

**PROGRAMMATIC AGREEMENT
AMONG
U.S. ARMY GARRISON FORT CARSON,
COLORADO STATE HISTORIC PRESERVATION OFFICER
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
MILITARY TRAINING AND OPERATIONAL SUPPORT ACTIVITIES DOWN RANGE
FORT CARSON, COLORADO**

WHEREAS, the sole purpose of Fort Carson (Installation) is to train military and civilian personnel in the intricacies of warfare, in preparation for deployment anywhere in the world, providing a vital high-altitude training ground for the Army, law enforcement at all levels from local counties to federal agencies, and for other American and friendly foreign military services; and

WHEREAS, no feasible alternative is available to eliminate, minimize, or replace military training and related operational support activities during a period of persistent conflict, global readiness, and corresponding training intensity; and

WHEREAS, U.S. Army Garrison Fort Carson (USAG) proposes to continue execution of these activities, pursuant to Army Regulation, thereby making these activities undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 United States Code (USC) Section (§) 470f, and its implementing regulations, 36 Code of Federal Regulations (CFR) Part 800; and

WHEREAS, USAG has determined that for the purpose of the undertakings considered as part of this Programmatic Agreement (Agreement), the Area of Potential Effects (APE) is all lands and airspace of the Installation as shown in Figure 1, encompassing about 122,503 acres, known as downrange Fort Carson; and

WHEREAS, cultural resources within the APE, including those determined eligible for listing in the National Register of Historic Places (NRHP), have been repeatedly exposed to adverse effects from military training and other repetitive undertakings, and much of the down range area of the Installation lies within calculated surface danger zones for specific weapons and munitions wherein errant impacts are possible; and

WHEREAS, the following Figures and Appendices are included as part of this Agreement: Figure 1 – Area of Potential Effects; Figure 2 – Surface Danger Zones and Artillery Impact Area/Safety Buffer; Figure 3 – Areas to be Surveyed; Appendix 1- Exempted Undertakings; Appendix 2 - Protected Properties and Monitoring Frequency; Appendix 3 – Cultural Resources Proposed for Adverse Effects; and Appendix 4 – Mitigation Considerations; and

WHEREAS, parties to this Agreement recognize the difficulty of effectively protecting properties within an intense training environment and accept that adverse effects to historic properties may have resulted or may result in the future; and

WHEREAS, the 2013 *Programmatic Agreement Among the U.S. Army Garrison Fort Carson, the Colorado State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Construction, Maintenance, and Operations Activities for Areas on Fort Carson, Colorado* remains in effect; and

WHEREAS, USAG has conducted limited cultural resources inventory in the Artillery Impact Area (8,481 acres) and its safety buffer (7,006 acres), shown at Figure 2, and is not expected to conduct additional inventories in these areas due to unexploded ordnance hazards; and

WHEREAS, USAG has provided the Colorado State Historic Preservation Officer (SHPO) geographic information system (GIS) shape files and a master index of inventories and archeological sites within the APE; and

WHEREAS, USAG acknowledges and accepts the Advisory Council on Historic Preservation (ACHP) guidance, "Recommended Approach for Consultation on the Recovery of Significant Information from Archeological Sites"; and

WHEREAS, USAG, in order to address the inadvertent discovery of human remains and cultural items, has consulted with Native American Tribes (Tribes) regarding compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) and has signed the *Comprehensive Agreement Regarding Tribal Access Privacy and Information Sharing and Inadvertent Discovery and Intentional Excavation of Native American Human Remains and Cultural Items Culturally Affiliated with the Apache Tribe of Oklahoma, Cheyenne and Arapaho Tribes of Oklahoma, Comanche Nation of Oklahoma, Kiowa Tribe of Oklahoma, Northern Arapaho Tribe, Northern Cheyenne Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation, Shoshone Tribe (Eastern Band), Southern Ute Indian Tribe, and Ute Mountain Ute Tribe Within Federal Lands Owned or Controlled by Fort Carson, Colorado, 2004* and the *Comprehensive Agreement Regarding Tribal Access Privacy and Information Sharing and Inadvertent Discovery and Intentional Excavation of Native American Human Remains and Cultural Items Culturally Affiliated with the Jicarilla Apache Nation Within Federal Lands Owned or Controlled by Fort Carson, Colorado, 2005*; and

WHEREAS, in the event of the discovery of human remains within the APE USAG will initiate the process outlined in NAGPRA; and

WHEREAS, this Agreement does not alter USAG's responsibility to consider the potential effects of undertakings on properties of religious and cultural significance to Tribes and to grant access in accordance with the American Indian Religious Freedom Act; and

WHEREAS, in accordance with 36 CFR § 800.14(b)(2) USAG has consulted and arranged for public participation as follows:

- Commanding General, Fort Carson and SHPO signed an agreement in December 2012, indicating a commitment to develop a programmatic agreement to expedite the section 106 process; and
- USAG notified the ACHP of the potential for adverse effects determinations and provided specified documentation, after which ACHP chose to participate in consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and
- USAG arranged for public participation via meetings conducted in Trinidad, Colorado, on August 20, 2013, and in Colorado Springs, Colorado, on August 21, 2013, by placing notices in several Colorado newspapers: El Paso County Fountain Valley News (July 31, 2013), Pueblo Chieftain (August 7, 2013), Gazette of Colorado Springs (August 5-11, 2013), La Junta Tribune Democrat (August 6, 2013), and Chronicle-News of Trinidad (August 5, 2013); and

USAG arranged for additional public participation by making a draft of the proposed Agreement available for review and comment, and held a public meeting in Trinidad, Colorado, on February 13, 2014. Notices were placed in several Colorado newspapers: El Paso County Fountain Valley News (January 22, 2014), Pueblo Chieftain (January 20, 2014), Gazette of Colorado Springs (January 22, 2014), La Junta Tribune Democrat (January 22, 2014), Rocky Ford Daily Gazette (January 20-21, 2014), and Chronicle-News of Trinidad (January 20, 2014); and

- USAG contacted the following organizations, groups, and individuals (Parties) for an initial meeting in Trinidad, Colorado on August 20, 2013, and in Colorado Springs, Colorado, on August 21, 2013: Department of Interior, Bureau of Land Management; U.S. Forest Service, Comanche National Grasslands; Boards of County Commissioners of El Paso, Fremont, Huerfano, Las Animas, Otero, and Pueblo Counties; City of Colorado Springs Historic Preservation Board; Colorado Council of Professional Archeologists; Colorado Preservation, Inc.; National Trust for Historic Preservation; Not 1 More Acre!; Southern Colorado Environmental Council; Ms. Loretta Martin, Trinidad State Junior College; and Dr. Lawrence Loendorf; and

USAG mailed a draft of the proposed Agreement to the Parties identified above, and two additional organizations, the Tatanka Group, LLC and the Santa Fe Trail Association, on January 15, 2014; and invited them to participate in a public meeting in Trinidad, Colorado, on February 13, 2014, to provide information and receive recommendations regarding this Agreement; and

- USAG contacted 13 Tribes that attach traditional, religious, and/or cultural significance to Fort Carson lands and invited all to participate in the development

of this Agreement: Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma; Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe; Shoshone Tribe of the Wind River Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Wichita and Affiliated Tribes, Oklahoma; and

USAG invited all 13 Tribes to an initial meeting held at Fort Carson on August 26, 2013 (attended by representatives from the Jicarilla Apache Nation), and to the public meetings conducted in Trinidad, Colorado, on August 20, 2013, and in Colorado Springs, Colorado, on August 21, 2013; and

USAG consulted with the Jicarilla Apache Nation; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation Utah; and Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; in Farmington, New Mexico, on November 20, 2013; and

USAG mailed and emailed a draft of the proposed Agreement to all 13 Tribes on January 15, 2014, and invited them to a meeting in Denver, Colorado, on February 6, 2014, to provide information and receive recommendations regarding this Agreement; and

USAG consulted on February 6, 2014, with the following Tribes who responded to the invitation: Arapaho Tribe of the Wind River Reservation, Wyoming; Jicarilla Apache Nation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Indian Tribe of the Uintah & Ouray Reservation Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; in Denver, Colorado; and

USAG had additional phone consultation with the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana, on February 10, 2014, and the Comanche Nation of Oklahoma on February 18, 2014; and

- USAG considered recommendations from the public, Parties, and Tribes, then responded to comments and invited all to sign this Agreement as concurring parties; and

NOW, THEREFORE, USAG, SHPO, and ACHP agree that this Agreement shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertakings on historic properties.

STIPULATIONS

USAG shall ensure that the following measures are carried out:

I. INVENTORY AND EVALUATION OF CULTURAL RESOURCES

A. Data Reconciliation

1. USAG shall ensure that all completed cultural resources documentation within the APE is provided to the SHPO, including inventory reports, site forms, and testing reports, within 60 calendar days following the last authorizing signature on this Agreement, but this documentation may require reconciliation of potential differences.

2. SHPO shall have one year following the last authorizing signature on this Agreement to integrate the provided GIS shape files and master index of USAG inventories and archaeological sites within the APE with its own system, and notify USAG in writing that a baseline has been created and request missing information.

3. Within 180 calendar days following the completion of data sharing as described above, USAG and SHPO will consult as needed to address data discrepancies, and then implement mutually agreeable terms within three years of the last authorizing signature on this Agreement.

B. USAG shall complete cultural resources inventories (approximately 3,438 acres) as shown in Figure 3, within three years from the date of the last authorizing signature on this Agreement, submitting results to SHPO within 60 calendar days of report completion.

1. If SHPO does not respond to partial or complete submittals with a concurrence or non-concurrence of NRHP eligibility within 60 calendar days of receipt, Fort Carson shall proceed with final determinations of eligibility.

2. Disputes regarding NRHP eligibility will be forwarded to the Keeper of the National Register for decision in accordance with 36 CFR Part 63.

C. USAG shall complete documentation of needs data resources if not identified for potential adverse effects (Appendix 3) and not protected by one of the protection measures identified in Stipulation III.B, and submit this data to SHPO within three years of the last authorizing signature on this Agreement.

1. If SHPO does not respond with concurrence or non-concurrence on the determinations of NRHP eligibility within 60 calendar days of receipt, USAG shall proceed with final determinations of eligibility.

2. Disputes regarding NRHP eligibility will be forwarded to the Keeper of the National Register for decision in accordance with 36 CFR Part 63.

D. USAG shall continue consultation efforts with Tribes regarding the identification and protection of traditional and sacred areas, to include site protection measures and monitoring frequencies. The protection and monitoring identified in Appendix 2 shall commence upon execution of this Agreement.

E. USAG is not required to limit military and operational support activities within the APE pending completion of inventories, eligibility determinations, or other administrative requirements.

II. EXEMPTED UNDERTAKINGS

A. USAG's standard consultation and concurrence requirements for undertakings listed within Appendix 1 of this Agreement are waived due to the repetitive nature of many Army undertakings, and to the site protection measures identified at Stipulation III.

B. During the implementation of an exempted undertaking vehicles and aviation assets are not permitted within the perimeter of protected properties.

C. USAG shall follow the Section 106 process in accordance with 36 CFR §§ 800.3 through 800.7 to address non-exempt undertakings within the APE of this Agreement.

III. PROTECTION OF HISTORIC PROPERTIES

A. USAG shall be required to protect all historic properties, needs data sites, traditional cultural properties, and sacred sites, except those proposed for adverse effects listed in Appendix 3.

B. USAG shall implement physical site protection measures within three years of the last authorizing signature of this Agreement wherever properties are not identified for potential adverse effects (Appendix 3), and wheeled and tracked vehicles are not excluded by terrain. Site protection measures proposed for historic properties, needs data sites, traditional cultural properties, and sacred sites are listed in Appendix 2 and described below.

1. High protective measures, defined as placement of boulders or similarly effective barriers, shall be installed where protected properties are expected to be surrounded by wheeled and tracked vehicle movement, or contain or are suspected to contain, human remains, making them impassible to vehicles utilized within the APE.
2. Standard protective measures, defined as a combination of boulders, fencing, stakes and/or signage, shall be installed where protected properties are located in areas not protected by terrain, and where wheeled and tracked vehicles are not likely to utilize that terrain.
3. Nominal protective measures, defined as a combination of fencing, staking and/or signage, shall be installed where protected properties are located in terrain-protected areas not likely to allow wheeled and tracked vehicle access, except insofar as in the judgment of USAG that the protected resource is better served by maintaining its anonymity.
4. Administrative protective measures, defined as a policy that provides protection to one or more properties within a given area, normally through access or activity restriction. Historic properties protected by this measure are generally not marked, although a combination of fencing, staking, and/or signage may be applied.

C. USAG shall propose amending listings of site protection measures (Appendix 2) in response to new information or changes in technological capabilities, as provided for in Stipulation VII.C of this Agreement.

D. Except for the purpose of immediate rescue and salvage operations conducted to preserve life and property, no vehicle of any kind may be operated within the perimeter of protected properties. If there is an emergency response activity within these areas, it shall be included in the Annual Report.

E. USAG shall provide training aircraft and vehicles that are equipped with a Global Positioning System a means of knowing the locations of protected properties, except the anonymous sites as referenced in Stipulation III.B.3. USAG shall implement these measures within three years of the last authorizing signature on this Agreement.

F. USAG is not required to limit training, operational support, and all other exempted undertakings within the APE, pending installation and implementation of protective measures.

IV. MONITORING

A. USAG shall inspect historic properties, needs data sites, traditional cultural properties, and sacred sites periodically to confirm the adequacy of the protection

measure employed. Formal site documentation shall minimally include Colorado Cultural Resources Survey Re-Visitation forms to document conditions and ongoing effects, if any, from training, operational support, or unauthorized entry. Protected properties shall be monitored according to the schedule in Appendix 2 as described below.

1. High frequency monitoring, defined as no less than every 180 calendar days, will take place where protected properties are surrounded by wheeled and tracked vehicle training, have been subjected to looting or vandalism, or contain or are suspected to contain human remains.
2. Moderate frequency monitoring, defined as no less than every two years, will take place where protected properties are not classified as accessible to wheeled and tracked vehicles, but are on the periphery of accessible areas.
3. Low frequency monitoring, defined as no less than every five years, will take place where protected properties are separated from wheeled and tracked vehicle traffic, require only minimal protective measures, or are known to be subject to natural impacts, but do not qualify for moderate or high frequency monitoring.

B. USAG shall notify SHPO within 72 hours following notification to the Cultural Resources Manager (CRM) of a breach or impact to a protected property. A subsequent report shall be submitted to the SHPO, Tribes, and Parties to resolve for adverse effects if necessary.

V. REPORTING

A. USAG shall prepare an Annual Report (period covered October 1st through September 30th), distributed electronically to SHPO and concurring parties, no later than November 15th of each year during the implementation of this Agreement. The report shall include the following information:

1. Information describing the progress made in implementing the terms of this Agreement, identified in Stipulations I and III;
2. Identify the non-training exempted undertakings executed within the APE;
3. The status of cultural resources awareness training, per Stipulation VI.A;
4. Inadvertent entry and/or impacts identified through monitoring and inadvertent discovery, to include actions taken to resolve for any adverse effects;
5. Actions taken for the purpose of immediate rescue and salvage operations conducted to preserve life or property within a protected property; and

6. Issues raised by an interested or concurring party in the reporting period.

VI. MITIGATION

A. USAG shall implement and continue cultural resources awareness training for all personnel involved in the execution of undertakings within the APE on an annual basis.

1. SHPO shall be notified of major cultural resources awareness training events and invited to participate in training led by USAG.

2. Contents of the training shall be summarized in the Annual Report.

B. For the purpose of offsetting mitigation as described below, USAG shall expend \$1,485,000 in order to fund projects in the following three general categories: 1) a Native American ethnographic oral history project specific to Fort Carson and PCMS lands; 2) archaeological context "gap studies" using Fort Carson and PCMS resources; and 3) project(s) that support Santa Fe Trail community outreach. Alternative categories may be undertaken following mutual agreement between USAG and SHPO.

1. Projects will be initiated within three years of the last authorizing signature on this Agreement. This mitigation conclusively offsets and resolves known adverse effects and unknown cumulative and/or potential adverse effects to historic properties listed in Appendix 3, and lands within training areas and the Artillery Impact Area with associated safety buffer that will not be surveyed (Stipulation I.B and Figure 3), and it survives any extension, withdrawal, amendment, or termination subsequent to the expenditure of the identified funds.

2. USAG and the SHPO shall organize an Advisory Committee of consulting and/or interested parties with appropriate knowledge and expertise. They will advise USAG concerning the three projects listed above to further refine the scopes of work. Within the funding limit established above, USAG will select, approve and fund specific projects within those three general categories after considering the non-binding priorities and recommendations of the SHPO and the Advisory Committee.

VII. ADMINISTRATIVE ACTIONS

A. Mitigation projects and funding identified in this Agreement settle matters addressed and conclusively offset adverse effects to historic properties listed in Appendix 3 and unknown cultural resources in the unsurveyed areas, surviving any extension, withdrawal, amendment and subsequent consultation, excepting only new matters, such as those addressed in Stipulations II.C of this Agreement.

- B. This Agreement is in effect for 10 years from the date of the last authorizing

signature, unless the signatories agree to extend it by written amendment in accordance with Stipulation VII.C.

C. This Agreement may be amended or extended by written agreement of all signatories, including the updating of figures and appendices with the results of completed inventories, evaluations and eligibility determinations. Amendments will be effective on the date of the last authorizing signature.

D. If a signatory or concurring party to this Agreement objects to the manner in which Stipulations are adhered to or implemented, USAG shall consult with the party regarding the objection.

1. If USAG determines that an objection cannot be resolved, USAG shall forward to ACHP all relevant documentation, including a proposed resolution. ACHP shall advise USAG within 30 calendar days of receiving adequate documentation, which advice USAG will take into account in making its final decision.

2. If ACHP fails to advise within 30 calendar days, USAG may make a final decision on the dispute and proceed accordingly, providing to all parties a written response to the objection that takes into account timely comments.

3. The ability and responsibility of USAG to carry out undisputed actions are unaffected by any dispute.

E. If a signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories in an attempt to amend this Agreement per Stipulation VII.C. If within 30 calendar days, or within 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.

F. Federal obligations under this Agreement are subject to the availability of appropriated funds, as mandated by the Anti-Deficiency Act (31 USC §1341). USAG will make reasonable and good faith efforts to secure funds necessary to promptly implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act impairs or precludes its ability to implement this Agreement, USAG will consult with the other signatories, in accordance with Stipulation VII.C of this Agreement. No legal liability for any payment may arise until such funds are made available and allocated for such purposes. No party other than signatories to this agreement shall have any cause of action or remedy pursuant to these obligations, and the sole remedy of signatories in the event of non-appropriation or non-commitment of funds shall be the termination of this agreement in accordance with Stipulation VII.E.

G. USAG shall implement the terms of this Agreement by instituting Fort Carson policies and/or by incorporating the requirements in the Integrated Cultural Resources Management Plan (ICRMP).

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

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AMONG
U.S. ARMY GARRISON FORT CARSON,
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ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
MILITARY TRAINING AND OPERATIONAL SUPPORT ACTIVITIES DOWN RANGE
FORT CARSON, COLORADO

SIGNATORIES:



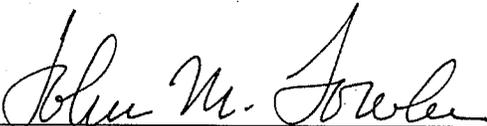
COL David L. Grosso
Commander, US Army Garrison Fort Carson

14 MARCH 2014
date



Edward C. Nichols
Colorado State Historic Preservation Officer

3/25/14
date



John M. Fowler
Executive Director, Advisory Council on Historic Preservation

3/21/14
date