

Programmatic Agreement
among
Federal Highway Administration
United States Department of Agriculture, Forest Service,
Rocky Mountain Region
Department of the Interior, Bureau of Land Management,
Glenwood Springs Field Office
Advisory Council on Historic Preservation
Colorado State Historic Preservation Officer
and
Colorado Department of Transportation
regarding implementation of
The Interstate 70 Mountain Corridor Project

WHEREAS, Federal Highway Administration (FHWA), in cooperation with Colorado Department of Transportation (CDOT), has determined that improvements on Interstate 70 (I-70) between Glenwood Springs, Colorado, and the intersection of C-470 are necessary to meet the purposes and needs described in Appendix A; and

WHEREAS, FHWA has prepared the *I-70 Mountain Corridor Draft Programmatic Environmental Impact Statement & Section 4(f) Evaluation* (PEIS) to determine what mode(s) or modes of transportation will meet the purpose and need for the I-70 Mountain Corridor and to identify the general alternative alignment, and has examined the relative effects of the proposed alternatives on known historic properties within the corridor in general terms, as described in Appendix B of this Agreement, and

WHEREAS, FHWA will prepare site-specific Tier 2 National Environmental Policy Act (NEPA) documentation presenting environmental analyses and more detailed design information for individual components of the selected alternative (the Tier 2 undertakings); and

WHEREAS, FHWA has determined that a phased process for compliance with Section 106 of the National Historic Preservation Act is appropriate for the I-70 Mountain Corridor Project, such that completion of the identification of historic properties, determinations of specific effects on historic properties, and consultation concerning measures to avoid, minimize, or mitigate any adverse effects will be carried out as part of planning for and prior to the approval of specific Tier 2 undertakings; and

WHEREAS, FHWA has determined that the I-70 Mountain Corridor Tier 2 undertakings may affect properties included in or eligible for inclusion in the National Register of Historic Places (NRHP), including the Georgetown-Silver Plume National Historic Landmark (NHL), and has consulted with the Advisory Council on Historic Preservation (ACHP) and the Colorado State Historic Preservation Officer (SHPO) to develop this Programmatic Agreement pursuant to Section 800.14(b)(3) of the regulation (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and Section 110(f) of the same Act (16 U.S.C. 470h-2(f)); and

WHEREAS, any projects carried out by CDOT within the I-70 Mountain Corridor during the term of this Agreement that were not analyzed within the PEIS will be subject to separate consultations and compliance actions as specified in 36 CFR Part 800; and

WHEREAS, the United States Department of Agriculture, Forest Service, Rocky Mountain Region (USFS) has determined that the I-70 Mountain Corridor Tier 2 undertakings may affect historic properties on public lands administered by the Arapaho and Roosevelt National Forests and the White River National Forest and intends to use this Programmatic Agreement to comply with the regulation (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and Section 110(f) of the same Act (16 U.S.C. 470h-2(f)); and

WHEREAS, the United States Department of the Interior, Bureau of Land Management (BLM) has determined that the I-70 Mountain Corridor Tier 2 undertakings may affect historic properties on public lands administered by the Glenwood Springs Field Office and intends to use this Programmatic Agreement to comply with the regulation (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and Section 110(f) of the same Act (16 U.S.C. 470h-2(f)); and

WHEREAS, development and execution of this Agreement by SHPO indicates participation in the Section 106 process followed during NEPA Tier 1 and does not indicate a preference for a specific alternative; and

WHEREAS, the entities identified in Appendix C were informed about the I-70 Mountain Corridor Project and invited to participate in consultations; and

WHEREAS, Clear Creek County, Eagle County, City of Glenwood Springs, City of Idaho Springs, Town of Georgetown, Town of Silver Plume, and Georgetown Silver Plume Historic District Public Lands Commission participated in consultations leading to the development of this document and have been invited to concur in this Agreement; and

WHEREAS, National Trust for Historic Preservation Mountain/Plains Office, Colorado Preservation Inc., Historic Georgetown Inc., Historical Society of Idaho Springs, Mill Creek Valley Historical Society, and Colorado Historical Society have participated in consultations leading to the development of this document and have been invited to concur in this Agreement; and

WHEREAS, execution of this Agreement as a concurring party indicates participation as a Section 106 consulting party and acknowledgment that the party's views were taken into consideration; and

WHEREAS, execution of this Agreement as a concurring party does not necessarily indicate approval of the outcome of the Tier 1 NEPA analysis for the I-70 Mountain Corridor Project; and

WHEREAS, Denver Landmark Preservation Commission, Town of Breckenridge, Jefferson County Historical Commission, Jefferson County Historical Society, Summit County, and Summit County Historic Preservation Commission were invited to participate as consulting parties; and

WHEREAS, FHWA has notified the Secretary of the Interior of the potential for effects to the Georgetown-Silver Plume NHL, pursuant to 36 CFR 800.10, and National Park Service, Intermountain Region (NPS) has participated in consultations and has been invited to concur in this Agreement; and

WHEREAS, the Cheyenne and Arapaho Tribes of Oklahoma, Kiowa Tribe of Oklahoma, Northern Arapaho Tribe, Northern Cheyenne Tribe, Rosebud Sioux Tribe, Southern Ute Indian

Tribe, Standing Rock Sioux Tribe, Ute Mountain Ute Tribe, Ute Tribe of the Uintah and Ouray Agency, and White Mesa Ute Tribe participated in consultations to develop and were invited to execute a separate programmatic agreement addressing the treatment of properties of religious and cultural significance to the signatory tribes, which appears as Appendix D and is incorporated by reference into this Agreement;

NOW, THEREFORE, FHWA, USFS, BLM, ACHP, CDOT, and SHPO agree that each of the I-70 Mountain Corridor Tier 2 undertakings shall be administered in accordance with the following principles and stipulations to satisfy FHWA's, USFS's, and BLM's Section 106 responsibilities for these undertakings.

Principles

FHWA and CDOT shall adhere to the following principles in complying with Section 106 of the National Historic Preservation Act for the Tier 2 undertakings:

1. FHWA and CDOT commit to plan, design, and implement the Tier 2 undertakings in accordance with the principles of Context Sensitive Solutions (CSS) as described in Appendix E.
2. Although many decisions about the I-70 Mountain Corridor Project, including selection of the mode alternative, were made during the Tier 1 process, substantial opportunities will be available during Tier 2 analyses for consulting party input concerning design and construction options and variances.
3. Consistent with CDOT's Environmental Stewardship Guide and with 36 CFR 800.5(a)(1), FHWA and CDOT will take into account direct, indirect, and cumulative effects on historic properties and will consider measures to improve existing conditions affecting historic properties.
4. FHWA and CDOT will seek, discuss, and consider the views of the consulting parties, and where feasible, will seek agreement with them (36 CFR 800.16[f]) when making decisions under the stipulations of this Agreement.
5. As a matter of public policy, reasonableness of cost must be considered when selecting measures to avoid, minimize, or mitigate adverse effects (FHWA policy is that the proposed mitigation measures must represent "a reasonable public expenditure" after considering the impacts of the action and the benefits of the proposed mitigation measures) to historic properties, but cost should not be the only determining factor in mitigation decisions.

Stipulations

FHWA shall ensure that the following measures are carried out:

I. Consultation and Consulting Parties

A. Delegation of Consultation Authority

1. FHWA authorizes CDOT to conduct consultation with the Colorado SHPO and other consulting parties on its behalf, including identification of consulting parties, determining the level of identification, NRHP eligibility determinations, and determinations of effect.
2. FHWA will remain ultimately responsible for all findings and determinations and retains responsibility for complying with all federal requirements pertaining to direct

government-to-government consultation with Indian tribes and requests to ACHP and NPS for participation in cases of adverse effect on NHLs.

3. Except as provided below, FHWA will take the lead in consultation with Indian tribes, in implementation of the dispute resolution clause of this Agreement, and in resolving adverse effects in accordance with 36 CFR 800.6.

B. Consultation with SHPO

As part of initial scoping for individual Tier 2 undertakings, CDOT shall initiate consultation with SHPO as provided in 36 CFR 800.3(c)(1).

C. Consultation with ACHP

FHWA shall notify the ACHP about Tier 2 undertakings when there is a finding of adverse effect and will invite the ACHP's involvement in consultation where the undertaking will adversely affect a NHL.

Such notifications shall include the documentation specified in 36 CFR 800.11(e). ACHP will apply the criteria set forth in Appendix A of 36 CFR Part 800 to determine whether it will participate in consultation to resolve adverse effects.

In addition, FHWA and the consulting parties may seek advice, guidance, and assistance from ACHP on the application of this Programmatic Agreement to Tier 2 undertakings, including the resolution of disagreements, whether or not ACHP is formally involved in the review of the undertaking.

D. Participation by Other Federal Agencies

FHWA shall notify NPS of any Tier 2 undertakings that may affect the Georgetown-Silver Plume NHL and invite their participation in consultations about that undertaking.

For Public Lands that are administered by USFS, FHWA shall consult the appropriate Forest. FHWA shall ensure that complete historic property inventory reports are sent to the appropriate Forest Heritage Staff for review and comments. The Forest shall ensure that the reports are reviewed for adequacy and comments on eligibility of sites and the project's effect are returned to the FHWA within 15 business days.

For Public Lands that are administered by BLM, FHWA shall consult with the appropriate BLM Field Office. FHWA shall ensure that complete historic property inventory reports are sent to the appropriate BLM Cultural Resource Staff for review and comments. The BLM Field Office shall ensure that the reports are reviewed for adequacy and that comments on eligibility and on the project's effect on historic properties are returned to the FHWA within 30 calendar days.

E. Native American Consultation

FHWA shall consult with the tribes that are signatories to the Tribal Programmatic Agreement (Appendix D) according to the provisions of that agreement.

For tribes that are not signatories to the Tribal Programmatic Agreement, FHWA shall consult according to the requirements of 36 CFR Part 800 when properties of religious and cultural significance to such tribes may be affected by a Tier 2 undertaking.

F. Local Governments

CDOT shall consult with local governments about all Tier 2 undertakings that may affect historic properties within their jurisdiction.

Such consultation shall begin early in the scoping process for each individual Tier 2 undertaking and will follow the approach of CSS as outlined in Appendix E.

Where properties within the Georgetown-Silver Plume NHL may be affected by a Tier 2 undertaking, CDOT will consult with all local governments with jurisdiction within the landmark.

G. Historic Preservation Organizations

1. CDOT shall consult with local historic preservation organizations that are consulting parties about all Tier 2 undertakings within their respective areas of interest, as established by each organization in consultation with CDOT.
2. CDOT shall consult with statewide and national historic preservation organizations that are consulting parties about all Tier 2 undertakings within the I-70 Mountain Corridor unless these organizations request a narrower scope of consultation.
3. Such consultation will begin early in the scoping process for each individual Tier 2 undertaking and will follow the approach of CSS as outlined in Appendix E.

H. Additional Consulting Parties

1. Additional local governments and other parties with a demonstrated interest in one or more Tier 2 undertakings or a concern about the effects of the undertaking(s) on historic properties may submit a written request to become a consulting party to FHWA at any time during the term of this Agreement.
2. At FHWA's discretion, such parties may be invited to concur in the Agreement and to participate as consulting parties for subsequent undertakings.

II. The Consultation Process

A. Early Action Projects

Certain projects with independent utility that are covered by the Tier 1 PEIS may need to be carried out before the stipulations of this Agreement can be put in place.

These projects are:

- The Twin Tunnels lighting project
- Empire Junction to Downieville eastbound acceleration lane
- The West Vail Pass auxiliary lanes

Should any additional projects with independent utility analyzed in the Tier 1 PEIS be added to this list of Early Action projects, consultation will be completed as specified in this stipulation.

Some small Tier 2 undertakings may be funded early in Tier 2 before the design guidelines, historic context, and other provisions of this Agreement can be put in place. If this should occur, CDOT shall notify the consulting parties of this circumstance and follow the provisions of this "Early Action" stipulation. This approach will be limited to undertakings that are Categorical Exclusions under NEPA and receive funding prior to the completion of the design guidelines and historic context.

Projects covered by this stipulation will be subject to standard consultation under 36 CFR Part 800, including involvement of consulting parties, identification and evaluation of historic properties, determination of effect, and resolution of any adverse effects.

CDOT shall follow the principles of CSS as described in the Chief Engineer's policy memo # 26 of October 31, 2005 (Appendix F), for these projects.

If any of the Pre-project Consultation products described in Stipulation II.B. have been completed prior to the initiation of a project covered by this Early Actions stipulation, those products will be used to guide consultation, development, and implementation of the undertaking.

B. Pre-project Consultations

1. In order to facilitate planning and streamline development of Tier 2 undertakings, CDOT shall, in consultation with the consulting parties, NPS, and other stakeholders, develop design guidelines and a historic context or contexts for the I-70 Mountain Corridor.
2. These design guidelines and context(s) shall be developed as early as funding for Tier 2 undertakings permits but no later than the initiation of the first Tier 2 undertaking that requires preparation of an Environmental Assessment or Environmental Impact Statement.
3. CDOT will also consult with the consulting parties, NPS, and other corridor stakeholders about broader implementation issues such as appropriate mechanisms (e.g., working groups) for the development of the design guidelines and historic contexts, about planning for historical interpretation within the corridor, and about possible historical and heritage designations, as well as other heritage tourism-related issues.
4. These initiatives are intended to guide the development of Tier 2 undertakings.

C. Consultations about Identification of Historic Properties

For each Tier 2 undertaking, CDOT and FHWA shall review existing information about historic properties within the project area of potential effects (APE) and, in consultation with the consulting parties, determine what additional efforts to identify historic properties are needed to adequately evaluate the effects of the undertaking on historic properties.

Historic properties identified as a result of Stipulation II.C.1 will be recorded using Colorado Cultural Resource Inventory Forms following the standards in the Colorado Cultural Resource Survey Manual.

D. Consultations about Eligibility of Historic Properties

1. Based on the criteria of eligibility to the NRHP in 36 CFR 60.4 and guidance to be developed in the historic context described in Stipulations II.B.3 and IV.A.1, CDOT shall complete determinations of eligibility for all properties identified under Stipulation IV and request concurrence from SHPO on these determinations.
2. CDOT shall bear in mind that the passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency to re-evaluate properties previously determined eligible or ineligible.

3. If CDOT and SHPO are unable to reach a consensus about the eligibility of a property that will be directly affected by a Tier 2 undertaking, FHWA will seek a determination of eligibility from the Keeper of the National Register of Historic Places, as provided in 36 CFR 800.4(c)(2).
4. If CDOT and SHPO are unable to reach a consensus about the eligibility of a property that will *not* be directly affected, CDOT and SHPO may agree to treat the property *as if* it were eligible *for the purposes of evaluating effects* or CDOT may seek a determination from the Keeper of the National Register.

E. Consultations about Determinations of Effect

1. For each Tier 2 undertaking, CDOT shall provide the appropriate consulting parties with information about the NRHP listed properties within the APE, any properties found through consensus determinations to be eligible, and any properties being treated as eligible for the purposes of the undertaking.
2. CDOT shall then invite the consulting parties to provide their views on the nature of effects from the undertaking on the characteristics of those properties that qualify them for listing in the NRHP, and shall consider those views in making a determination of effect for the undertaking.
3. If CDOT finds that an undertaking will have no effect on historic properties or no adverse effect on historic properties, the agency shall notify the consulting parties of this finding and provide them with the documentation specified in 36 CFR 800.11(d) or (e), respectively.
4. If no parties object to such findings within 30 days, CDOT will proceed with the undertaking. If any party objects, CDOT shall follow the dispute resolution stipulation of this Agreement to resolve the objection.
5. If documents prepared for NEPA compliance meet the requirements for documentation under 36 CFR 800.11, CDOT and FHWA may submit these documents to the consulting parties in support of findings of effect on historic properties. All NEPA documents for Tier 2 undertakings that will be used in this way should include a separate, clearly identifiable section summarizing the effects of the undertaking on historic properties.

F. Consultation about Resolution of Adverse Effect

1. If CDOT finds that a Tier 2 undertaking will have an adverse effect on historic properties, the agency shall notify ACHP following the procedures specified in 36 CFR 800.6(1) and consult further with the consulting parties about measures to avoid, minimize, or mitigate those adverse effects.
2. When the process of resolving adverse effects has been completed for a Tier 2 undertaking, CDOT shall prepare a supplement to this Agreement, which specifies the measures it will take to avoid, minimize, or mitigate adverse effects. This supplement takes the place of a Memorandum of Agreement for the Tier 2 undertaking.
3. FHWA shall circulate this supplement to the Programmatic Agreement signatories and invited signatories for signature, including ACHP if they have participated in consultations for the undertaking. When fully executed, the supplement will become part of this Agreement.
4. FHWA shall file the executed supplement with ACHP.

5. CDOT shall distribute copies of the fully executed supplement to all Programmatic Agreement signatories and concurring parties.
6. If the signatories to this Programmatic Agreement find themselves unable to reach a satisfactory resolution of adverse effects for a Tier 2 undertaking and one or more signatories terminates consultation, FHWA shall either follow the procedures provided in ACHP's regulation at 36 CFR 800.6(c) to execute a Memorandum of Agreement or comply with the procedures in 36 CFR 800.7.

III. Area of Potential Effects

- A. The APE for each Tier 2 undertaking will be the exterior boundary of the area within which any current and proposed transportation facilities and associated land disturbance can be seen.
- B. If CDOT proposes to define the APE in some other way for a particular undertaking or kind of effect, the agency shall consult with SHPO and the appropriate consulting parties before making this decision.

IV. Level of Effort to Identify and Evaluate Historic Properties

A. Historic Context Development

1. To facilitate planning and streamline development of Tier 2 undertakings, CDOT shall, in consultation with SHPO and the other consulting parties, develop a historic context or contexts for the I-70 Mountain Corridor. One such context might address the development of mining and the attendant town building from Idaho Springs to Bakerville; other contexts might be appropriate for other segments of the corridor.
2. Historic contexts are information about historical trends and properties grouped by an important theme and a particular period of time. These documents link historic properties to important historical trends.
3. The historic context(s) should include an assessment of existing site records and eligibility determinations.
4. The context or contexts will be used to evaluate the National Register eligibility of historic properties and provide information for interpretive materials.

B. Identification of Historic Buildings and Engineering Features

As early as possible (contingent on the timing and extent of available funding which CDOT shall seek), but no later than the identification phase of the first non-Categorical Exclusion Tier 2 undertaking that will affect each of these areas, CDOT shall also complete the following identification efforts in consultation with the consulting parties:

- a. Survey and evaluate historic buildings and features in the Dumont-Downieville-Lawson (DDL) area (between mileposts 233 to 235.5) to a level adequate to evaluate the effects of any Tier 2 undertakings on historic properties eligible to the National Register
- b. Evaluate the appropriateness of the current boundaries of the Georgetown-Silver Plume NHL for use in determining the effect of Tier 2 undertakings on historic properties. This may include identification of currently unrecorded historic mining and railroad features, which will be evaluated at a level adequate to assess the effects of any Tier 2 undertakings on the NHL.

For Tier 2 undertakings that lie outside the boundaries of DDL and the NHL, CDOT shall consult with FHWA, SHPO, and the appropriate consulting parties and land-managing agencies about any additional efforts needed to identify historic structures and features not already identified during Tier 1 that may be affected by the undertaking.

Historic properties identified as a result of the provisions of this stipulation will be recorded using Colorado Cultural Resource Inventory Forms following the standards in the Colorado Cultural Resource Survey Manual.

In addition to meeting the Secretary of the Interior's Standards for Professional Qualifications, consultants selected by CDOT to develop the historic context called for in Stipulations II.B.3 and IV.A.1 and to do fieldwork to identify and make recommendations about the eligibility of historic mining landscapes and features should have demonstrated:

- a. Knowledge of Colorado mining history and familiarity with technical aspects of 19th century mining, milling, and transportation features
- b. Experience in identifying and recording historic mining features and structures
- c. Previous experience with National Register evaluations for mining-related properties

C. Historical Archaeology

In areas identified in the historic context (Stipulations II.B.3 and VI.A.1) as likely to contain subsurface historical remains, CDOT shall implement the following strategy to evaluate the potential for intact NRHP eligible historical archaeological deposits within areas slated for ground disturbance.

Use historical documents to reconstruct past land use up to the date of construction of I-70

Use "as-builts" and other documentation (e.g., historic maps and topographic maps, Sanborn maps, etc.) to evaluate the degree of previous disturbance

If such deposits are determined to be likely to exist, CDOT shall consult with SHPO to develop and then shall implement testing strategies to locate such deposits and evaluate their eligibility.

D. Precontact Archaeology

CDOT shall ensure that any temporary use areas, temporary and permanent easements, and other areas of ground disturbance associated with any Tier 2 undertaking that lie outside the current right-of-way are surveyed for archaeological sites if they have not been previously inventoried and are not already disturbed.

The provisions of the tribal consultation programmatic agreement (Appendix D) shall govern CDOT's activities in identifying and evaluating precontact archaeological sites.

In Glenwood Springs, ground disturbance near the hot springs has the potential to encounter precontact archaeological deposits. CDOT shall consult with SHPO and the City of Glenwood Springs about an appropriate investigative strategy during project planning for any Tier 2 undertaking in that area.

CDOT shall ensure that any precontact archaeological materials exposed during Tier 2 construction projects within the I-70 Mountain Corridor will be subject to the

provisions of CDOT Standard Specification 107.23, "Archaeological and Paleontological Discoveries."

E. Interstate 70

Under the terms of the national Exemption Regarding Historic Preservation Review Process for the Interstate Highway System (70 FR 11928-11931, March 10, 2005), FHWA need not consider the effects of its I-70 Mountain Corridor Tier 2 undertakings on elements of the Interstate System except in the case of the following individual properties, which have been designated as exceptions to the exemption:

- Glenwood Canyon (mileposts 116 to 132)
- Eisenhower-Johnson Memorial Tunnels (milepost 213.65)
- Vail Pass (milepost 180 to 195.2)
- Genesee Park Bridge (milepost 253.53)
- Twin Tunnels (milepost 242.16)

V. Determining the Effect of Tier 2 Undertakings on Historic Properties

CDOT shall ensure that direct, indirect, and cumulative aspects of the following categories of effect are taken into account for Tier 2 undertakings, where appropriate.

A. Physical Destruction or Damage

Avoidance of physical takes of historic structures and features and precontact archaeological sites shall be given full consideration in all cases.

The potential for effects on historic properties as a result of transportation facility construction, construction-related vibration, and blasting shall be assessed where appropriate. The general potential for and nature of such effects shall be considered early in planning; specific details of such assessments may need to be delayed until after the construction contractor has been selected.

B. Visual Effects

1. Visual effects considered will be related to the qualities of significance of the historic properties being affected. At the scoping stage of each Tier 2 undertaking, CDOT will meet with the appropriate consulting parties to discuss visual impact criteria appropriate to evaluating both new and cumulative visual effects of the undertaking on historic properties. Cumulative visual effects include those that result from the incremental consequences of an undertaking when those effects are added to the visual effects of past CDOT undertakings.
2. Depending on the selected mode of transportation and specifics of the design issues for the particular undertaking, some or all of the following points may need to be considered in these consultations:

Minimization and mitigation of visual impacts will take into consideration the qualities of the historic properties, particularly the requirements of Section 110(f) of the National Historic Preservation Act concerning NHLs.

Visible air pollution and light pollution will be considered as possible adverse effects on historic properties.

Both viewscape (the area within which a particular point is visible) and viewshed (the area visible from a particular point—including the transportation facility itself) will be considered.

Visual impacts on the mining-related cultural landscape, such as scars from road cuts, will be taken into account.

Some mitigation measures and project design features, such as noise walls and retaining walls, have the potential for visual impact and will be considered as part of design review.

Shadow effects on historic properties as a result of construction or mitigation measures will be avoided to the maximum possible extent.

C. Noise Effects

1. Minimization and mitigation of noise impacts will take into consideration the qualities of significance of the historic properties, including the requirements of Section 110(f) of the National Historic Preservation Act concerning NHLs.
2. At the scoping stage of each Tier 2 undertaking, CDOT will meet with the appropriate consulting parties to discuss mechanisms for evaluating new and cumulative noise effects of the undertaking. Cumulative noise effects include those that result from the incremental consequences of an undertaking when those effects are added to the noise effects of past CDOT undertakings.
3. Depending on the selected mode of transportation and specifics of the design issues for the particular undertaking, some or all of the following points may need to be discussed in these consultations:
 - a. FHWA and FTA standard noise guidelines may not be sufficient to evaluate the effects on historic properties for the purposes of Section 106 of the National Historic Preservation Act. For the purposes of Section 106 only, if standard noise guidelines prove to be insufficient, CDOT will give serious consideration to adopting other means for evaluating effects on the integrity of historic properties.
 - b. Evaluation of effects from noise will take into account the current high levels of noise in the corridor, including average noise levels, pitch of sounds, and peak and intermittent events.
 - c. Noise impacts on a variety of heritage tourism activities that provide essential financial support for the continued preservation of historic properties will also be considered.

D. Economic Impacts

1. At the scoping stage of each Tier 2 undertaking, CDOT will meet with the appropriate consulting parties to discuss potential economic impacts of the undertaking on historic properties and strategies for minimizing these effects. These effects will generally have to do with potential disruption of heritage tourism.
2. As part of NEPA analysis for each Tier 2 undertaking, CDOT shall seek assistance from the consulting parties and other stakeholders to identify specific time periods and events during which traffic restrictions and closures would be most and least harmful.
3. Depending on the selected mode of transportation and specifics of the design for the particular undertaking, some or all of the following points may need to be discussed during these consultations:

- a. Ways to minimize restrictions on access and other construction impacts
- b. Ways to minimize the effects of changing access patterns on the economic viability of historic properties and the historic landscape
- c. Currently no changes are anticipated in connectivity among the historic communities or in access to trails, fishing locations, and other heritage tourism resources, but if any changes arise, CDOT will consult with local governments and consulting parties to minimize the effects.

VI. Resolution of Adverse Effects

A. I-70 Mountain Corridor Projectwide Mitigation Measures

1. FHWA and CDOT commit to plan, design, and implement the Tier 2 undertakings in accordance with the principles of Context-Sensitive Solutions (CSS) as described in Appendix E.
2. Before approval of any individual Tier 2 undertaking (other than the early actions and other special situations described in Stipulation II.A), CDOT shall, in cooperation with the consulting parties and incorporating the advice obtained as a result of Stipulation II.B, develop design guidelines and an interpretation plan.
3. The design guidelines will establish design elements that are compatible with the historic character of the I-70 Mountain Corridor and will contribute to the sense of place. These design elements may then be incorporated into features such as bridges, median barriers, signage, landscaping, fencing, noise barriers, and gateways to historic communities. Other features of the project, such as access to river rafting locations and bikeways, may also incorporate these design elements.
4. The purpose of the design guidelines is to facilitate development of context sensitive transportation facilities and to create and brand a heritage corridor within the I-70 Mountain Corridor project area. The term "heritage corridor" is used here to describe efforts to convey to the traveling public the historic character and significance of the area through which I-70 passes by using unified design and interpretation.
5. The content of the interpretation plan will be based on the historic context(s) provided for in Stipulations II.B.3 and IV.A.1 and will be developed in consultation with the individual communities.
6. Possible interpretation efforts might include, but are not limited to:
 - a. Roadside exhibits
 - b. Solar-powered, short-range transmitters broadcasting brief historical vignettes to car radios or cell phones
 - c. A book or documentary on the highway and its impacts, both negative and positive, possibly recapturing information about the "lost" properties
 - d. Gateway development for historic communities
 - e. Interpretation of exposed roadside features (tunnels truncated by the original construction, etc.)
 - f. Educational materials for regional schools

B. Resolution of Adverse Effects of Individual Tier 2 Undertakings

At the scoping stage of each Tier 2 undertaking, CDOT shall meet with the appropriate consulting parties to discuss appropriate mechanisms for avoiding, minimizing, and mitigating adverse effects of the specific undertaking.

These discussions shall include direct, indirect, and cumulative effects.

Depending on the selected mode of transportation and on the specific design issues for the particular undertaking, some or all of the following points may be considered in these consultations, as well as newly proposed measures appropriate to the mode and design:

Measures to minimize/mitigate physical destruction and damage

Allow variances from CDOT's design standards (which are based on guidance from the American Association of State Highway and Transportation Officials) within narrowly defined limits—lane widths, shoulder widths, and alignment shifts, both vertical and horizontal.

Precontact archaeological sites that cannot be protected in place will be treated according to the provisions of the tribal consultation programmatic agreement (Appendix D).

Historical archaeological deposits found through testing in the construction areas that cannot be preserved in place will be subject to data recovery carried out in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, coupled with guidelines established by the Colorado Office of Archaeology and Historic Preservation.

Modern explosive techniques that minimize ground and air blasts will be used; monitoring of blasting and other major vibration-causing activities may be required in areas where historic buildings and structures are at risk.

Measures to minimize/mitigate noise effects

Use sound-absorbing noise walls and vegetative buffers.

Work with enforcement agencies to improve compliance with the requirement for engine brake mufflers.

Use arcaded structures like those used in Europe to dampen noise impacts while preserving views of historic towns.

Reconsider noise minimizing measures that are not currently feasible (e.g., "quiet" pavement) as the technology changes in the future.

Carry out post-construction monitoring to evaluate the effectiveness of noise minimizing measures adopted for previous Tier 2 undertakings.

Measures to minimize/mitigate visual effects

Use a variety of landscaping approaches—rocks as well as plants—that are appropriate to the historic character and mountainous setting.

Use stacked rock walls or other more attractive materials instead of standard chain link fencing where appropriate within the limits of historic communities.

Measures to minimize/mitigate economic impacts on historic properties/heritage tourism

- i. CDOT shall ensure that construction contractors are aware of periods of least and greatest impact on heritage tourism from traffic restrictions and closures and include the contractors in meetings with the potentially affected historic communities to discuss scheduling decisions.
- ii. As each construction phase potentially affecting historic communities is conducted, CDOT will work with the communities to select community liaisons who will represent the interests of the community and provide assistance and feedback to the traffic control team concerning construction scheduling and mitigation strategies.
- iii. As part of rebuilding/redesigning interchanges, assist the historic communities to develop gateways that will draw visitors.
- iv. Time and design the construction between Georgetown and Silver Plume such that any needed temporary closure of the Lebanon Mine Tunnel on the loop railway is of limited duration.
- v. Consider visitor safety enhancements for the Lebanon Mine Tunnel.
- vi. Design promotional measures to inform the traveling public about the continued availability of and access to historic properties during construction.
- vii. Adopt Intelligent Traffic Systems, which use communications and information technology to control traffic, inform drivers, and reduce congestion.
- viii. CDOT will work with the owners of historic properties whose access has been impaired by the original construction of I-70 to explore ways of restoring access to those properties.

C. Support for Historic Preservation Efforts in Local Communities

1. The Georgetown-Silver Plume NHL and the City of Idaho Springs have experienced and continue to experience impacts to the historic character of these communities from the presence of I-70.
2. As part of the measures to resolve adverse effects of Tier 2 undertakings on these communities, CDOT will assist the communities with their efforts to preserve their historic character by carrying out the following measures:

CDOT will assist the Town of Georgetown in its historic preservation efforts by working with the town, local preservation organizations, and SHPO to correct information in COMPASS (the Colorado On-line Cultural Resource Database) about the NRHP eligibility of contributing structures within the Georgetown portion of the NHL.

CDOT will assist the Town of Silver Plume in its historic preservation efforts by collecting sufficient information to determine which structures and features within the Silver Plume portion of the NHL are contributing and noncontributing to the significance of the landmark.

CDOT will assist the City of Idaho Springs in its historic preservation efforts by assessing the potential for one or more historic residential districts within the

town, developing an appropriate context or contexts for an NRHP district nomination or nominations, and collecting preliminary information on potentially contributing and noncontributing structures for the district or districts.

CDOT will include the measures described in Stipulation VI.C.2 in the Programmatic Agreement supplement for the first non-Categorical Exclusion Tier 2 undertaking within the jurisdiction of each of these communities.

VII. Coordination with Other Agreements and Plans

CDOT shall ensure that decisions made under the provisions of this Agreement are coordinated appropriately with the following agreements and planning efforts:

Mine Waste MOU with Colorado Department of Public Health and Environment, FHWA, US Environmental Protection Agency, and CDOT

ALIVE (A Landscape level Inventory of Valued Ecosystem components) MOU among FHWA; US Fish and Wildlife Service; BLM; USFS; Colorado Department of Natural Resources, Division of Wildlife; and CDOT

Clear Creek County Greenway Plan (including Whitewater Park)

Clear Creek County Master Plan

Idaho Springs Master Plan

Idaho Springs Preservation Plan for Joint Assets

Georgetown Comprehensive Plan

Georgetown Gateway Master Plan

Management Plan for the Georgetown Silver Plume Loop Railroad

Georgetown Silver Plume Historic District Public Lands Commission Management Plan

Bakerville Neighborhood Plan

- C. For all I-70 Mountain Corridor Tier 2 undertakings only, this Agreement supersedes the Colorado Minor Projects and Historic Bridges Programmatic Agreements among FHWA, CDOT, SHPO, and ACHP, as well as the Memorandum of Agreement concerning Section 106 procedures between CDOT and SHPO.

VIII. Public Participation

Early in the planning process for each Tier 2 undertaking, CDOT shall inform the non-consulting party local governments and the general public of the project and of opportunities for participation in the compliance process for Section 106 of the National Historic Preservation Act.

CDOT shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking, its potential to affect historic properties, and the likely interest of the public in that undertaking.

IX. Historic Preservation Standards and Professional Qualifications

FHWA shall ensure that activities carried out under the terms of this Agreement follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation and Professional Qualifications for Archeologists/Historians (48FR190:44716-44742).

X. Ownership and Curation of Collected Materials

All artifacts, specimens, and samples collected from public lands are the property of the United States Government. After completion of the analyses, FHWA shall ensure that all such materials are deposited with a curation facility that meets the criteria in 36 CFR 79.9.

XI. Confidentiality and Disclosure

Information about the location, character, or ownership of a historic property that is acquired in the course of implementing this Agreement may be kept confidential by the Federal agencies or SHPO provided that the requirements of Section 304 of the National Historic Preservation Act and of 36 CFR 800.11(c) are met.

USFS records dealing with historic, prehistoric, paleontological, and Native American religious site localities are exempt from disclosure pursuant to 5 USC 522(b)(5).

XII. USFS Disclaimer

Non-Fund Obligor Document. This Agreement is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This Agreement does not provide such authority. Specifically, this Agreement does not establish authority for non-competitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

Participation in Similar Activities. This instrument in no way restricts the USFS from participating in similar activities with other public or private agencies, organizations, and individuals.

XIII. Dispute Resolution

Should any party to this Agreement object in writing to FHWA or CDOT regarding any action carried out or proposed with respect to any Tier 2 undertaking or to the implementation of this Agreement, the agency shall consult with the objecting party to resolve the objection.

If after initiating such consultation FHWA or CDOT determines that the objection cannot be resolved through consultation, FHWA shall forward all documentation relevant to the objection to ACHP, including the agency's proposed response to the objection.

Within 30 days after receipt of all pertinent documentation, ACHP shall exercise one of the following options:

1. Advise the agency that ACHP concurs in the agency's proposed response to the objection, whereupon the agency will respond to the objection accordingly;
2. Provide the agency with recommendations, which the agency shall take into account in reaching a final decision regarding its response to the objection; or

3. Notify the agency that the objection will be referred for comment pursuant to 36 CFR 800.7(a)(4), and proceed to refer the objection and comment. The agency shall take the resulting comment into account in accordance with 36 CFR 800.7(c)(4).

XIV. Amendment and Termination

Any signatory to this Agreement may request that it be amended, whereupon the parties will consult to reach a consensus on the proposed amendment. Where no consensus can be reached, the Agreement will not be amended.

Once the Final Programmatic EIS for the I-70 Mountain Corridor has been released and the preferred alternative has been identified, the parties to this Agreement will meet or consult electronically to determine whether any amendments to this Agreement should be proposed in response to any provisions within the PEIS.

In the event that Congress amends Section 106 of the National Historic Preservation Act or in the case of substantial changes to 36 CFR 800, the parties to this Agreement will meet to consider whether it would be appropriate to amend the Agreement.

Any signatory to this Agreement may terminate it by providing thirty (30) days notice to the other parties, provided that the signatories and concurring 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, FHWA shall comply with 36 CFR Part 800 for all remaining Tier 2 undertakings of the I-70 Mountain Corridor Project.

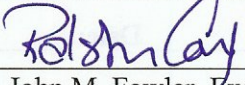
XV. Participation by Additional Federal Agencies

Any additional federal agency that funds or authorizes a Tier 2 component of the I-70 Mountain Corridor Project during the life of this Agreement may choose to meet its Section 106 obligations for that undertaking under the process provided in this Agreement by executing the Additional Signatory Form (Appendix G) and notifying FHWA, ACHP, and SHPO of its intention to do so. Notification to FHWA, ACHP, and SHPO should include an explanation of the nature of the agency's participation in or assistance to the I-70 Mountain Corridor Project.

Execution and implementation of this Agreement and of all supplements to this Agreement evidence that FHWA, USFS, and BLM have taken into account the effects of the I-70 Mountain Corridor undertakings on historic properties and afforded the Advisory Council on Historic Preservation an opportunity to comment on those effects.

Signatories:

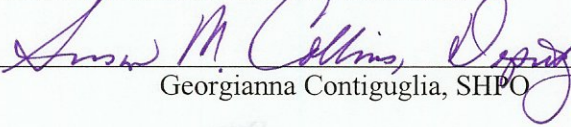
Advisory Council on Historic Preservation

By:  Date: 4/3/08
for John M. Fowler, Executive Director

Colorado Department of Transportation

By:  Date: 2/12/08
Russell George, Executive Director

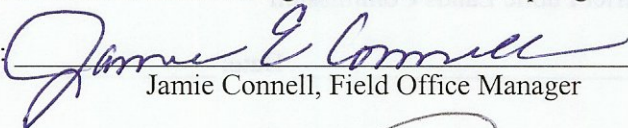
Colorado State Historic Preservation Officer

By:  Date: 2/21/08
Georgianna Contiguglia, SHPO

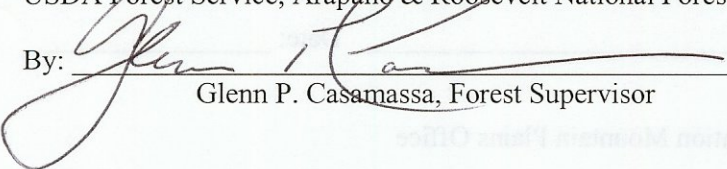
Federal Highway Administration

By:  Date: 2/14/08
Douglas Bennett, Acting Colorado Division Administrator

DOI Bureau of Land Management, Glenwood Springs Field Office

By:  Date: 3/10/08
Jamie Connell, Field Office Manager

USDA Forest Service, Arapaho & Roosevelt National Forests and Pawnee National Grassland

By:  Date: 3-18-08
Glenn P. Casamassa, Forest Supervisor

Concurring:

Clear Creek County

By: _____ Date: _____

Eagle County

By: _____ Date: _____

City of Glenwood Springs

By: _____ Date: _____

City of Idaho Springs

By: _____ Date: _____

Town of Georgetown

By: _____ Date: _____

Town of Silver Plume

By: _____ Date: _____

Georgetown Silver Plume Historic District Public Lands Commission

By: _____ Date: _____

National Park Service, Intermountain Region

By: _____ Date: _____

National Trust for Historic Preservation Mountain Plains Office

By: _____ Date: _____

Colorado Preservation, Inc.

By: _____ Date: _____

Colorado Historical Society

By: _____ Date: _____

Historic Georgetown, Inc.

By: _____ Date: _____

Historical Society of Idaho Springs

By: _____ Date: _____

Mill Creek Valley Historical Society

By: _____ Date: _____

List of Appendices

- A. Purpose and Need for the Mountain Corridor Project**
- B. Section 106 Summary and Evaluation of Relative Effects on Historic Properties**
- C. Parties Informed about the Mountain Corridor Project and Invited to Participate in Section 106 Consultations**
- D. Programmatic Agreement for Tribal Consultation for the Mountain Corridor Project**
- E. Context Sensitive Solutions and the Mountain Corridor Project**
- F. CDOT Chief Engineer's Policy Memo #26 (October 31, 2006) on Context Sensitive Solutions**
- G. Additional Signatory Form**