

Memorandum of Agreement Among the Federal Highway Administration, the Montana Department of Transportation, the Montana State Historic Preservation Office, and the Advisory Council on Historic Preservation regarding the Secondary Route 399 Reconstruction Project in Jefferson County, Montana.

**South of Boulder South
STPP 399-1(7) 18
Control Number 6097**

WHEREAS, the Federal Highway Administration (FHWA) with the Montana Department of Transportation (MDT) proposes to reconstruct Secondary Route 399 located south of Boulder, in Jefferson County, Montana;

WHEREAS, MDT proposes reconstructing two segments of Secondary 399 between the towns of Boulder and Whitehall to meet current road design standards. The work includes placing a new base course, new gravel or asphalt surfacing, and installing new drainage structures to decrease the maintenance required by Jefferson County;

WHEREAS, FHWA in consultation with MDT and the Montana State Historic Preservation Office (Montana SHPO) has established the undertaking's Area of Potential Effect (APE) as the Limit of Construction (LOC);

WHEREAS, FHWA and MDT, have determined that the undertaking may have an adverse effect on Site 24JF699, which is eligible for listing in the National Register of Historic Places under Criterion D, and has consulted with Montana SHPO pursuant to 36 CFR 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. 306108).

WHEREAS, FHWA and MDT has consulted with the Confederated Salish & Kootenai Tribal (CSKT) Historic Preservation Office, for which Site 24JF699 has cultural significance;

WHEREAS, FHWA and MDT have afforded the public an opportunity to comment on the effects of the undertaking on historic properties through the National and Montana

Environmental Policy Acts (NEPA and MEPA) through MDT's public involvement procedures;

WHEREAS, in accordance with 36 CFR 800.6(a)(1), FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specific documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii);

WHEREAS, MDT participated in consultation, has responsibilities for implementing stipulations under this Memorandum of Agreement (MOA), and has been invited to be a signatory to this MOA;

WHEREAS, the consulting parties agree that it is in the public interest to expend funds to mitigate adverse effects to 24JF699 via the recovery of significant information from 24JF699;

WHEREAS, the proposed reconstruction of Secondary 399 has been designed to avoid cultural resources as much as is feasible;

WHEREAS, to the best of our knowledge no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (24 U.S.C. 3001), are expected to be encountered during the South of Boulder South highway work or during proposed archaeological work on 24JF699;

NOW THEREFORE, FHWA, Montana SHPO and the ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

Stipulations

FHWA shall ensure that the following measures are carried out:

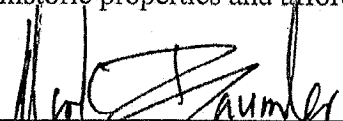
- 1) Data recovery at 24JF699 will follow the methods discussed in the attached data recovery plan.
- 2) Recovered artifacts will be curated at the Bureau of Land Management Billings Curation Facility in Billings, Montana or another facility that meets the requirements of 36 CFR 79.
- 3) MDT will cover the one-time cost of curation.
- 4) MDT will cover the cost of one full-time CSKT Tribal Monitor while clearing, grubbing, and topsoil removal (construction) is underway within 200 yards of site 24JF699. The monitor will be paid \$350 per day. By hiring a CSKT Tribal

Monitor, MDT waives no rights and retains all decision-making authority previously possessed.

- 5) CSKT Tribal members will be encouraged to take part in the excavation of site 24JF699.
- 6) In the unlikely event that human remains are found during data recovery or construction of the South of Boulder South project, MDT will comply with the Montana Human Remains and Burial Site Protection Act and will do everything feasible to avoid further disturbance of the burial or burials.
- 7) This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation 10.
- 8) If properties are discovered that may be historically significant or unanticipated effects on historic properties are found, FHWA shall follow the steps described in 36 CFR 800.13.
- 9) Should any signatory or invited signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:
 - A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from ACHP, signatories, invited signatories, and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
 - B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories, invited signatories, and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
 - C. 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.
- 10) This MOA may be amended when such an amendment is agreed to in writing by all signatories [this includes invited signatories]. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

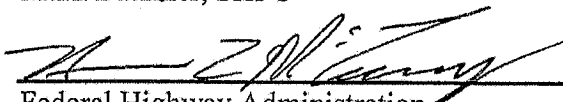
11) If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 10, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, and prior to work continuing on the undertaking, FHWA must either (a) execute an MOA pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by FHWA, Montana SHPO, and the ACHP and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.



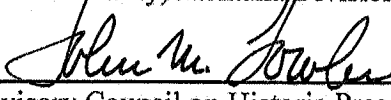
Montana State Historic Preservation Office
Mark Bauml, SHPO

7/17/2017



Federal Highway Administration
Kevin McLaury, Montana Division Administrator

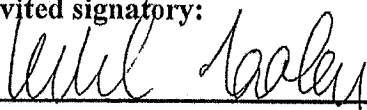
7/21/2017



Advisory Council on Historic Preservation
John M. Fowler, Executive Director

7/21/17

Invited signatory:



Montana Department of Transportation
Mike Tooley, Director

Concurring Party:

CSKT Tribal Historic Preservation Department
Kim Swaney, Department Head