

APPENDIX D:

Memorandum of Agreement



Record of Decision

MEMORANDUM OF AGREEMENT
BETWEEN FEDERAL HIGHWAY ADMINISTRATION
AND THE COLORADO STATE HISTORIC PRESERVATION OFFICER
REGARDING THE PROPOSED IMPROVEMENT OF
COLORADO FOREST HIGHWAY 80, GUANELLA PASS ROAD

WHEREAS, Leavenworth Mountain is the backdrop to the historic setting of Site 5CC3, the Georgetown-Silver Plume National Historic Landmark District (GSPNHLD), the Town of Georgetown believes that any improvement of the switchbacks on the existing roadway may adversely affect the visual quality of the cultural landscape within the District. This 1,331 hectare (3,288 acre) historic district includes the towns of Georgetown and Silver Plume and the valley between the two communities within T4S, R74W, Sections 5, 8, 17, 18, 19, and 20; and T4S, R75W, Sections 13 and 24. The Federal Highway Administration (FHWA) has determined that the proposed improvement of Colorado Forest Highway 80, Guanella Pass Road (undertaking) may have an adverse effect on, the GSPNHLD, which is listed in the National Register of Historic Places, and has consulted with the Colorado State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f); and

WHEREAS, the Federal Highway Administration has consulted with the Comanche, Eastern Shoshone, Northern Arapaho, Northern Cheyenne, Shoshone-Bannock, Southern Ute, Northern Ute (Uintah and Ouray Reservation), Ute Mountain Ute (Colorado Chapter), Ute Mountain Ute (Towaoc), Ute Indian Tribe (Colorado Chapter), and White Mesa Ute tribes, in accordance with 36 CFR 800.2(c)(3), and the consulting parties agree that Indian Tribes have raised no objection to the proposed undertaking; and

WHEREAS, the Federal Highway Administration has consulted with Georgetown, Colorado regarding the effects of the undertaking on the GSPNHLD and has invited them to sign this MOA as a concurring party; and

WHEREAS, in accordance with 36 CFR 800.10(c) the Federal Highway Administration has notified the Secretary of Interior of its adverse effect determination regarding the GSPNHLD and the Secretary has chosen not to participate in the consultation; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the Federal Highway Administration has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii);

NOW, THEREFORE, the FHWA and the Colorado SHPO agree that the undertaking

shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties:

STIPULATIONS

The FHWA will ensure that the following measures are carried out to mitigate the adverse effects on the visual quality of the GSPNHL on Leavenworth Mountain :

I. Mitigation Measures:

- A. Minimize tree removal.
- B. Coordinate the selection of materials to be used for retaining walls and guardrail for the portion of the road located in the backdrop of the GSPNHL with representatives of Georgetown.
- C. Use retaining walls in select locations to minimize cut and fill slopes. The design materials used in the retaining walls will attempt to blend with the forest and adjacent natural materials. Cut walls will be faced with indigenous dry stack rock. The materials for fill walls will be determined jointly by Georgetown and the FHWA.
- D. Minimize cut slopes where possible. Where cut slopes are necessary, they should typically not exceed a 50 percent (27 degree) slope. A 30 percent (18 degree) slope is preferable to increase the possibility for revegetation.
- E. All guardrails will be a natural appearance design (timber, naturally weathered rail, or other materials). On the face of Leavenworth Mountain, guard wall with a natural rock face will be used instead of guard rail. Where ever guardrail is required within the District, but beyond the face of Leavenworth Mountain, guardrail will be steel backed timber as described in Figure II-23, page II-52 of the FEIS.
- F. All sign posts and sign backs will be dark brown in color.
- G. Where appropriate, exposed rock will be stained where cuts occur into bedrock in visually sensitive areas. This will minimize the stark color contrasts of very lightly colored freshly cut rock with the dark background of the forested mountainside.
- H. Blast in such a way as to avoid the defined, vertical drill holes that sometimes result. Explosives will be used in such a way that the faces of the rock outcrops are fractured, imitating a natural appearance.
- I. Implement landscaping and revegetation on all abandoned roadway segments and adjacent disturbed land that is capable of sustaining vegetation. Revegetation of trees and shrubs should be as close as practical to the new roadway without compromising safety.

- J. Stabilize and revegetate existing barren slopes where practical using native vegetation techniques and techniques similar to those developed for areas of new disturbance. The Guanella Pass Scenic Byway CMS will be used as a guide for enhancing the visual quality of the roadway. Where possible, the strategies in the CMS to preserve the rural and rustic character of the Guanella Pass corridor will be implemented to maintain consistency between the CMS and the project. Some of the visual strategies include creating a buffer zone between formal parking areas and the roadway and softening the effects of the presence of the road in the environmental setting.
- K. FHWA will continue to consult with Georgetown during the final design of the project regarding the design of the roadway and adjacent roadway.
- L. FHWA will construct a bridge at 7th Street along the proposed Argentine/Brownell Street construction haul route through Georgetown to mitigate construction impacts within the GSPNHLD. FHWA will consult with the SHPO and Georgetown on the final design of the bridge to ensure that it is visually compatible with the historic character of the GSPNHLD.

II. MONITORING AND REPORTING

By December 31st each year following the execution of this agreement until it expires or is terminated, the FHWA will provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. Such report will include any scheduling changes proposed, any problems encountered, and any disputes and objections received in FHWA's efforts to carry out the terms of this agreement. Failure to provide such summary report may be considered noncompliance with the terms of this MOA pursuant to Stipulation VI, below.

III. DURATION

This agreement will be null and void if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the FHWA may consult with the other signatories to reconsider the terms of the agreement and amend in accordance with Stipulation VI below.

IV. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the FHWA shall implement the following provisions:

- A. Cessation of construction activities that could further disturb previously undiscovered properties.
- B. Assessment of eligibility through implementation of 36 CFR 800.13(c) provisions.

- C. Assessment of damage to properties resulting from construction-related activities and evaluation of resultant integrity.
- D. All parties of this MOA and the Tribes are immediately contacted for consultation if appropriate.
- E. Implementation of 36 CFR 800.13(a)(2) provisions by the FHWA to resolve adverse effects.

V. DISPUTE RESOLUTION

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FHWA will consult with the objecting party(ies) to resolve the objection. If the FHWA determines, within 30 days, that such objection(s) cannot be resolved, the FHWA will:

- A. Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2), including FHWA's proposed response to the objection. Upon receipt of adequate documentation, the Council shall review and advise the FHWA on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by the FHWA in reaching a final decision regarding the dispute.
- B. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the FHWA may render a decision regarding the dispute. In reaching its decision, the FHWA will take into account all comments regarding the dispute from the parties to the MOA.
- C. The FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. The FHWA will notify all parties of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The FHWA's decision will be final.

VI. AMENDMENTS AND NONCOMPLIANCE

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

VII. TERMINATION

If an MOA is not amended following the consultation set out in Stipulation VI., it may be

terminated by any signatory or invited signatory. Within 30 days following termination, the FHWA will notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

Execution of this Memorandum of Agreement by the FHWA, the Colorado SHPO, and Georgetown and the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv) prior to the FHWA's approval of this undertaking, and implementation of its terms evidence that the FHWA has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

SIGNATORIES:

Federal Highway Administration

By: *Karen Smith* Date: *12/10/02*

Title: *Division Engineer*

Colorado State Historic Preservation Officer

By: *Aimee M. Collins* Date: *12/11/02*

Title: *Deputy SHPO*

CONCURRING PARTY:

Georgetown, Colorado

By: *Diana A. Swanger* Date: *12/17/02*

Title: *Mayor*