

Appendix B — Memorandum of Agreement
for Cultural Resources

MEMORANDUM OF AGREEMENT

AMONG THE FEDERAL HIGHWAY ADMINISTRATION,

THE WYOMING STATE HISTORIC PRESERVATION OFFICER,

THE UNITED STATES FOREST SERVICE,

AND THE NATIONAL PARK SERVICE

REGARDING THE PROPOSED IMPROVEMENT OF A PORTION OF

THE BEARTOOTH HIGHWAY, WYOMING FOREST HIGHWAY 4

WHEREAS the Federal Highway Administration (FHWA) has entered into a Memorandum of Understanding that is supplemental to Part 660 of Chapter 1, Title 23, Code of Federal Regulations in order to establish procedures for coordinating the planning, reconnaissance, location, design, construction, signing, and consideration of social, economic, and environmental effects related to Forest Highway use and occupancy of National Forest; and

WHEREAS, the Federal Highway Administration has determined that the proposed reconstruction of a portion of Wyoming Forest Highway 4, the Beartooth Highway (undertaking) from kilometer post 39.5 (mile post 24.5) to kilometer post 69.4 (mile post 43.1) will have an adverse effect on sites 48PA2306, 48PA2307, 48PA2308, 48PA2309, and 48PA2310 which have been determined eligible for listing in the National Register of Historic Places, and has consulted with the Wyoming 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, in accordance with 36 CFR 800.2(c)(3), has consulted with the Crow, Northern Arapaho, confederated Tribes of the Umatilla, Northern Cheyenne, Shoshone-Bannock, Eastern Shoshone, and the Medicine Wheel Coalition for Sacred Sites in North America, hereinafter referred to as **Tribes**, and the consulting parties agree that the Tribes have raised no objection to the proposed undertaking; and

WHEREAS, the Federal Highway Administration has consulted with the United States Forest Service (FS) and the National Park Service (NPS) regarding the effects of the undertaking on sites 48PA2306, 48PA2307, 48PA2308, 48PA2309, and 48PA2310 and has invited them to sign this MOA (FS Agreement # 03-MA-11021404-022) as signatory parties; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the FHWA has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination with specified documentation and the Council has declined to participate;

NOW, THEREFORE, the FHWA, the FS, the NPS, and the Wyoming SHPO agree that the undertaking will 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 historic properties:

I. Mitigation Measures

- A. Prior to construction, the FHWA, in consultation with all appropriate agencies, and in coordination with the USFS and the NPS, will research, prepare, and provide to Yellowstone National Park and the Montana Department of Transportation, nomination form(s) for the Beartooth Highway Corridor as defined in Executive Order 5949, dated November 16, 1932 (Appendix A). Included in the nomination form(s) will be research conducted by the FHWA that documents the ethnohistory of the entire Beartooth Highway Corridor. The FHWA shall complete research, documentation, and the nomination form(s) to the extent necessary to allow Yellowstone National Park to initiate procedures for nomination of the Beartooth Highway Corridor to the Keeper of the National Register, in cooperation with the Montana and Wyoming SHPO and appropriate road and land managing agencies, without needing to perform further investigation, data collection, or compilations.

- B. Mitigation of effects on Site 48PA2310, segment 4 of the Beartooth Highway, will include Historic American Building Survey/Historic American Engineering Record HABS/HAER documentation of the five sections of the original alignment selected for realignment. This documentation will include photographs showing the original location, footprint, and setting of the sections. The FHWA will consult with the NPS staff in the Cultural Resources Management Program in the Intermountain Regional Office to determine the appropriate level of documentation of these five sections of the road.
- C. Mitigation also will include interpretation of the history and construction of the road, by installing interpretive kiosks at two scenic pullout areas along the road, and providing other interpretive materials for visitors. Information about Sites 48PA2306, 48PA2307, 48PA2308, and 48PA2309 will be included in the interpretive materials. The FHWA and the FS will prepare the interpretive materials and will consult with the Wyoming SHPO and the NPS during the development of such materials. The Wyoming SHPO will be afforded 30 days to review and comment on the design and content of the interpretive sites.

The locations of the interpretive kiosks are tentative and may change. Any changes will be coordinated with the FS, the NPS, and the Wyoming SHPO. The interpretive kiosks will be completed within three months of project completion and maintained by the FS.

- D. Mitigation of effects to Site 48PA2306, Long Lake bridge, Site 48PA2307, Little Bear Creek eastern bridge, 48PA2308, Little Bear Creek western bridge, and 48PA2309, Beartooth Lake bridge, and culvert headwalls will include detailed photo-documentation and drawings of the existing bridge features before they are dismantled. Documentation will be to Historic American Building Survey/Historic American Engineering Record (HABS/HAER) standards. If Alternative 2 is selected, documentation will still be completed on the Little Bear Creek bridge #2, even though the bridge will not be dismantled. The FHWA will consult with the NPS staff in the Cultural Resources Management Program in the Intermountain Regional Office to determine the appropriate level of documentation of these bridges. The FS and the NPS will be notified of the scheduled time for dismantling of the bridges and all HABS/HAER documentation will be completed in the summer of 2004.

The original stone masonry will be salvaged from the dismantled bridges and culvert headwalls. The FHWA will use the salvaged stone masonry or similar stone masonry to provide facing for the three culvert headwalls and new bridge abutments, except for the Beartooth Ravine Bridge. It may be necessary to split the existing stone masonry in half to provide sufficient masonry for the new abutments. Bridge design will replicate the original bridges as closely as possible, given safety and construction requirements. The abutments for the Beartooth Ravine bridge will be covered with form-liner or cultured stone, and the bridge will have railings similar to the other bridges. The FS, the NPS, and the Wyoming SHPO will be given 30 days to comment on the facing design. Also, the FS, the NPS, and the Wyoming SHPO will be notified prior to any work on the culverts and bridge abutments.

- E. As additional mitigation of effects to all four of the bridges, the FHWA and the FS in consultation with the NPS will develop interpretive sites at the Lake Creek and the Beartooth Lake Outlet Bridge sites. At the Lake Creek Bridge site, the interpretative site will provide information about the Bridge as well as the other four bridges along the proposed project. If the bridge has not been modified significantly, it will be recorded as a historic resource. Bridge construction will be researched, and if appropriate, the bridge will be recommended as eligible for listing on the NRHP by the end of 2004. If eligible, the FHWA shall ensure that the proposed interpretive site will have no adverse affect to the Lake Creek Bridge historic site. The interpretation will be consistent with the Beartooth All-American Road Corridor Management Plan. The FS, the NPS, and the Wyoming SHPO will be given 30 days to review and comment on the interpretive site design, and the FS will maintain the Lake Creek Bridge interpretative site. The FHWA conducted geotechnical investigations at the Bridge in the summer of 2003 to determine if any repairs are needed and if there are any safety issues associated with the Bridge if it is used as an interpretative site.

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 on or before December 31st of every two (2) years to reconsider the terms of the agreement and amend in accordance with Stipulation VI below.

IV. POST-REVIEW DISCOVERIES

If historic properties are discovered during implementation of the proposed undertaking or unanticipated effects on historic properties found, the FHWA will 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 will 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 will 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 VII, 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 MOA by the FHWA, the Wyoming SHPO, FS, and the NPS, the submission of documentation and filing of this MOA 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: Clara H Conner Date: 11/14/03

Title: Director Program Administration

USDA Forest Service, Shoshone National Forest

By: Rebecca Aus Date: 11/17/03

Title: Forest Supervisor

National Park Service, Yellowstone National Park

By: [Signature] Date: 11/21/03

Title: Deputy Superintendent

Wyoming State Historic Preservation Officer

By: [Signature] Date: 1/16/04

Title: WY SHPO

Appendix A

Executive Order 5949. November 16, 1932

Executive Order

WITHDRAWAL OF PUBLIC LAND

MONTANA AND WYOMING

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847-848), entitled "AN ACT To authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat. 497), and on the recommendation of the Secretary of the Interior, it is hereby ordered that the lands lying within 250 feet on each side of the center line of the Cooke-Red Lodge approach road as now located on the ground, from Cooke to a point 8.58 miles south and west of Red Lodge, in sec. 25, T. 9 S., R. 14 E., S. $\frac{1}{2}$ secs. 19, 20, N. $\frac{1}{2}$ secs. 29 and 30, and NW. $\frac{1}{4}$ sec. 28, T. 9 S., R. 15 E., principal meridian, Montana, surveyed; S. $\frac{1}{2}$ sec. 28, secs. 33 and 34, T. 9 S., R. 15 E., Tps. 8 and 9 S., R. 19 E., T. 9 S., R. 18 E., principal meridian, Montana, unsurveyed; Tps. 57 and 58 N., Rs. 104, 105, 106, and 107 W., sixth principal meridian, Wyoming, unsurveyed, be, and the same are hereby, in so far as title thereto remains in the United States, withdrawn from settlement, location, sale, entry, or other disposal and reserved for approach road to Yellowstone National Park, subject to all valid existing rights.

This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

HERBERT HOOVER

THE WHITE HOUSE,

November 16, 1932.

[No. 5949]