



UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WICHITA MOUNTAINS NATIONAL WILDLIFE REFUGE
32 Refuge Headquarters
Indiahoma, Oklahoma 73552
580-429-3222



MEMORANDUM OF AGREEMENT
AMONG
FISH AND WILDLIFE SERVICE, WICHITA MOUNTAINS NATIONAL WILDLIFE
REFUGE (FWS),
THE FEDERAL HIGHWAY ADMINISTRATION, CENTRAL FEDERAL LANDS
HIGHWAY DIVISION (CFLHD),
AND THE
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER (SHPO)
REGARDING
THE WICHITA MOUNTAINS WILDLIFE REFUGE ROAD PROJECT, COMANCHE
COUNTY,
FILE #0914-10

WHEREAS, The Central Federal Lands Division of the Federal Highway Administration (CFLHD) proposes to fund the widening of a 3.5 mile section of Highway 49/115 (Refuge Route 10) within the Wichita Mountains National Wildlife Refuge in Southwestern Oklahoma (Project) to accommodate traffic safety concerns. The Project will add seven foot wide paved shoulders to extend the width of the road bed, and extend or replace several culverts and bridges; and

WHEREAS, the Project is situated within the Wichita Mountains National Wildlife Refuge (Refuge), a unit administered by the Fish and Wildlife Service (FWS); and
WHEREAS, the FWS has assumed the lead federal agency role through a cooperative arrangement with the CFLHD for purposes of compliance with Section 106 of the National Historic Preservation Act, and its implementing regulations 36 CFR Part 800; and

WHEREAS, FWS notified the Kiowa Tribe of Oklahoma, the Comanche Tribe of Oklahoma, Fort Sill Apache Tribe of Oklahoma, Wichita and Affiliated Tribes of Oklahoma, Caddo Indian Tribe, Apache Tribe of Oklahoma, and Delaware Tribe of Western Oklahoma of the Project in letters dated July 22, 2009, and the Comanche Tribe of Oklahoma a second time on January 1, 2010; and

WHEREAS, none of the contacted tribes expressed concerns regarding the Project; and
WHEREAS, the FWS has caused to be conducted a cultural resource inventory of the area of potential effects (ERO Resources Corporation, 2009), and in consultation with the SHPO has determined that the proposed road widening project will adversely affect eight drainage structures (culverts identified as #s 545+, 555+, 568+, 581+, 588+, 617+, 631+, and 660+) constructed by the Works Progress Administration (WPA) and considered eligible for listing in the National Register of Historic Places, and the Ferguson House, a

property listed in the National Register in 1981, for their architectural merits and association with important historic events; and

WHEREAS, the FWS notified the Advisory Council on Historic Preservation (ACHP) on July 19, 2010, of its adverse effect finding and extended an invitation to the ACHP to participate in consultation pursuant to 36 CFR Section 800.6(a)(1); and

WHEREAS, the ACHP declined to participate in the consultation on September 16, 2010; and

WHEREAS, a range fire resulted in substantial damage to the Ferguson House after the finding of adverse effect was reached, and FWS and SHPO agree that the Ferguson House continues to exhibit the qualities and integrity that merited its listing in the National Register of Historic Places;

NOW, THEREFORE, the FWS, SHPO, and CFLHD agree that the FWS will ensure that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties.

STIPULATIONS

FWS shall ensure that the following measures are carried out.

1. FERGUSON HOUSE

- a. FWS will complete or cause to be completed a National Register of Historic Places Registration Form (NPR Form 10-900) that meets current standards and guidelines of the National Park Service for the Ferguson House historic property.
- b. The FWS will present the completed National Register of Historic Places Registration Form (Form) to the SHPO for review and upon acceptance, submission to the Keeper of the National Register.
- c. SHPO will be provided 30 days to respond regarding the adequacy of the Form. If SHPO identifies any deficiencies, SHPO and FWS will consult further to resolve the deficiencies. If FWS determines the deficiencies cannot be resolved to SHPO's satisfaction, FWS will resolve the dispute in accordance with Stipulation 4, or will submit the Form directly to the Keeper of the National Register.
- d. Subsequent to Project construction, FWS will provide to SHPO a second set of photographic prints and descriptive text documenting the intrusion of the widened road shoulders into the viewshed of the Ferguson House historic property.

2. WPA CULVERTS

- a. Prior to the initiation of construction activities, FWS will submit to SHPO a set of photographic prints to substitute for the copies included in the original documentation of the WPA culverts.
- b. Within one year of the initiation of construction activities, FWS will present to SHPO a historical narrative (historic context) of the WPA's

contribution to the infrastructure and architectural elements of the Refuge.

3. INTERPRETIVE SIGNAGE

- a. In consultation with SHPO, FWS will design interpretive signage about the Ferguson House. Such signage will be designed to inform the visiting public of the property's historic importance and to enhance the visiting public's experience at the Refuge. Interpretive signage may also include information regarding the activities of the WPA at the refuge, as appropriate.
- b. Interpretive signage shall include a historical narrative, based on archival background research focused on the Refuge, and photographic prints, as appropriate, to visually convey the salient topics.
- c. Placement of interpretive signage will be within the historic filling station, a structure associated with the Ferguson House, and accessible to vehicular and non-vehicular traffic.

4. DISPUTE RESOLUTION

- a. Should any signatory to this agreement object at any time to any actions proposed or the manner in which the terms of the agreement are implemented, FWS shall consult with such party to resolve the objection. If FWS determines that such objection cannot be resolved, FWS will:
 1. Forward all documentation relevant to the dispute, including the FWS's proposed resolution to the ACHP. The ACHP shall provide FWS with its advice on the resolution of the objection within thirty (30) days of receipt of adequate documentation. Prior to reaching a final decision on the dispute, FWS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. FWS will then proceed according to its final decision.
 2. If the ACHP does not provide its written advice regarding the dispute within the thirty (30) day time period, FWS may make a final decision on the dispute and proceed accordingly. Prior to reaching a final decision, FWS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to this agreement, and provide them and the ACHP with a copy of such written response.

5. DISCOVERIES

In the unlikely event that historic properties are discovered or unanticipated effects on historic properties are found after initiation of construction activities, FWS shall cease construction activities in the vicinity of the discovery, and follow the procedures established at 36 CFR Section 800.13(b)(3).

- a. Construction activities shall not resume in the vicinity of the discovery until after FWS has taken into account any recommendations received from the Council and SHPO within 48 hours from notification as specified at Section 800.13(b)(3).
- b. If the discovery pertains to a previously unrecorded property that may be of interest to tribes, FWS will also notify the Kiowa Tribe of Oklahoma, the Comanche Tribe of Oklahoma, the Fort Sill Tribe of Oklahoma, the Wichita and Affiliated Tribes of Oklahoma, the Caddo Indian Tribe, the Apache Tribe of Oklahoma and the Delaware Tribe of Western Oklahoma of the discovery and invite them to participate in the deliberations regarding the discovery.
- c. FWS shall provide to Council, SHPO and any interested tribes, a report of its actions in response to the discovery when they are completed.

6. AMENDMENTS

- a. Any party to this agreement may propose to the FWS that it be amended, whereupon the FWS will consult with the other parties to consider such amendment. Section 800.6(c)(1) shall govern the execution of any such amendment.

7. TERMINATION

- a. Any party to this agreement may terminate it by giving notice of intent to terminate to the other parties, whereupon the parties may consult to avoid termination. In the event the agreement is terminated, the FWS shall either consult in accordance with Section 800.6 to develop a new agreement, or request the comments of the ACHP in accordance with Section 800.7.

8. EXPIRATION

- a. This agreement shall expire if its terms have not been carried out within five (5) years from the date of its execution, or upon completion of all stipulations of the agreement, whichever comes first. The parties to this agreement may extend its terms with their unanimous approval. Extensions of this agreement shall be executed in accordance with Stipulation 5.

Execution of this agreement by the CFLHD, FWS and SHPO and its submission to the ACHP in accordance with 36 CFR Section 800.6(b)(1)(iv), shall evidence that FWS has taken into account the effects of the Project on historic properties and afforded the ACHP a reasonable opportunity to comment.

SIGNATORIES

Ralph L. Bryant Date 10-7-10
Fish and Wildlife Service, Wichita Mountains Wildlife Refuge

[Signature] Date 10/7/10
Federal Highway Administration, Central Federal Lands Highway Division

[Signature] Date Oct 13, 2010
Oklahoma State Historic Preservation Officer