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ENVIRONMENTAL PROGRAMMATIC AGREEMENT

AMONG

THE FEDERAL HIGHWAY ADMINISTRATION

THE MONTANA DEPARTMENT OF TRANSPORTATION

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

AND

THE MONTANA STATE HISTORIC PRESERVATION OFFICE

REGARDING ABANDONED HISTORIC RAILROAD GRADES

AFFECTED BY MONTANA DEPARTMENT OF TRANSPORTATION

UNDERTAKINGS IN MONTANA

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BY: SHPO

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FHWA  
MONTANA DIVISION

WHEREAS, the Federal Highway Administration, Montana Division (FHWA), proposes to make Federal funding available to the Montana Department of Transportation (MDT) for that agency's on-going program to construct or rehabilitate highways and bridges; and

WHEREAS, the FHWA has determined that this federally-assisted program may have an effect upon a certain class of properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and has consulted with the Advisory Council on Historic Preservation (Council) and the Montana State Historic Preservation Office (SHPO) pursuant to Section 800.14 of the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470s); and

WHEREAS, the FHWA and MDT implemented a Programmatic Agreement (Agreement) regarding highway projects affecting the Chicago, Milwaukee, St. Paul & Pacific Railroad in July 26, 1990 and that Agreement will expire on December 31, 2010; and

WHEREAS, the FHWA and MDT implemented a Programmatic Agreement on April 13, 2000 regarding highway projects affecting abandoned historic railroad grades in western Montana; and

WHEREAS, this Agreement shall supersede and replace the July 26, 1990 and April 13, 2000 Agreements regarding undertakings affecting the Chicago, Milwaukee, St. Paul & Pacific Railroad grades in Montana and abandoned historic railroad grades in western Montana; and

WHEREAS, the MDT participated in the consultation and has been invited to concur in this Agreement; and

WHEREAS, all references to 36 CFR 800 within this Agreement are to the Council's revised regulations, effective August 5, 2004;

NOW THEREFORE, the FHWA, the MDT, the Council, and the Montana SHPO agree that the Montana Historic Abandoned Railroad Grades program addressed in this

Agreement shall be administered in accordance with the following stipulations to satisfy the FHWA's Section 106 responsibility for all individual undertakings of the program.

### **Stipulations**

The FHWA will ensure that the following measures are carried out:

1. **MONTANA DEPARTMENT OF TRANSPORTATION AND MONTANA STATE HISTORIC PRESERVATION OFFICE COOPERATION**
  - A. MDT and SHPO will strive to work cooperatively in all matters concerning the identification, evaluation, and treatment of historic abandoned railroad grades.
  - B. MDT will routinely encourage, invite, and support SHPO participation in on-site field visits and meetings for MDT undertakings involving historic abandoned railroad grades.
  - C. SHPO will routinely provide constructive reviews and comments to all written requests for consultation from MDT and will routinely communicate, advise, meet with MDT to share information and seek to resolve issues pertaining to historic abandoned railroad grades before they arise.
2. **FOR UNDERTAKINGS INVOLVING HISTORIC ABANDONED RAILROAD GRADES**
  - A. This Agreement will apply to all historic abandoned railroad grades constructed in Montana after 1880 and at least 50 years old.
    1. This Agreement is not intended to apply to the MDT's Community Transportation Enhancement Program (CTEP) Rails-to-Trails projects.
  - B. The MDT will comply with 36 CFR 800.4 in regards to identifying and evaluating, in consultation with SHPO, the National Register eligibility of abandoned railroad grades located within the Area of Potential Effect (APE) for MDT undertakings.
    1. MDT will identify, record and obtain Smithsonian trinomial site numbers from the SHPO Site Records Office for all abandoned railroad grades within the APE of MDT undertakings to be evaluated for eligibility to the NRHP.
      - a. Abandoned railroad grade segments will be evaluated as districts with contributing and non-contributing segments to the district.
    2. MDT will consider national, state, and local levels of significance in determining the eligibility of abandoned railroad grades to the NRHP

- C. If MDT and SHPO determine that a particular abandoned railroad grade within its APE contains historically significant features that are eligible for listing in the NRHP, MDT will consult with SHPO to develop and implement a plan to avoid or incorporate the features into the agency's undertaking in a manner that preserves their historical significance and integrity.
- D. All abandoned historic railroad grades within the APE of lengths more than 2,000 feet and associated railroad-related buildings and structures (e.g. bridges, depots, stations, warehouses, water towers, shops, etc.) within the APE will be treated per 36 CFR §§ 800.4 through 800.6.
- E. For all impacts to NRHP-eligible abandoned historic railroad grades within the APE of lengths less than 2,000 feet, the MDT will implement the following actions:
  - 1. The MDT will provide \$10,000 to the Montana Historical Society Press for the preparation and publication of Thomas Taber's "Short Lines of the Treasure State: The Histories of the Independently Operated Railroads in Montana."
  - 2. The MDT will assist the Montana Historical Society Press in updating and making available the 1992 publication *Guide to the Milwaukee Road in Montana* in print or digital media format.
  - 3. The MDT will provide SHPO with GIS shape files for all active and abandoned railroad routes in Montana that have previously been recorded with a Smithsonian trinomial site number, for which MDT currently has or acquires this information. MDT will also regularly provide SHPO with GIS shape files for all newly identified abandoned railroad grades, recorded with Smithsonian trinomial site numbers pursuant to Stipulation 2.B.1.
  - 4. MDT will provide SHPO a summary of impacts to abandoned historic railroad grades by December 31 of each year.
    - a. Every five years after implementation of this Agreement, SHPO and MDT will meet to review the Agreement to determine if it meets the needs of both agencies and if it should be continued.
  - 5. The MDT will develop and install ten interpretive signs about historic railroads where appropriate.
    - a. MDT will install the signs by June 30, 2015.
    - b. MDT will provide SHPO a written report of the signs, their locations (mapped), and texts by July 31, 2015.

### **3. AGREEMENT, MONITORING, AMENDMENT, AND TERMINATION**

- A. This Agreement will remain in force until such time that it is terminated by one or more of the signatory parties.
- B. Any signatory to this Agreement may terminate it by providing, in writing, forty-five (45) days notice to the other parties, provided that the 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 will comply with 36 CFR 800 with regard to each individual undertaking covered by this Agreement.
- C. The Council and SHPO may monitor any activity carried out pursuant to this Agreement, and the Council will review such activities if so requested. MDT and FHWA will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.
- D. Any signatory to this Agreement may request that it be amended, whereupon the signatories will consult to consider such an amendment. An amendment will go into effect when agreed to in writing by signatories.

**4. OBJECTIONS, DISPUTE RESOLUTION, AND FAILURE TO FULFILL**

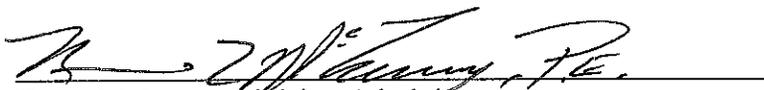
- A. Should any signatory to this Agreement object within sixty (60) days to any action proposed or undertaken pursuant to this Agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objections cannot be resolved, the FHWA shall forward all documentation relevant to the dispute to the Council, including the FHWA's proposed response to the objection. Within thirty (30) calendar days after receipt of all pertinent documentation, the Council will either:
  - 1. Advise the FHWA that it concurs with the FHWA response, whereupon the FHWA will respond to the objection accordingly; or
  - 2. Advise the FHWA that it should enter into adverse effect consultation pursuant to 36 CFR 800.6; or
  - 3. Provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute; or
  - 4. Notify the FHWA that it will comment pursuant to 36 CFR 800.7(c), and proceed to comment on the subject of the objection. Any Council comment provided in response to such a request will

be taken into account by the FHWA in accordance with 36 CFR 800.7(c)(4) with reference only to the subject of the dispute; the FHWA and MDT's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

5. If the Council fails to provide recommendations or to comment within the specified time period, the FHWA may implement that portion of the undertaking subject to dispute under this Stipulation in accordance with the documentation submitted to the Council for review.
- B. At any time during implementation of the measures stipulated in this Agreement, should any objection to any such measure or its manner of implementation be raised by a member of the public or other non-signatory to the Agreement, the FHWA shall take the objection into account and consult as needed with the objecting party, the SHPO or the Council to address the objection.
- C. In the event that the FHWA or MDT does not carry out the terms of this Programmatic Agreement, it shall not take any action or make any irreversible commitment that would result in an adverse effect to historic properties or would foreclose the Council's consideration of modifications or alternatives to the undertaking.

Execution and implementation of this Programmatic Agreement evidences that the FHWA has satisfied its Section 106 responsibilities for all individual undertakings subject to the terms of the Agreement.

**MONTANA DIVISION, FEDERAL HIGHWAY ADMINISTRATION**

By:   
Kevin McLaury, Division Administrator

Date: 1/20/2011

**ADVISORY COUNCIL ON HISTORIC PRESERVATION**

By:   
John M. Fowler, Executive Director

Date: 3/7/11

**MONTANA STATE HISTORIC PRESERVATION OFFICE**

By:

Mark F. Bauml  
Mark F. Bauml, State Historic Preservation Officer

Date:

1/11/2011

**CONCUR:**

**MONTANA DEPARTMENT OF TRANSPORTATION**

By:

\_\_\_\_\_  
Jim Lynch, Director MDT

Date:

APPROVED FOR LEGAL CONTENT	
Date	12-22-10
By	<u>Mark Bauml</u>
	Signature