

PROGRAMMATIC AGREEMENT AMONG THE
NATIONAL PARK SERVICE
(U.S. DEPARTMENT OF THE INTERIOR),
THE ADVISORY COUNCIL
ON HISTORIC PRESERVATION,
AND
THE NATIONAL CONFERENCE OF STATE HISTORIC
PRESERVATION OFFICERS

WHEREAS, the National Park Service (NPS) plans for, operates, manages, and administers the National Park System, and is responsible for preserving, maintaining, and interpreting the cultural resources of the System unimpaired for the enjoyment of future generations; and

WHEREAS, the operation, management, and administration of the System entail undertakings that may affect historic properties (as defined in 36 CFR Part 800), which are therefore subject to review under Sections 106, 110(f) and 111(a) of the National Historic Preservation Act as amended (NHPA; 16 U.S.C.470 et seq.) and the regulations of the Advisory Council on Historic Preservation (Council) (36 CFR Part 800); and

WHEREAS, the NPS has established management policies, guidelines, standards, and technical information designed for the treatment of cultural resources consistent with the spirit and intent of the NHPA; and

WHEREAS, the NPS has a qualified staff of cultural resources specialists in parks, System Support Offices, and archeological and preservation centers to carry out programs for cultural resources; and

WHEREAS, the NPS has consulted with the National Conference of State Historic Preservation Officers (Conference) and the Council regarding ways to ensure that NPS operation, management, and administration of the System provide for management of the System's cultural resources in accordance with the intent of NPS policies and with Sections 106, 110, and 111 of the NHPA; and

WHEREAS, the National Park Service, the Conference, and the Council executed a Nationwide Programmatic Agreement in 1990 that is superseded with the execution of this Programmatic Agreement; and

WHEREAS, the NPS has re-structured in order to place more resources and delegations of authorities with park managers;

NOW, THEREFORE, the NPS, Conference, and Council mutually agree that the NPS will carry out its Section 106 responsibilities with respect to management of the System in accordance with the following stipulations:

STIPULATIONS

I. POLICY

The NPS will continue to preserve and foster appreciation of the cultural resources in its custody through appropriate programs of protection, research, treatment, and interpretation. These efforts are and will remain in keeping with the NHPA, the National Environmental Policy Act (NEPA), the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, the Archeological and Historic Preservation Act of 1974, the Native American Graves Protection and Repatriation Act, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, NPS Management Policies, and the Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act. It remains the NPS goal to implement these programs in consultation with other Federal agencies, State Historic Preservation Officers (SHPOs), Indian tribes, local governments, and the public.

Other guidelines, standards, and regulations relevant to this Agreement and its purposes include:

- NPS-28, Cultural Resource Management Guideline
- NPS-2, Planning Process Guideline
- NPS-6, Interpretation and Visitor Services Guideline
- NPS-12, NEPA Compliance Guideline
- NPS-38, Historic Property Leasing Guideline
- 36 CFR Part 18, Leases and Exchanges of Historic Property

II. IDENTIFYING CULTURAL RESOURCES

The NPS will coordinate with SHPOs activities for research related to resource management needs and identification, evaluation, and registration of park historic properties. NPS fulfills these responsibilities under Section 110 of the NHPA and 36 CFR Part 800.4, with regard to properties potentially significant at national, State, or local levels and mindful of State preservation planning and inventory programs.

III. DELEGATION OF AUTHORITY

A. Park superintendents are the responsible agency officials as defined in 36 CFR Part 800.1(c)(1)(i) for purposes of Section 106

compliance. They will assume this responsibility in accordance with Stipulation VIII below.

B. Superintendents will be held accountable for their performance in Section 106 compliance through NPS procedures for performance and program evaluation.

C. To meet this responsibility, each park will have the following:

1. a commitment to training park staff, including an invitation to the appropriate SHPO and the Council to participate in that training, so that park staff are generally familiar with Section 106 processes; and
2. at least one staff person qualified to act as the park's 106 coordinator, whose 106 responsibilities are specified in his or her position description and performance standards; and
3. a formally designated set of CRM advisers whose qualifications are consistent with OPM standards, the intent of 36 CFR Part 61, Appendix A, and the intent of Section 112(a)(1)(B) of the National Historic Preservation Act. In-park staff, System Support Offices, other parks, NPS cultural preservation and archeological centers, Denver Service Center, other government agencies, and specialists and scholars outside NPS are all possible sources for needed expertise. Specialists who are not federal employees must meet the standards in 36 CFR Part 61, Appendix A.

D. SHPOs and the Advisory Council may at any time raise with the appropriate Field Director any programmatic or project matters where they wish the Field Director to review a park superintendent's decision.

IV. PROJECT REVIEW-- NATIONWIDE PROGRAMMATIC EXCLUSIONS

A. Undertakings listed in IV.B will be reviewed for Section 106 purposes within the NPS, without further review by the Council or SHPOs, provided:

1. that these undertakings are based upon information adequate to identify and evaluate affected cultural resources [except for IV.B.(5)];
2. that the NPS finds that their effects on cultural resources in or eligible for the National Register will not be adverse based on criteria in 36 CFR Part 800.9; and
3. that decisions regarding these undertakings are made and carried out in conformity with applicable policies, guidelines, and

standards as identified in Stipulation I, and are documented by NPS using the form for "Assessment of Actions Having an Effect on Cultural Resources" or another appropriate format. (See Stipulation VII below).

B. The following undertakings may be reviewed under the terms of IV.A:

1. preservation maintenance (housekeeping, routine and cyclic maintenance, and stabilization) as defined in NPS-28;
2. routine grounds maintenance, such as grass cutting and tree trimming;
3. installation of environmental monitoring units, such as those for water and air quality;
4. archeological monitoring and testing and investigations of historic structures and cultural landscapes involving ground disturbing activities or intrusion into historic fabric for research or inventory purposes (see also Stipulations II and IX.C);
5. acquisition of lands for park purposes, including additions to existing parks;
6. rehabilitation and widening of existing trails, walks, paths, and sidewalks within previously disturbed areas;
7. repaving of existing roads or existing parking areas within previously disturbed areas;
8. placement, maintenance, or replacement of utility lines, transmission lines, and fences within previously disturbed areas;
9. rehabilitation work limited to actions for retaining and preserving, protecting and maintaining, and repairing and replacing in kind materials and features, consistent with the Secretary of the Interior's Standards for Rehabilitation and the accompanying guidelines;
10. health and safety activities such as radon mitigation, and removal of asbestos, lead paint, and buried oil tanks;
11. installation of fire detection and suppression systems, and security alarm systems, and upgrading of HVAC systems;

12. erection of signs, wayside exhibits, and memorial plaques;

13. leasing of historic properties consistent with NPS-38, if proposed treatments are limited to those consistent with IV.B(1) and (9) and other activities excluded under IV.A and B.

C. Park superintendents and SHPOs may develop additions to Stipulation IV.B that identify other types of undertakings that they mutually agree will be excluded from further review. Proposals for such additions will be provided for review to the Executive Director of the Council, the NPS Director, and the Executive Director of the Conference. Upon their acceptance, the Council, the Conference, and NPS will maintain records on those additions as amendments to this Agreement, and provide for dissemination to other appropriate SHPOs and NPS offices.

D. In the event that a SHPO questions whether a project should be considered a programmatic exclusion under Stipulation IV.A and B, the superintendent and SHPO will make every effort to resolve the issue informally. If those efforts fail, the question will be referred to the Field Director. If the matter is still not resolved, it will be referred to the Advisory Council in accordance with Stipulation XI.A.

V. PROJECT AND PROGRAM REVIEW--OTHER UNDERTAKINGS

A. All undertakings (as defined in 36 CFR Part 800), with the exception of those that meet provisions in Stipulation IV, will be reviewed in accord with 36 CFR Part 800.

B. Superintendents are encouraged to evaluate their park's programs and discuss with SHPOs ways to develop programmatic agreements for park undertakings that would otherwise require numerous individual requests for comments.

C. Memoranda of Agreement and Programmatic Agreements specific to a project, plan, or park may be negotiated between park superintendents and SHPOs, pursuant to 36 CFR Part 800.5(e) or 800.13, and may be independent of or supplement this Agreement.

VI. RELATIONSHIP OF PROJECT REVIEW TO PLANS

A. To the extent that the requirements of Section 106 and NEPA overlap for a given plan or project, superintendents are encouraged to coordinate these two processes, including the preparation of documentation and public involvement processes, in accordance with

the guidance in 36 CFR Part 800 or otherwise provided by the Advisory Council.

B. In conformity with 36 CFR Part 800.3(c), park superintendents will ensure that the Section 106 process is initiated early in the planning stages of any given undertaking, when the widest feasible range of alternatives is open for consideration.

C. General Management Plans (GMPs) establish a conceptual framework for subsequent undertakings, and can thus play an important role in this process. GMPs may constitute the basis for consultation under 36 CFR Part 800.4-6 on individual undertakings, if sufficient information exists for resource identification, determination of National Register eligibility, and assessment of the effect of a proposed undertaking on the property in question. In the absence of such information, Section 106 consultation will normally be initiated or completed at subsequent stages in the planning process [such as Development Concept Plans (DCPs) or other subsequent implementing plans, as defined in NPS-2].

D. The park superintendent will notify the appropriate SHPO and the Council when a GMP or DCP is scheduled for preparation, amendment, revision, or updating. The superintendent will request comments regarding preservation concerns relevant to the plan, such as management objectives, identification and evaluation of historic properties, and the potential effects of individual undertakings and alternatives on historic properties.

E. During the planning process, the park superintendent, in consultation with the SHPO, will make a determination about which undertakings are programmatic exclusions under IV.A and B, and for all other undertakings, whether there is sufficient information about resources and potential effects on those resources to seek review and comment under 36 CFR Part 800.4-6 during the plan review process. In cases where consultation is completed on specific undertakings, documentation of this consultation will be included in the GMP or DCP.

F. The approved plan will list all undertakings in the plan that are subject to further consultation, and the stage of planning at which consultation is most likely to be completed.

G. NPS GMPs will include a statement about the status of the park's cultural resources inventory and will indicate needs for additional cultural resource information, plans, or studies required before undertakings can be carried out.

VII. NPS PROCESS FOR DOCUMENTING ACTIONS HAVING AN EFFECT ON CULTURAL RESOURCES

All System-related undertakings that may have an effect on cultural resources will be appropriately documented and carried out in accordance with applicable policies, guidelines, and standards, as identified in Stipulation I. Formats for documentation include those outlined in published Advisory Council guidance (see "Preparing Agreement Documents," for example), the NPS "Assessment of Actions Having an Effect on Cultural Resources" form, programmatic agreements and, where appropriate, NEPA documentation that addresses cultural resources issues with information consistent with requirements of 36 CFR Part 800.

Cultural resources specialists will review all such actions prior to their implementation, and parks will maintain documentation of this review. Documentation of NPS reviews not already provided to SHPOs and the Council will be available for review by the Council and the appropriate SHPO upon request. Individual SHPOs who wish to review this documentation are responsible for specifying scheduling, frequency, and types of undertakings of concern to them.

VIII. PUTTING THIS AGREEMENT INTO EFFECT

The delegation of Section 106 responsibility to park superintendents will take place as of October 1, 1995. As a condition of this delegation, each park will identify

A. the specialists, on or off park staff, who will provide the park with advice and technical services for cultural resource issues related to Section 106 compliance. These specialists must be qualified in their areas of expertise and have a specified term of commitment to advise the park; and

B. a contact person to coordinate the park's Section 106 compliance processes.

Parks supplement on-staff expertise through advice and technical services from CRM specialists in SSOs, the Denver Service Center, preservation centers, and other specified CRM specialists inside and outside the NPS, for advice and technical services involved in 106 documentation and consultation. The superintendent will be the responsible agency official for 106 purposes, who ensures the implementation of this agreement and 36 CFR Part 800 procedures, and who signs correspondence to SHPOs and the Advisory Council and documentation of programmatic exclusions.

IX. COOPERATION AND COMMUNICATIONS

A. Within six months of the date of the signature of this PA by all parties, and every two years thereafter, each park superintendent will invite the appropriate SHPO(s) to meet to discuss the compliance process and any actions necessary to improve communications between the park and SHPO.

B. SHPOs, the Conference, and the Council will be informed and consulted about revisions to NPS standards and guidelines listed in Stipulation I.

C. SHPOs, parks and NPS System Support Offices will share information about inventories of historic properties, preservation planning processes, and historic contexts developed by each, as well as other reports and research results related to cultural resources.

D. SHPOs will treat the appropriate park superintendent as an interested party for purposes of State environmental and preservation laws as they may relate to park undertakings and cultural resources.

E. The Council and SHPOs will treat the appropriate park superintendent as an interested party under 36 CFR Part 800 for purposes of undertakings by other Federal agencies and Indian tribes that may affect NPS areas, including undertakings in areas in and around parks.

F. As required in NPS-2, NPS-12, the Section 110 Guidelines, and 36 CFR Part 800, NPS will provide opportunities for Indian tribes and other interested persons to participate in the processes outlined in this Agreement.

X. RELATIONSHIP TO OTHER EXISTING AGREEMENTS

A. This Programmatic Agreement will become effective on October 1, 1995 and shall supersede the following existing Programmatic Agreements:

1. the Memorandum of Understanding executed in June 1976, regarding NPS planning documents;
2. the Programmatic Memorandum of Agreement executed on December 19, 1979, and its amendments dated September 1981 and December 1985 regarding planning documents, energy management, and preservation maintenance; and
3. the Programmatic Memorandum of Agreement executed on December 19, 1982, regarding leasing of historic properties.
4. the nationwide Programmatic Agreement of 1990.

B. Signature and implementation of this Agreement does not invalidate park-, Region- or project-specific Memoranda of Agreement or programmatic agreements negotiated for Section 106 purposes prior to the effective date of this Agreement.

XI. DISPUTE RESOLUTION

A. Should a SHPO or the Council object to a park superintendent's decisions or actions pursuant to any portion of this Agreement, the superintendent will consult the objecting party to resolve the objection. If the park superintendent or the objecting party determines that the objection cannot be resolved, the

superintendent will forward all documentation relevant to the dispute to the Field Director for further consultation. If the objection still cannot be resolved, the Field Director will forward to the Council relevant documentation not previously furnished to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:

1. provide the Field Director with recommendations, which the Field Director will take into account in reaching a final decision regarding the dispute; or
2. notify the Field Director that it will comment pursuant to 36 CFR Part 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the Field Director with reference to the subject of the dispute.

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The NPS responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

B. When requested by any person, the Council will consider NPS findings under this Agreement pursuant to the provisions of 36 CFR Part 800.6(e) on public requests to the Council.

XII. MONITORING, TERMINATION, AND EXPIRATION

A. The National Park Service will convene a meeting of the parties to this Agreement on or about November 15, 1996, to review implementation of the terms of this Agreement and determine whether revisions or amendments are needed. If revisions or amendments are needed, the parties will consult in accordance with 36 CFR Part 800.13.

B. Any party to this Agreement may terminate it by providing ninety (90) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the NPS will comply with 36 CFR Part 800 with regard to individual undertakings otherwise covered by this Agreement.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Catherine B. Sater
Chairman

DATE: 7-17-95

NATIONAL PARK SERVICE

By: [Signature]
Director

DATE: 7-17-95

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: W. Ray Furse
President

DATE: 7/17/95