed scheduling changes, any problems encountered, and any disputes or objections received in ROMO's efforts to carry out the terms of this PA. If additional time is necessary to complete the report, ROMO shall notify all parties within 30 days after the report is due and propose a revised schedule. The reporting extension will be agreed upon by all parties to this PA.
- D. For qualified undertakings, ROMO will maintain a list of properties not documented or evaluated for NRHP eligibility. The updated list shall be transmitted to SHPO annually by or before March 31, in conjunction with the streamlined review reporting.
- E. Public access to the cultural resources assessment or other archeological reporting and documentation will remain confidential to the extent that they meet the definitions set forth at Section 304 of the NHPA, Section 9 of the Archeological Resource Protection Act, Native American Graves Protection and Repatriation Act, and similar legislation.
- F. **Monitoring**

If the streamlined activity includes ground disturbance, archeological and/or cultural monitoring may be appropriate in accordance with any recommendation of the CRM Team and/or Federally recognized Indian Tribes. These parties shall be notified of the recommendation for archeological monitoring and be given the opportunity to request cultural monitoring.
- G. **Inadvertent Discoveries or Unanticipated Effects**
 - 1. For situations when historic properties may be discovered or unanticipated effects on historic properties are found during implementation of any

activity associated with the undertaking, all work in the area of the discovery or unanticipated effects will stop and the area will be secured from further disturbance.

2. An archeologist or other cultural resource specialist who meets the *Secretary of the Interior's Professional Qualification Standards* will document and evaluate the discovery for NRHP eligibility.
3. If archeological materials are discovered as a result of any undertaking, the discovery will be protected, and all earth disturbing activities will cease within 30 meters of the discovery until the discovery is assessed and documented. If an archeologist who meets the Secretary of the Interior's Qualification Standards determines that the discovery is an isolated find that is not eligible for NRHP listing, it will be documented in accordance with 36 CFR § 800.13(a)(2)(b) and the activity will proceed with no further consultation. For all other discoveries, ROMO will either assume the materials eligible for NRHP listing pursuant to 36 CFR § 800.13(c) or consult with Federally recognized Indian Tribes and the SHPO regarding eligibility and effect. ROMO will notify the SHPO and Federally recognized Indian Tribes by phone within 48 hours of the discovery.
4. The Park Superintendent, in consultation with the Park Section 106 Coordinator and appropriate CRM Team members, will make reasonable efforts to avoid, minimize or mitigate adverse effects on historic properties in consultation with the SHPO and the respective Federally recognized Indian Tribes.

IV. DISPUTE RESOLUTION

Should any concurring party or signatory to this Parkwide PA object at any time to any actions proposed or the manner in which the terms of this Parkwide PA are implemented, the NPS shall consult with such party 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 ACHP. The ACHP 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 ACHP, 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 ACHP does not provide advice regarding the dispute 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 this Parkwide PA, and provide them and the ACHP with a copy of such written response.

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

V. AMENDMENTS

This Parkwide 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.

VI. DURATION AND TERMINATION

- A. This Parkwide PA will expire ten years from the date of execution. Prior to expiration, the NPS and other signatories may consult to reconsider the terms of the Parkwide PA and renew, amend, or terminate it.
 - 1. The NPS will notify other signatories to this Parkwide PA of the scheduled expiration date one year in advance, in order to allow adequate time for any needed consultations to amend the terms prior to renewal or termination.
- B. If any signatory to this Parkwide PA 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 Section V. If an amendment cannot be reached within 30 days (or another time period agreed to by all signatories) of an NPS decision to proceed (in accordance with the Dispute Resolution process), any signatory may terminate this Parkwide PA upon written notification to the other signatories.
- C. If the NPS fails to submit the annual report on Parkwide Streamlined Activities by the March 31 due date, or request an extension within 30 days after the due date, the Parkwide PA will then be considered terminated.
- D. If the 2008 Nationwide PA is terminated prior to expiration of the Parkwide PA, then the Parkwide PA will also be terminated.
- E. Once the Parkwide PA is terminated, and prior to work continuing on the undertaking, the NPS must either execute a new Parkwide PA pursuant to 36 CFR § 800.14(b) or request, take into account, and respond to the comments of the

ACHP under 36 CFR § 800.7. The NPS shall notify the signatories as to the course of action it will pursue.

VI. ANTI-DEFICIENCY ACT

The stipulations of this Parkwide PA are subject to the provisions of the Anti-Deficiency Act. The NPS shall make reasonable and good faith efforts to secure the necessary funds to implement this Parkwide PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the NPS' ability to implement the stipulations of this agreement, the NPS shall consult in accordance with the amendment and termination procedures found in Sections V and VI of this Parkwide PA.

EXECUTION of this Parkwide PA by the NPS, SHPO and ACHP, and implementation of its terms evidence that the NPS has taken into account the effects of these undertakings on historic properties.

SIGNATORIES:

National Park Service

_____ Date _____

Darla Sidles,
Superintendent, Rocky Mountain National Park

Colorado State Historic Preservation Officer

_____ Date _____

Dr. Holly Norton
Deputy State Historic Preservation Officer

Advisory Council on Historic Preservation

_____ Date _____

Reid J. Nelson
Executive Director (Acting), Advisory Council on Historic Preservation

CONCURRING PARTIES

For the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation:

Name Title Date

For the Cheyenne and Arapaho Tribes:

Name Title Date

For the Comanche Nation:

Name Title Date

For the Northern Arapaho Tribe of the Wind River Reservation:

Name Title Date

For the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation:

_____ Name	_____ Title	_____ Date
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For the Shoshone Tribe of the Wind River Reservation:

_____ Name	_____ Title	_____ Date
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For the Southern Ute Indian Tribe of the Southern Ute Reservation:

_____ Name	_____ Title	_____ Date
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For the Ute Indian Tribe of the Uintah and Ouray Reservation:

_____ Name	_____ Title	_____ Date
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For the Ute Mountain Tribe of the Ute Mountain Reservation:

_____ Name	_____ Title	_____ Date
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For Larimer County:

_____ Name	_____ Title	_____ Date
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For Grand County:

_____ Name	_____ Title	_____ Date
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For Boulder County:

_____ Name	_____ Title	_____ Date
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For the Town of Estes Park:

_____ Name	_____ Title	_____ Date
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For the Town of Grand Lake:

_____ Name	_____ Title	_____ Date
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For the Colorado Council of Professional Archaeologists:

_____ Name	_____ Title	_____ Date
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For the Grand Lake Area Historical Society:

_____ Name	_____ Title	_____ Date
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For the Rocky Mountain Conservancy:

_____ Name	_____ Title	_____ Date
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APPENDICES

APPENDIX A: Park Level Roles and Responsibilities

APPENDIX B: Rocky Mountain National Park Cultural Resource Documentation Forms

APPENDIX C: Road Maintenance Streamlined Activities

APPENDIX D: Trails and Wilderness Streamlined Activities