

Appendix H: Memorandum of Agreement

Between the Federal Highway Administration,
the Advisory Council on Historic Preservation,
and
the Colorado State Historic Preservation Officer
Regarding Mitigation for Project Fc-Nh(Cx) 160-2(48), US Highway 550
Connection to US Highway 160 at Farmington Hill,
La Plata County, Colorado

**MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND
THE COLORADO STATE HISTORIC PRESERVATION OFFICER**

**REGARDING MITIGATION FOR PROJECT FC-NH(CX) 160-2(48), US HIGHWAY 550
CONNECTION TO US HIGHWAY 160 AT FARMINGTON HILL,
LA PLATA COUNTY, COLORADO**

WHEREAS, FHWA has determined that Project FC-NH(CX) 160-2(48) will result in an adverse effect to historic properties within the Area of Potential Effects (APE) and has consulted with the Colorado State Historic Preservation Officer (SHPO) pursuant to 36 CFR 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f); and

WHEREAS, FHWA has consulted with the Colorado Department of Transportation (CDOT) regarding the effects of the undertaking on historic and archaeological resources, and has invited CDOT to sign this MOA as an invited signatory; and

WHEREAS, FHWA has consulted with the Section 106 consulting parties identified for the project, including Mr. Shannon Bennett and Ms. Antonia Clark (“Clark Property”); Ms. Peggy Cooley (“Schaeferhoff-Cowan Ranch”); Mr. Joel Craig and Mr. Philip Craig (“Craig Ranch”); and Mr. Chris Webb (“Webb Ranch”) regarding the effects of the undertaking on historic properties, and has invited them to sign the MOA as concurring parties; and

WHEREAS, FHWA has consulted with The Hopi Tribe, the Pueblo of Laguna, and the Southern Ute Indian Tribe regarding the effects of the undertaking on historic properties, and has invited these tribal governments to sign the MOA as concurring parties; and

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

WHEREAS, the historic properties that will be affected are:

Archaeological Resources

Sites 5LP6665, 5LP6671, 5LP6673, 5LP9588, 5LP9589, and 5LP9590: All six sites exhibit one or more prehistoric occupational components, and all are eligible under NRHP Criterion D for their documented potential to contain significant intact subsurface cultural remains.

Historic Resources

Webb Ranch (5LP8461): The Webb Ranch is significant under Criterion A for its association with ranching on Florida Mesa, and under Criterion C for its good examples of ranching architecture.

Craig-Limousin Ranch (5LP9307): The ranch is significant under Criterion A for its association with agricultural development in La Plata County in the mid-twentieth century, and under Criterion C for its good representative examples of early ranching architecture, in particular its dairy barn.

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

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

I. MITIGATION

A) ARCHIVAL DOCUMENTATION

- 1) CDOT shall ensure that the Webb Ranch (5LP8461) and Craig Limousin Ranch (5LP9307) shall be documented in accordance with Level II documentation as outlined in Colorado Office of Archaeology and Historic Preservation (OAHP) Form #1595, *Historical Resource Documentation: Standards for Level I, II, and III Documentation*.
- 2) CDOT shall ensure that all documentation activities will be performed or directly supervised by architects, historians, photographers and/or other professionals meeting the qualification standards in their field as stipulated in the *Secretary of Interior's Professional Qualifications Standards* (36 CFR 61, Appendix A).
- 3) CDOT shall provide originals of all documents resulting from the documentation to the SHPO, the La Plata County Historical Society, the property owners, and a local library or archive designated by the SHPO.

B) INTERPRETIVE MITIGATION

- 1) Interpretive mitigation will be created that focuses on the development and importance of historic ranching on Florida Mesa. Options include, but are not necessarily limited to, signage, brochures, pamphlets, historic contexts, or other printed material. Content, design, materials, location, distribution and other details will be determined in consultation with SHPO and the consulting parties.
- 2) Other creative mitigation options that arise as the project progresses that further the education or understanding of the importance of the ranching resources shall also be considered.

C) DATA RECOVERY EXCAVATIONS

- 1) At such time as one or more of the NRHP eligible archaeological sites referenced above is within the limits of a planned and funded construction

project and therefore in danger from earth-moving activities, an Archaeological Data Recovery Plan defining the methodology and goals for excavation will be completed. The Plan will meet all criteria outlined in the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation*, in addition to the procedures and protocols developed by the Colorado OAHP. The Data Recovery Plan(s) will be reviewed and approved by the SHPO prior to issuance of an excavation permit and initiation of controlled excavations. The consulting parties and tribal governments will also be provided the opportunity to review and comment on the excavation plan(s) prior to implementation.

- 2) To the best of our knowledge and belief, 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 (25 U.S.C. 3001), are expected to be encountered in the archaeological work. If such items are discovered, work will cease in the vicinity of the find and all appropriate coordination will ensue with the SHPO, consulting parties and tribal governments, and other involved entities, as necessary.

D) DESIGN AND CONSTRUCTION

- 1) Efforts to minimize harm to historic and archaeological properties will be assessed during the final design phase for the preferred alternative and may include, but not be limited to, narrower roadway width, use of retaining walls, steeper slopes, and creative underpass and irrigation design, as applicable. Contributing features of historic properties will be protected during construction and avoided to the extent practicable.

II. 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, FHWA may consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation V below.

III. MONITORING AND REPORTING

Each year following the execution of this agreement until it expires or is terminated, FHWA shall provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, problems encountered, and/or 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 V, below.

IV. DISPUTE RESOLUTION

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

A) Forward all documentation relevant to the dispute to the Advisory Council in accordance with 36 CFR 800.2(b)(2). Upon receipt of adequate documentation, the Council shall review and advise FHWA on the resolution of the objection within 30 days. Any comments provided by the Council, and all comments from the parties to the MOA, will be taken into account by 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, FHWA may render a decision regarding the dispute. FHWA will transmit information specific to the dispute to all the signatories of the MOA. In reaching its decision, FHWA will take into account all comments received from the signatories regarding the dispute.

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. FHWA will notify all parties of its decision in writing before implementing that portion of the undertaking subject to dispute under this stipulation. FHWA's decision will be final.

V. AMENDMENTS AND NONCOMPLIANCE

If any signatory to this MOA, including the 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 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 VI, below.

VI. TERMINATION

If the MOA is not amended following the consultation set out in Stipulation IV above, it may be terminated by any signatory or invited signatory. Within 30 days following termination, the FHWA shall 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 agreement by FHWA and the Colorado SHPO, and the submission of documentation and filing of this agreement with the Council pursuant to 36 CFR 800.6(b)(1)(iv) prior to FHWA's approval of this undertaking, and implementation of its terms, evidence that 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

John M. Cater, Colorado Division Administrator

Date

Advisory Council on Historic Preservation

John M. Fowler, Executive Director

Date

Colorado State Historic Preservation Officer

Edward C. Nichols, SHPO

Date

INVITED SIGNATORY:

Colorado Department of Transportation

Don Hunt, Executive Director

Date

CONCURRING PARTIES: (individual signature pages attached)

Clark Property (Shannon Bennett and Antonia Clark)

Craig Ranch (Philip and Joel Craig)

Schaeferhoff-Cowen Ranch (Peggy Cooley)

Webb Ranch (Chris Webb)

The Hopi Tribe (Leroy Shingoitewa, Chairman)

Pueblo of Laguna (Richard B. Luarkie, Governor)

Southern Ute Indian Tribe (Pearl Casias, Chairwoman)

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