

**PROGRAMMATIC AGREEMENT  
AMONG  
THE U.S. FISH AND WILDLIFE SERVICE: INTERIOR REGIONS 5 AND 7,  
THE COLORADO STATE HISTORIC PRESERVATION OFFICER,  
THE CITY OF GUNNISON, AND GUNNISON VALLEY PROPERTIES,  
REGARDING THE CONSTRUCTION OF THE GUNNISON RISING PROJECT  
GUNNISON COUNTY, COLORADO**

**WHEREAS**, the City of Gunnison (City) in conjunction with Gunnison Valley Properties (GVP) proposes to develop 637 acres within the City of Gunnison as part of the 1522 acre Habitat Conservation Plan (HCP) on the east side of the City as the Gunnison Rising Project (Project); and

**WHEREAS**, the Project will extend across a portion of the range of the threatened Gunnison sage-grouse (*Centrocercus minimus*), and the proposed construction of the Project cannot occur without adversely affecting the sage-grouse; and

**WHEREAS**, for the City to conduct an otherwise lawful activity where a threatened or endangered species may be taken, and the purpose of the activity is not scientific research or enhancement of a listed species, the City must obtain an Incidental Take Permit (ITP) from the United States Fish and Wildlife Service: Interior Regions 5 & 7 (USFWS), pursuant to Section 10(a)(1)(B) of the Endangered Species Act; and

**WHEREAS**, issuance of an ITP by USFWS to the City for the take of sage-grouse is a federal undertaking as defined in Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations “Protection of Historic Properties” (36 CFR Part 800) and therefore USFWS must consider the effect of the undertaking on historic properties; and

**WHEREAS**, in accordance with 36 CFR Part 800.14(b)(1)(ii), execution of a Programmatic Agreement (PA) is appropriate because effects on historic properties cannot be fully determined prior to USFWS issuance of the ITP to the City; and

**WHEREAS**, the USFWS has delineated three management areas based on the timing of the proposed developments and the anticipated uses of the lands: Phase I, Phase II, and the Mitigation Area (Appendix A); and

**WHEREAS**, the Phase I parcel (347 acres) is anticipated to start being developed in the next one to three years, the Phase II parcel (290 acres) is not expected to be developed for many years, and development in the Mitigation Area (885 acres) will be very limited and dispersed with little or no ground disturbance in most areas; and

**WHEREAS**, the USFWS has defined the area of potential effects (APE) for the Undertaking to not only include the three management areas, but also an additional 0.25-mile buffer extending from these areas to consider the physical, visual, auditory and atmospheric effects that may result from the Project (Appendix A); and

**WHEREAS**, a Class III cultural resource survey was conducted of the Phase I parcel and no historic properties were identified. The results of that survey are documented in the March 2020 report *A Class III Cultural Resource Inventory of Phase I of the Gunnison Rising Project, Gunnison County, Colorado*.

The review of the Phase I parcel under Section 106 of NHPA, is complete and the City may proceed with the Project in that area; and.

**WHEREAS**, Identification efforts in the Phase II parcel and the Mitigation Area are incomplete; and

**WHEREAS**, the USFWS is phasing identification of historic properties and assessment of adverse effects in accordance with 36 CFR 800.4(b)(2) and 36 CFR 800.5(a)(3), respectively, because development plans are not finalized; and

**WHEREAS**, the USFWS identified seven federally recognized Indian tribes (Appendix B) as potentially having religious and cultural affiliation with the APE and invited tribes to participate in the Section 106 process and the development of this Programmatic Agreement (PA); and

**WHEREAS**, potentially interested parties have been provided opportunities to comment on the Undertaking through outreach to various organizations and individuals (Appendix B); and

**WHEREAS**, in accordance with 36 CFR § 800.14(b)(1), the USFWS has notified the Advisory Council on Historic Preservation (ACHP) of its effect determination with specified documentation, and the ACHP has chosen to not participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, the USFWS and the SHPO are signatories; and

**WHEREAS**, the City, and GVP, will have crucial roles to play in the implementation of this PA and have been asked to sign as invited signatories; and

**WHEREAS**, the City has agreed to complete its stipulations, listed below, regarding the identification, evaluation of eligibility and assessment of effects regarding archaeological resources within the direct APE as elaborated below, as a condition of receiving the ITP; and

**WHEREAS**, the terms used in this PA are defined in 36 CFR Part 800.16;

**NOW, THEREFORE**, the USFWS, SHPO, City, and GVP agree that the Undertaking will be implemented in accordance with the following stipulations in order to take into account the effect of the Project on historic properties.

## **STIPULATIONS**

The USFWS shall ensure that the following stipulations are carried out:

### **I. Phase II Parcel Construction**

- A. The Section 106 of NHPA review, following the 36 CFR 800.4-7 regulations, of the APE for the Phase II parcel will be completed prior to any development within the parcel. Cumulative effects will be considered as a part of that review.
- B. The City may proceed with the Project in the Phase II parcel when the Section 106 of NHPA review is complete as determined by the USFWS in consultation with the SHPO.
- C. Stipulations IV through VI will be followed during development of Phase II parcel.

## II. Mitigation Area Management

- A. The APE for future ground-disturbing activities in the Mitigation Area parcel will be reviewed under Section 106 of NHPA, following the 36 CFR 800.4-7 regulations, on a case-by-case basis as they are proposed. No buildings are proposed in the Mitigation Area; only trails and associated structures (e.g., signs) are proposed at this time. Cumulative effects will be considered as a part of that review.
- B. The City or GVP (upon the City's authorization) may proceed with management that involves ground disturbance and trail construction in the Mitigation Area when the Section 106 NHPA review is complete as determined by the USFWS in consultation with the SHPO.
- C. Stipulations IV through VI will be followed during ground-disturbing activities in the Mitigation Area.

## III. Changes to the Undertaking

In the event of any changes to the Project scope, the following measures shall be implemented in consultation with the signatories:

- A. The USFWS shall assess and revise the Project APE as needed to incorporate any additional areas that have the potential to affect historic properties.
- B. The USFWS shall carry out additional investigations to identify historic architectural and archaeological properties that may be affected.
- C. The USFWS shall assess the Project's effect on any new historic properties and explore measures to avoid, minimize, or mitigate effects on these properties.
- D. The USFWS shall ensure the preparation of appropriate reports and documents, notify Section 106 consulting parties, including Indian tribes, on any changes in the Project's effect on historic properties, and provide an opportunity for review and comment.
- E. If a change in project scope results in additional adverse effects to historic properties, the USFWS shall consult with all consulting parties in accordance with 36 CFR 800.6.

## IV. Post-Review Discoveries

- A. In the event of any post-review discovery of cultural resources, unmarked cemeteries, or human remains and associated funerary objects during the implementation of the Project, all activities will be suspended within 100 feet of the area of discovery.
- B. If the post-review discovery includes human remains, or possible human remains, Stipulation V will be followed.
- C. In the event of the post-review discovery of cultural resources that do not include human remains, the City will contact the USFWS Ecological Services Colorado Field Supervisor and the SHPO within 48 hours of the discovery.

- D. Following notification of the post-review discovery of cultural resources, the USFWS will follow the procedures as outlined in 36 CFR 800.13(b).

## V. Human Remains

If human remains, or possible human remains, are encountered, the City shall contact the coroner and local law enforcement, and shall comply with the terms of the Colorado Unmarked Human Graves Statute (CO Rev Stat § 24-80-1302 (2017)).

## VI. Professional Standards

All actions prescribed by this PA that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition for historic properties, and/or that involve reporting or documentation of such actions in the form of reports, forms, or other records, shall be carried out by or under the direct supervision of a person or persons who meet at a minimum the Secretary of Interior's Professional Qualifications Standards (48 FR 44738-44739; Appendix A to 36 CFR 61) in the appropriate discipline. The USFWS will ensure that the work outlined in this PA is conducted by individuals meeting these qualifications standards who hold appropriate federal and state permits to complete this work. Historic property identification will adhere to regional standards for intensive (or Class III) identification and reporting will follow SHPO standards which are available on its website.

The USFWS acknowledges that Indian tribes "possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them" (§ 800.4 (c)(1)). The USFWS acknowledges and respects traditional knowledge and traditional education systems on their own terms. The Secretary of Interior's Professional Qualifications Standards do not apply to individuals designated by tribes to assist in or review results of identification, evaluation, analysis, recording, treatment, monitoring or disposition of historic properties.

## VII. Dispute Resolution

Should any signatory to this PA object in writing at any time to any actions proposed or the manner in which the terms of this PA are implemented, the USFWS will consult with such party to resolve the objection. If the USFWS determines that the objection cannot be resolved, the parties will adhere to the following process.

- A. The USFWS will forward all documentation relevant to the dispute, including the resolution proposed by the USFWS, to the ACHP. ACHP will provide the USFWS with its advice, pursuant to 36 CFR 800.2(b)(2), on the resolution of the objection within 30 calendar days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USFWS will prepare a written response that takes into account any timely advice or comments from the ACHP and signatories regarding the dispute and provide a copy of this written response. The USFWS will then proceed according to its final decision.

- B. If ACHP does not provide its advice regarding the dispute within 30 calendar days, the USFWS may make a final decision and proceed accordingly. Prior to reaching a final decision, the USFWS will prepare a written response that takes into account any timely comments regarding the dispute from signatories and provide them and ACHP with a copy of the written response.
- C. The responsibilities of the USFWS to carry out all other actions subject to the terms of this PA, that are not the subject of the dispute, remain unchanged.
- D. If at any time during the implementation of the measures stipulated in this PA an objection should be raised by the public, the USFWS will notify the signatories to this PA and consult with the objecting party to seek resolution. If the USFWS determines that the objection may be valid and cannot be resolved, it will decide if the objection is of such magnitude to seek the advice or comment of ACHP (as described above).

#### VIII. Emergency Situations

- A. The parties recognize that there may be instances over the life of the Project where a situation occurs that requires the City to promptly respond using access routes or taking other action in areas that were not previously surveyed for cultural resources.
- B. If the situation allows for coordination with the agencies prior to the use of such areas that have not been surveyed, the City will contact the USFWS and the SHPO before utilizing areas not previously surveyed. Within seven days, USFWS and SHPO will develop alternative measures to relevant Stipulations in this Agreement.
- C. If, however, an emergency situation occurs on the Project, i.e., one that represents an imminent threat to property or public health or safety, the City will coordinate with USFWS and the SHPO after the emergency is addressed to discuss whether any additional actions should be taken.
- D. Should an emergency situation occur that represents an imminent threat to property or public health or safety, and the City can respond to that emergency situation using the same access routes that were used during construction, no further consultation under this PA is required.

#### IX. Reporting

The City, in consultation with the USFWS, shall provide the SHPO with a status of PA implementation by July 1 of each calendar year during the life of this PA, to include, if applicable:

- Status of survey
- Status of discussion of mitigation measures
- Status of mitigation measure implementation
- Post-review discovery
- Emergency situation: response and recovery actions
- Suggested amendments

If additional time is necessary to complete the report, the City, in consultation with the USFWS, shall notify all parties within 30 days after the report is due and propose a revised schedule. The reporting extension will be agreed upon by all parties to this PA. If the City or the USFWS fail to submit the status report by the due date, or fail to request an extension within 30 days after the report is due, the PA will then be considered terminated.

#### X. Amendment

This PA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

#### XI. Coordination with Other Federal Reviews

In the event that another federal agency not initially a party to or subject to this PA receives an application for funding/license/permit for an Undertaking that is covered by this PA, that agency may fulfill its Section 106 responsibilities by stating in writing it concurs with the terms of this PA and notifying the USFWS, SHPO, and ACHP that it intends to do so. Such agreement shall be evidenced by execution and implementation of the terms of this PA.

#### XII. Termination

If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation X. If within 30 calendar days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories.

Once the PA is terminated, and prior to work continuing on the Undertaking, USFWS must notify the signatories as to the course of action it will pursue.

#### XIII. Duration

The term of this PA will expire with the Incidental Take Permit for the project, which expires in approximately 20 years. Prior to such time, USFWS may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation X.

One year prior to the terms of this PA expiring, USFWS shall initiate consultation to consider amendments to this PA, to include extending its duration, or other changes as necessary.

#### XIV. Anti-Deficiency Act

The USFWS obligations under this PA are subject to the availability of appropriated funds, and the stipulations of this PA are subject to the provisions of the Anti-Deficiency Act. The USFWS will make reasonable and good faith efforts to secure the necessary funds to implement this PA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the USFWS ability to implement the stipulations of this agreement, the USFWS will consult in accordance with the amendment and terminations procedures found at Stipulations X, XI and XII of this agreement.

EXECUTION of this PA by the USFWS, SHPO, City, and GVP, and implementation of its terms, evidences that the USFWS has taken into account the effects of this Undertaking on historic properties and afforded ACHP a reasonable opportunity to comment.

**SIGNATORIES**

U.S. FISH AND WILDLIFE SERVICE, INTERIOR REGIONS 5 & 7


By ANN TIMBERMAN Digitally signed by ANN  
TIMBERMAN  
Date: 2021.03.18 08:54:30 -06'00' Date \_\_\_\_\_  
Noreen Walsh, Regional Director, Interior Regions 5 & 7

COLORADO STATE HISTORIC PRESERVATION OFFICER

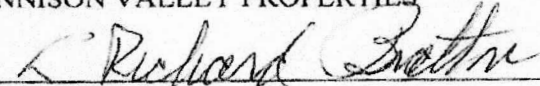
By Dr. Holly Kathryn Norton Digitally signed by Dr. Holly Kathryn Norton  
Date: 2021.03.17 13:07:36 -06'00' Date \_\_\_\_\_  
Steve Turner, State Historic Preservation Officer

**INVITED SIGNATORIES**

CITY OF GUNNISON

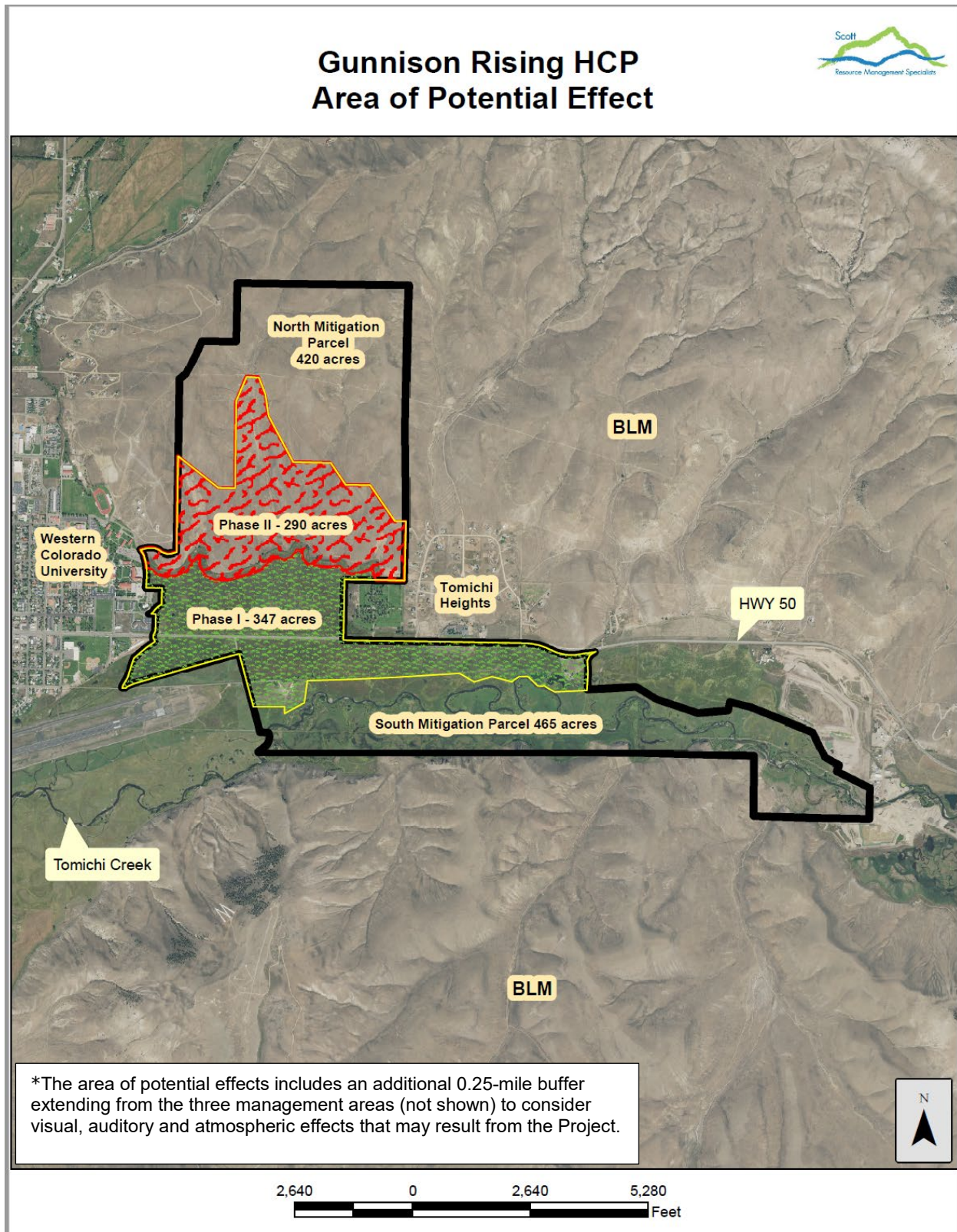
By  Date 3-3-2021  
Anton J. Sinkewich, Community Development Director

GUNNISON VALLEY PROPERTIES

By  Date 3/21/2021  
L. Richard Bratton, Manager



## Appendix A: Area of Potential Effect (Map)\*





## **Appendix B: Consulted Native American Tribes and Other Parties**

### Native American Tribes

November 25, 2019

The USFWS initiated consultation with the following tribes by letter:

- Apache Tribe of Oklahoma
- Comanche Nation of Oklahoma
- Gros Ventre and Assiniboine Tribes of Fort Belknap
- Navajo Nation
- Southern Ute Indian Tribe
- Ute Indian Tribe of the Uintah and Ouray Reservation
- Ute Mountain Ute Tribe

January 10, 2020

The Southern Ute Indian Tribe responded by checking a “No Adverse Effect” box with the associated statement: “I have identified properties of cultural and religious significance within the area of effect that I believe are eligible for listing in the National Register, for which there would be no adverse effect as a result of the proposed project”.

April 22, 2020

The Comanche Nation responded that they checked their files and found “No Properties” of interest to them for this project.

June 29, 2020

The USFWS announced development of the Programmatic Agreement (PA) with the same Native American Tribes. The Southern Ute Tribe Department of Natural Resources responded that same day that they do not intend to submit comments on the PA but that the Tribe’s Culture Department may choose to comment. However, as of October 22, 2020, neither the Southern Ute Tribe Culture Department nor any other Tribes have expressed interest in development of the PA.

The USFWS will continue to consult with Native American tribes during subsequent NHPA reviews of this Undertaking.

### Other Parties

June 29, 2020

The USFWS invited the following potentially interested non-tribal partners to participate in development of the PA.

- Western Colorado University
- Colorado Parks and Wildlife
- Bureau of Land Management
- Gunnison County

July, 10, 2020

Gunnison County responded via email that they would like to review a draft of the PA (and will review after the Colorado SHPO review).

August 20, 2020

Colorado Parks and Wildlife notified the USFWS via e-mail that they do not need to sign the PA.

August 24, 2020

Western Colorado University notified the USFWS via e-mail that they do not need to sign the PA.

The Bureau of Land Management did not respond.

The USFWS will continue to consult with potentially interested parties, organizations and agencies during subsequent NHPA reviews of this Undertaking.

The City of Gunnison City Council also had a series of public meetings to solicit comments on the anticipated changes to the Planned Urban Development (PUD) plan and related issues associated with the Phase I parcel. Below is a list of those meetings.

February 26, 2020

Change to PUD discussion. One person commented in favor of Gunnison Rising concept.

March 24, 2020

Change to PUD discussion. No comments from the public.

April 28, 2020

Change to PUD discussion. Two people commented on road and trail pathways

May 12, 2020

Change to PUD discussion. No comments from the public.

May 26, 2020

Change to PUD discussion, including transportation, phasing and Gunnison sage-grouse issues.

No comments from the public.

June 1, 2020

Change to PUD discussion, including annexation, affordable housing, and land dedication.

No comments from the public.

June 9, 2020

Change to PUD discussion, including zoning designations and development standards.

No comments from the public.

July 14, 2020

Change to PUD discussion, including zoning designations and development standards.

No comments from the public.

August 25, 2020

Change to PUD discussion, including zoning designations and development standards.

Two people commented on affordable housing and in favor of Gunnison Rising.

September 8, 2020

Annexation amendment and aviation agreement discussion. No comments from the public.

September 22, 2020

Aviation agreement discussion. No comments from the public.