

**MEMORANDUM OF AGREEMENT
AMONG
THE U.S. FISH AND WILDLIFE SERVICE,
COLORADO PARKS AND WILDLIFE,
COLORADO STATE HISTORIC PRESERVATION OFFICER,
AND**

**REGARDING THE COLORADO PARKS AND WILDLIFE SOUTHWEST REGIONAL OFFICE
CONSTRUCTION PROJECT IN DURANGO, LA PLATA COUNTY, COLORADO**

Commented [GB1]: Highlighted portions of this document are for emphasis of editing or as optional stipulations for discussion.

WHEREAS, the U.S. Fish and Wildlife Service (Service) provides federal funding to Colorado Parks and Wildlife (CPW) through the Wildlife Restoration Grant Program to conserve, protect, and enhance wildlife, their habitats, and the fishing opportunities they provide; and

WHEREAS, for purposes of enhancing public use of the property and accommodating the required increased capacity of the CPW Southwest Regional Office for both staff and the public, CPW proposes to construct a 9,950-square-foot Southwest Regional Office building with associated parking, demolish the existing San Juan Basin Area Office, relocate existing utilities, and improve the East 16th Street access drive at the 9-acre Durango Hatchery and Wildlife Museum in the city of Durango, located in La Plata County, Colorado (Undertaking); and

WHEREAS, the Undertaking is located on the Durango State Fish Hatchery and Wildlife Museum property, which is owned and managed by the State of Colorado; and

WHEREAS, the Undertaking will be federally funded (in whole or part) using Pittman-Robertson funds granted by the Service's Office of Conservation Investment under Grant Agreement No. [CO F24AF00680 – W – 360-D-1], and as such, is subject to review in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA; 54 United States Code [U.S.C.] 306108) and its implementing regulations, 36 Code of Federal Regulations (CFR) Part 800; and

WHEREAS, for the purposes of the Undertaking, the Service is the lead federal agency responsible for compliance with Section 106 of the NHPA; and

WHEREAS, the Service, in consultation with the Colorado State Historic Preservation Officer (SHPO), Colorado Parks and Wildlife, Tribal Nations, and other Consulting Parties, has defined the areas of potential effects (APEs), as defined by 36 CFR 800.16(d), for direct effects as consisting of the APE for Physical Effects and APE for Visual Effects, as shown in Appendix A; and

WHEREAS, the APE for Physical Effects consists of the entire 9-acre property of the state-owned hatchery plus a 100-foot buffer; and

WHEREAS, the APE for Visual Effects consists of a 0.2-mile or less visual radius from the project location that was refined from a preliminary 3-mile viewshed; and

WHEREAS, audible effects and atmospheric effects would only be associated with construction, and therefore, are temporary and will not be permanent or adverse; and

WHEREAS, the Undertaking will not result in indirect effects to historic properties; and

WHEREAS, the Service, in consultation with the SHPO, has determined that cultural resources listed in Appendix B are eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the Service, in consultation with the SHPO, has determined that sites listed in Appendix C are not eligible for the inclusion in the NRHP; and

WHEREAS, the Service, in consultation with the SHPO, has determined that the Undertaking will have an adverse effect on the San Juan Basin Office (5LP12125), which is eligible for inclusion in the NRHP under Criterion A and C; and

WHEREAS, the Service has determined that preservation in place is not tenable after careful consideration of alternatives to the Undertaking; and

WHEREAS, as the Applicant and potential grantee of federal funding who will play a crucial role in the implementation of this Memorandum of Agreement (Agreement), CPW has participated in consultation pursuant to 36 CFR 800.2(c)(4) and is an Invited Signatory to this Agreement; and

WHEREAS, the Service recognizes the sovereignty of federally recognized Tribal Nations that may attach religious and cultural significance to historic properties that may be affected by the Undertaking and its government-to-government obligation to consult with these Sovereign Nations regarding their concerns under Section 106 of the NHPA; and

WHEREAS, the Service has consulted with the Apache Tribe of Oklahoma; the Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; the Hopi Tribe of Arizona; the Jicarilla Apache Nation, New Mexico; the Navajo Nation, Arizona, New Mexico, & Utah; the Ohkay Owingeh, New Mexico; the Pueblo of Acoma, New Mexico; the Pueblo of Cochiti, New Mexico; the Pueblo of Isleta, New Mexico; the Pueblo of Jemez, New Mexico; the Pueblo of Laguna, New Mexico; the Pueblo of Nambe, New Mexico; the Pueblo of Picuris, New Mexico; the Pueblo of Pojoaque, New Mexico; the Pueblo of San Felipe, New Mexico; the Pueblo of San Ildefonso, New Mexico; the Pueblo of Sandia, New Mexico; the Pueblo of Santa Ana, New Mexico; the Pueblo of Taos, New Mexico; the Pueblo of Tesuque, New Mexico; the Pueblo of Zia, New Mexico; the Santo Domingo Pueblo; the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; the Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; the Ute Mountain Ute Tribe; Ysleta del Sur Pueblo; and the Zuni Tribe of the Zuni Reservation, New Mexico regarding the effects of the Undertaking to historic properties, and have invited these Tribal Nations to sign this Agreement as a Concurring Party; and

WHEREAS, the Service has consulted with the Certified Local Government of the City of Durango; the La Plata County Manager; the La Plata County Historic Society; the City of Durango Historic Preservation Board; the Colorado Department of Transportation; the Intermountain Region Partnerships office of the National Park Service; Colorado Preservation Incorporated; the Colorado Council of Professional Archaeologists; and the U.S. Army Corps of Engineers regarding the effects of the Undertaking on historic properties and has invited them to sign this Agreement as Concurring Parties; and

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), the Service has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect finding, and the ACHP has chosen [NOT] to participate in the consultation pursuant to 36 CFR Part 800.6(a)(1)(iii) in correspondence dated [DATE]; and

NOW, THEREFORE, the Service, CPW, and SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into consideration the effect of the Undertaking on the historic properties. These stipulations shall govern the Undertaking and all of its parts until this Agreement expires or is terminated

STIPULATIONS

The Service shall ensure that the following stipulation are implemented:

I. DOCUMENTATION

- A. The Service and CPW shall consent to the funding and drafting of a NRHP nomination form for 5LP12125 (the site) to include items delineated in Stipulations ... and as appropriate in order to identify architectural components related to the historic nature of the building related to the development of the hatchery. The Service and CPW will follow the instruction in the National Register Bulletin: *How to Complete the National Register Registration Form* and the Office of Archaeology and Historic Preservation's History Colorado (OAHP), *Supplemental Material to the National Register Bulletin: How to Complete the National Register Registration Form*.
1. ... Shall follow the grammar and punctuation guidelines established by the Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER), which includes preferences for certain terms over others.
 2. The nomination will include a significance statement and periods of significance including a reassessment of whether additional criteria beyond Criteria A and C apply; and will include a discussion on contributing and noncontributing elements (roofing material, foundation configuration, etc.) of the site. The discussion on contributing status will include an analysis on how this status was determined.
 3. The nomination must include a minimum of one location map, and six architectural drawings of the site. One map showing the location and boundary of the nominated area. The architectural drawings should show a plan view of each of the interior floors of the building; and a profile view of each side of the structure. These drawings shall include but are not limited to the exact measurements of the interior and exterior of the structure; the materials used in construction of the site; and identify any features contributing to the structures NRHP eligibility. The map and drawings of the site should also include photographs of the locations depicted. In addition to the National Register Bulletin guidance, ... will follow the instructions in the National Park Service's (NPS) Electronic Map Policy Factsheet https://www.nps.gov/subjects/nationalregister/upload/GIS_Guidance_2013_05_15_508.pdf
 4. Current photographs of the site (5LP12125) must accompany the nomination.
 - a. Photographs will provide an accurate visual representation of the property, and its significant features as discussed in the nomination. Photographs of the historic district should include several streetscapes, individually significant buildings, representative examples of wood stave piping, representative building or feature types, intrusions, and noncontributing buildings.
 - b. Digital photographs are acceptable in lieu of photographic prints. The ... will follow the digital photograph requirements described in the NPS's National Register Photo Policy Factsheet: https://www.nps.gov/subjects/nationalregister/upload/Photo_Policy_upda te_2013_05_15_508.pdf. Digital photograph requirements are as follows:
 1. File format of digital photographs should be TIFF. JPEG converted to TIFF is acceptable.
 2. Color photographs are required.

3. Minimum camera resolution should be 6 megapixels (2816 x 2112 pixels).
 4. Digital images shall be named using the following standard naming format: CO_La Plata County_Durango_00#. Each photograph number should correspond to a photograph log in the nomination.
- B. The Service will submit a draft NRHP Registration form with appropriate associated documentation to the SHPO within **years** of execution of this Agreement. The SHPO shall have forty-five (45) days to review and comment. The Service shall address any comments and update the documentation accordingly. The updated documentation will be provided to the SHPO.
- C. All work carried out pursuant to this Agreement shall meet the Archaeology and Historic Preservation: Secretary of the Interior's Standards for Archaeology and Historic Preservation (As Amended and Annotated).
- D. The Service shall ensure that all work carried out pursuant to this Agreement shall be done by or under the direct supervision of historic preservation professionals who meet the Secretary of the Interior's Professional Qualifications Standards (48 FR 44716, September 1983 and 62 FR 33708, June 20, 1997). A "qualified professional" is a person who meets the relevant standards outlined in the Archaeology and Historic Preservation: Secretary of the Interior's Standards for Archaeology and Historic Preservation (As Amended and Annotated).
- E. Demolition of the site may occur after field documentation of the whole site has been completed and prior to submittal of the NRHP nomination to the Colorado Historic Preservation Review Board.

II. HISTORIC ARCHITECTURAL DOCUMENTATION OF 5LP12125

A qualified historic architect as described in Stipulation II shall complete a Historic American Buildings Survey (HABS) of the structure to be included in the draft NRHP nomination form. This survey shall include all four Standards for a HABS Level 1 survey described in the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation: HABS/HEAR Standards (Federal Register, Vol. 48, No. 190, pp 44730-34). This survey shall exclude printing of large format negatives and photocopies.

Commented [GB2]: This whole stipulation is highlighted as a possible alternative to some portions of the above stipulation.

III. 3-D MODELING OF 5LP12125 FOR DISPLAY IN NEW OFFICE BUILDING (IN DURANGO WILDLIFE MUSEUM)

An experienced Service or CPW staff member shall document the building using Polycam. This documentation shall create a 3-dimensional model of the building and surrounding landscape to be displayed on an interactive tablet within the existing exhibit for the other demolished buildings in the Durango Wildlife Museum (5LP12124) and a simple display of architectural drawings in the proposed new office building south of 5LP12125.

IV. HISTORIC ARCHITECT AND MONITOR WITH APPROPRIATE QUALIFICATIONS

A **qualified professional archaeologist or historic architect** shall be on site during all ground disturbing activities to document the existing structure with detailed scaled photos and measured drawings/maps following the guidelines established in the Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation (Federal Register Vol. 68, No. 139, pp. 43159-43162), record construction techniques, and document any diagnostic historic material uncovered during the building removal process. This work shall not include the collection of any

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artifacts related to the 5LP12125 resource. Once the onsite monitoring and mitigation recordation is completed, the results of this work, along with additional historical archival research, shall be written up and a report shall be provided to the Service, CPW, and SHPO for their review and approval.

In addition, a qualified tribal monitor shall also be present for ground disturbing activities related to this project. This monitor shall be selected by the TRIBE and meet their QUALIFICATION STANDARDS.

The Service and CPW shall ensure that all cultural resources work carried out pursuant to this MOA shall be carried out by or under the direct supervision of individuals that meet the Secretary of the Interior's Professional Qualification Standards. Professional standards shall correspond to the nature of the resource, e.g., work related to cultural resources shall be carried out by or under the direct supervision of individuals prequalified to perform historic architectural work.

V. DURATION

This Memorandum of Agreement (MOA) shall expire if its terms are not carried out within two years from the date of its execution. Prior to such time, the Service may consult with other signatories to reconsider the terms of the MOA and amend in accordance with the stipulations below. If the Service determines, in consultation with the SHPO, that the terms of the Agreement have been fulfilled in a satisfactory manner, the Service shall provide the SHPO written notice of this determination, and the Agreement will no longer be in force.

VI. DISPUTE RESOLUTION

Should any signatory to this MOA object to any actions proposed or the manner in which the terms of this MOA are implemented the Service shall consult with the objecting party to resolve the objection. If the Service determines, within thirty (30) days, that the objection cannot be resolved, the Service shall forward all documentation relevant to the objection to the ACHP, including the Service proposed resolution to the objection. Within thirty (30) days after receipt of all pertinent documentation the ACHP shall:

1. Provide the Service with recommendations pursuant to 36 CFR 800.2 which the Service shall consider in reaching a final decision regarding the dispute; or,
2. notify the Service that it shall comment pursuant to 36 CFR 800.7(c) and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by the Service in accordance with 36 CFR 800.7(c) (4) and Section 110 (1) of the NHPA; or
3. not provide comments. The Service may then render a decision regarding the dispute. In reaching its decision, the Service shall consider all comments regarding the dispute from the parties to the MOA.

Any recommendation or comment provided by the ACHP shall be understood to pertain only to the subject of the dispute; the responsibility of the Service, CPW, and SHPO to carry out other actions pursuant to this MOA that are not the subject of the dispute shall remain unchanged. The Service shall notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. The Service decision shall be final.

Commented [GB4]: Highlighted to ensure discussion occurs about HABS survey, or a simple historic and architectural survey.

VII. POST REVIEW DISCOVERY

In the event that one or more historic properties, other than the site, are discovered or that unanticipated effects on historic properties are found during the implementation of this MOA, the **MONITORS** shall follow the procedure specified in 36 C.F.R. 800.13, by stopping work in a 100-foot (30-meter) area and notifying the Service and CPW of the discovery immediately. Within forty-eight (48) hours, the Service will notify the SHPO of the post-review discovery and consult according to 36 CFR 800.13. Any necessary archaeological investigations shall be conducted according to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. No other access to this buffer zone or discovery location shall be permitted until written notification is provided by the Service.

VIII. MONITORING AND REPORTING

Following all ground disturbing activities at the **Durango State Fish Hatchery (5LP3363)** related to the funding under **(grant #)** until this MOA expires or is terminated, CPW shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such reports shall include any scheduling changes proposed, any problems encountered, and any disputes and objects received in efforts to carry out the terms of this MOA.

IX. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including any invited signatory, determines that its terms cannot be fulfilled, or that an amendment to the terms of this MOA must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 CFR 800.6(c) (7-8). The amendment shall be effective on the date a copy signed by all of the original signatories is filed with the ACHP. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with the stipulations below.

X. TERMINATION

If the MOA cannot be amended following consultation set out in the stipulations above, it may be terminated by any signatory or invited signatory. Within 30 days following termination, the Service shall notify the signatories if it shall initiate consultation to execute an MOA with the signatories under 36 CFR 800.6(c) (1) or request the comments of the ACHP under 36CFR 800.7(a) and proceed accordingly.

Execution of this MOA by all signatory parties, the submission of the documentation and filing of this MOA with the ACHP pursuant to 36 CFR 800.6(b)(iv) prior to the Service' approval of this undertaking, and implementation of its terms is evidence that the Service has considered the effects of this undertaking on the historic properties and has afforded the ACHP a reasonable and good faith opportunity to comment.

XI. AUTHORIZED REPRESENTATIVES OF SIGNATORIES

Each of the Signatories hereto represent and warrant that they each have received the requisite authority to enter into the MOA on behalf of the party for whom they have each signed.

XII. COUNTERPARTS

Memorandum of Agreement Regarding the Colorado Parks and Wildlife Southwest Regional Office Construction Project in Durango, La Plata County, Colorado

This Agreement may be executed separately by the parties as counterparts. All such counterparts will be deemed to be originals, and upon completion of signatures will be combined to constitute one and the same instrument. The Service will ensure that, upon receipt of counterparts from the Signatories, a copy of the Agreement with combined signature page showing all signatures is provided to each of the Signatories.

EXECUTION of this Agreement by the Service and SHPO and implementation of its terms evidence that the Service has considered the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

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CONSTRUCTION PROJECT IN DURANGO, LA PLATA COUNTY, COLORADO**

SIGNATORY:

Agency Name

Signatory Name

Date