APPENDIX B

AGENCY COORDINATION

AGENCY CORRESPONDENCE

The following table lists agency correspondence to date. Items that contain substantive information are noted in the table, and are included in Appendix B, C, or D, as noted.[1] All other items are noted as located in the "Supplement" which is a compilation of supplemental agency coordination materials attached to this FEIS on CD. In addition to the materials listed below, Appendix B also contains a meeting summary from the Cooperating and Participating Agency meeting held on April 1, 2011.

Agency Correspondence Summary Table

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
BILLINGS K-12 SCHOOLS DISTRICT 2					
09/27/10	Dr. R. Keith Beeman, Billings K-12 Schools District 2	Tom S. Martin, PE, MDT	Information Letter		Supplement
CITY OF BILLINGS					
09/27/10	Tom Hanel, City of Billings	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
10/14/10	Tom S. Martin, PE, MDT	Christina F. Volek	Acceptance of Participating Agency Request		Supplement
11/03/10	Tom S. Martin, PE, MDT	Vern Heisler	Comments on Billings Bypass EIS	City has Capital Improvement Project (CIP) planned within study area. Agency officials should meet with City of Billings staff to discuss questions in invitation letter to be a participating agency.	Appendix B
01/27/11	Christina Volek, City of Billings	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	Christina Volek, City of Billings	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
05/24/12	Tom S. Martin, PE, MDT	Erin S. Claunch, PE, PTOE, City of Billings	Comment on Agency Draft EIS for Billings Bypass EIS		Supplement

[1] Note: Agency comments received as part of the DEIS comment period are included in Appendix J and are not listed in this table.

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
CROW NATION					
09/27/10	Jeremy Not Afraid, Crow Nation	Tom S. Martin, PE, MDT	Information Letter		Supplement
LOCKWOOD FIRE / RESCUE					
1/31/11	Stefan Streeter	William D. Rash, Fire Chief	Comments on project	Expression of support for improvements to Johnson Lane interchange	Appendix B
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY					
09/27/10	Greg Hallsten, DEQ	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
09/27/10	George Mathius, DEQ	Tom S. Martin, PE, MDT	Information Letter and Request		Supplement
09/27/10	Judy Hanson, DEQ	Tom S. Martin, PE, MDT	Information Request		Supplement
10/05/10	Tom S. Martin, PE, MDT	Michael Pipp, DEQ	Response to Data and/or Information Request Relating to Billings Bypass EIS Project Area	Transfer of Data and information including specific waterbodies from 305(b) assessment database, 303(d) listings for each, and state water use class designations.	Supplement
10/12/10	Tom S. Martin, PE, MDT	Thomas M. Ellerhoff, DEQ	Acceptance of Participating Agency Request	Jeff Ryan will handle permitting issues. Robert Ray will handle planning issues.	Supplement
01/27/11	Thomas M. Ellerhoff, DEQ	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	Jeff Ryan, DEQ	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
03/17/11	Robert Ray, DEQ	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS					
09/27/10	Gary Hammond, FWP	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
09/27/10	Jim Darling, FWP	Tom S. Martin, PE, MDT	Information Letter and Request		Supplement

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
09/27/10	Walt W. Timmerman, FWP	Tom S. Martin, PE, MDT	Information Letter and Request		Supplement
10/12/10	Tom S. Martin, PE, MDT	Gary Hammond, FWP	Acceptance of Participating Agency Request		Supplement
10/13/10	Tom Gocksch, PE, MDT	Walt W. Timmerman, FWP	Comments on Billings Bypass EIS	Two Land and Water Conservation Fund (LWCF)-assisted sites within study area.	Appendix B
10/14/10	Walt W. Timmerman, FWP Tom Gocksch, PE, MDT	James Colegrove, FWP	Comments on Billings Bypass EIS	No LWCF funding was affiliated with the acquisition of the East River Bridge FAS land.	Appendix B
10/14/10	James Colegrove, FWP	Walt W. Timmerman, FWP	Comments on Billings Bypass EIS	Section 6(f) may not apply to East River Bridge FAS, but Section 4(f) does apply.	Appendix B
01/27/11	Gary Hammond, FWP	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	Gary Hammond, FWP	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION					
09/27/10	Mary Sexton, DNRC	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
10/13/10	Tom S. Martin, PE, MDT	Jeff Bollman, DNRC	Acceptance of Participating Agency Request		Supplement
10/13/10	Tom S. Martin, PE, MDT	Jeff Bollman, DNRC	Comments on Billings Bypass EIS	Crossing of Yellowstone River will require an easement to be submitted to and reviewed by the DNRC and approved by the Board of Land Commissioners.	Appendix B
01/27/11	Jeff Bollman, DNRC	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
02/17/11	Tom S. Martin, PE, MDT	Jeff Bollman, DNRC	Comments on Draft Purpose and Need Statement	No specific comments at this time.	Supplement

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
03/17/11	Jeff Bollman, DNRC	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
MONTANA NATURAL HERITAGE PROGRAM					
09/27/10	Bryce Maxell, NHP	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
09/29/10	Tom S. Martin, PE, MDT	Bryce Maxwell, NHP	Decline Request to be a Participating Agency	Agency has no jurisdiction or authority with respect to the project – they are a neutral data provider.	Supplement
10/05/10	Tom S. Martin, PE, MDT	Martin P. Miller, MNHP	Response to 09/27/10 NHP letter	Enclosed preliminary list of Species of Concern within study area and maps depicting species and ecological site locations.	Supplement
MONTANA STATE HISTORIC PRESERVATION OFFICE					
09/27/10	Dr. Mark Baumler, SHPO	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
10/01/10	Tom S. Martin, PE, MDT	Damon Murdo, SHPO	Response to 09/27/11 SHPO letter	List of cultural resource sites and reports.	Supplement
01/27/11	Damon Murdo, SHPO	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	Damon Murdo, SHPO	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
04/06/11	Tom Gocksch, PE, MDT	Dr. Stan Wilmoth, SHPO	Response to Invitation to Cooperating/ Participating Agency Meeting	Encourage systematic consideration of Historic Properties early in project planning.	Supplement
11/23/11	Dr. Mark Baumler, SHPO	Jon Axline, MDT	Request for Concurrence with Cultural Resources Report, CRABS, and site forms for Billings Bypass EIS Concurrence dated 12/9/11 except for Coulson Ditch and Five Mile Creek Bridge	1805 Mary St., 2206 Mary St., 2411 Bench Blvd., and Five Mile Creek Bridge recommended as ineligible for the National Register of Historic Places. The BBWA Canal, Northern Pacific Railway, and the Billings Central and Montana Railroad were determined eligible for the National Register.	Appendix D

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
12/15/11	Dr. Mark Baumler, SHPO	Jon Axline, MDT	Request for Concurrence with Determination of Effect for Billings Bypass EIS Concurrence dated 12/29/2011	No Adverse Effect to Billings Bench Water Association Canal, the Northern Pacific Railway, and Coulson Ditch. Billings and Central Montana Railroad covered under MDT's Abandoned Historic Railroad Grade Programmatic Agreement. Five Mile Creek Bridge covered under the Historic Roads and Bridges Programmatic Agreement.	Appendix D
04/26/12	Tom S. Martin, PE, MDT	Dr. Mark Baumler, SHPO	Comment on Agency Draft EIS for Billings Bypass EIS		Supplement
9/12/2013	Jon Axline, MDT	Kathryn Ore, Montana SHPO	Historic resources: determination of eligibility for National Register of Historic Places (NRHP)	Coulson Ditch is not eligible for listing on NRHP	Appendix D
9/16/2013	Jon Axline, MDT	Kathryn Ore, Montana SHPO	Historic resources: determination of eligibility for NRHP	Ten properties on Mary Street not eligible for listing on NRHP	Appendix D
12/3/13	John Axline, MDT	Kathryn Ore, Montana SHPO	Historic resources: determination of eligibility for NRHP	Five Mile Creek Bridge (24YL1867) is not eligible for listing on NRHP	Appendix D
12/18/13	Jon Axline, MDT	Kathryn Ore, Montana SHPO	Historic resources: determination of eligibility for NRHP	Nine properties on Mary Street not eligible for listing on NRHP	Appendix D
SECTION 4(f)					
11/03/11	Christina Volek, City of Billings	Tom S. Martin, PE, MDT	Information Request for Significance of City Park Sites		Appendix B
12/12/11	Tom S. Martin, PE, MDT	Candi Beaudry, Director, City and County Planning	Section 4(f) Applicability Form	Kiwanis Trail, Planned Kiwanis Trail Extension, Planned Heights Upper Loop Trail, and Planned Two Moon Park to Five Mile Creek Trail are all Significant Park or Recreation Areas.	Appendix B

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
11/03/11	Bill Kennedy, Yellowstone County Commissioner	Tom S. Martin, PE, MDT	Information Request for Significance of County Park Sites		Appendix B
12/12/11	Tom S. Martin, PE, MDT	Cal Cumin, Yellowstone County Parks Director	Section 4(f) Concurrence Form	Concurrence that Yellowstone County has jurisdiction over Homestead Park, Lockwood Park, Madsen Park, Shawnee Park, Oxbow Park, Pine Hill Subdivision Park, Quarter Horse Park, Shamrock Acreage Tracts Subdivision Park, Two Moon Park.	Appendix B
2/3/14	Candi Millar, City of Billings	Brian Hasselbach, FHWA	Section 4(f) *de minimis* findings, City of Billings Concurrence	City of Billings concurred with *de minimis* findings for the Kiwanis Trail and planned Kiwanis Trail extension	Appendix B
U.S. ARMY CORPS OF ENGINEERS					
09/27/10	Todd Tillinger, COE	Tom S. Martin, PE, MDT	Invitation to be a Cooperating Agency		Supplement
10/20/10	Tom S. Martin, PE, MDT	Shannon Johnson, COE	Acceptance of Cooperating Agency Request		Supplement
01/27/11	Shannon Johnson, COE	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
02/08/11	Tom S. Martin, PE, MDT	Shannon Johnson, COE	Comments on Draft Purpose and Need Statement	Request for additional alternative to be evaluated which does not cross the Yellowstone River.	Appendix B
03/17/11	Shannon Johnson, COE	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
04/22/11	Tom S. Martin, PE, MDT	Todd N. Tillinger, COE	Comments on Preliminary Alternatives Analysis	Various river crossing alignment appear reasonable, but Johnson Lane Option 2 has potential impact to wetlands mitigation area and wetlands are adjacent to the river in the study area, potential floodplain impacts as well. Yellowstone River is a Section 10 waterway.	Appendix B
U.S. DEPARTMENT OF AGRICULTURE – NATURAL RESOURCES CONSERVATION SERVICE					
09/27/10	Joyce Swartzendruber, NRCS	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
09/27/10	Nick Vira, NRCS	Tom S. Martin, PE, MDT	Information and Request Letter		Supplement
10/08/10	Tom S. Martin, PE, MDT	David Kascht, NRCS	Acceptance of Participating Agency Request		Supplement
01/27/11	David Kascht, NRCS	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	David Kascht, NRCS	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
05/24/12	Tom S. Martin, PE, MDT	Philip Sandoval, NRCS	Comment on Agency Draft EIS for Billings Bypass EIS		Supplement
8/6/2013	Maggie Buckley, David Evans and Associates	Kate Norvell, Agronomist, NRCS	FPPA assessment (evaluation of farmland impacts)		Appendix C
U.S. DEPARTMENT OF INTERIOR - BUREAU OF LAND MANAGEMENT					
09/27/10	Mike Nedd, BLM	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
10/13/10	Tom S. Martin, PE, MDT	James M. Sparks, BLM	Decline Participating Agency Request	BLM does not intend to submit comments on the project.	Supplement
U.S. ENVIRONMENTAL PROTECTION AGENCY					
09/27/10	Julie Dalsoglio, EPA	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
10/04/10	Brian Hasselbach, FHWA Fred Bente, MDT	Julie Dalsoglio, EPA	Comments on EIS for Yellowstone County Route Connection Between I-90 and Old Hwy 312 Near Billings, MT	Revised set of scoping comments.	Appendix B
01/27/11	Julie Dalsoglio, EPA	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	Stephen Potts, EPA	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
04/19/11	Thomas S. Martin, PE, MDT	Julie DalSoglio, EPA	Comment on Preliminary Alternative Analysis Information for Billings Bypass EIS	Recommend Alternatives Considered but Dismissed section in the EIS and 404(b)(1) analysis include support that less damaging alternatives to aquatic resources are not practicable in the context of the CWA.	Appendix B
05/24/12	MDT	EPA	Comment on Agency Draft EIS for Billings Bypass EIS		Supplement
U.S. FISH AND WILDLIFE SERVICE					
09/27/10	R. Mark Wilson, FWS	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
11/23/10	Tom S. Martin, PE, MDT	R. Mark Wilson, FWS	Acceptance of Participating Agency Request	Project may affect listed species, but USFWS is short-staffed and will not be able to provide substantial review or participation in activities.	Appendix B
01/27/11	R. Mark Wilson, FWS	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	R. Mark Wilson, FWS	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
05/22/12	Tom S. Martin, PE, MDT	R. Mark Wilson, FWS	Comment on Agency Draft EIS for Billings Bypass EIS	Suggested edits to DEIS incorporated into published document	Supplement

DATE	RECIPIENT	SUBMITTER	SUBJECT	KEY INFORMATION	LOCATION IN FEIS
07/26/12	Bill Semmens, MDT	R. Mark Wilson, FWS	Concurrence with effects determinations of federally listed species affected by the proposed Billings Bypass (NCPD 56(55))	Concludes informal ESA consultation with USFWS	Appendix B
U.S. NATIONAL PARK SERVICE					
10/07/10	Brian Hasselbach, FHWA	Julie Sharp, NPS	Comments on Proposal to Construct a Connection between I-90 and Old Hwy 312 in or near City of Billings, MT	NPS reviewed the project. No parks will be affected so they have no comments.	Supplement
YELLOWSTONE COUNTY					
09/27/10	Bill Kennedy, Yellowstone County	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
09/27/10	Duane Winslow, Yellowstone County	Tom S. Martin, PE, MDT	Information Letter		Supplement
01/20/11	Tom S. Martin, PE, MDT	Jim E. Reno, Yellowstone County	Acceptance of Participating Agency Request		Supplement
01/27/11	Bill Kennedy, Yellowstone County	Tom S. Martin, PE, MDT	Request for Comments on Draft Purpose and Need Statement		Supplement
03/17/11	Bill Kennedy, Yellowstone County	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
YELLOWSTONE COUNTY PLANNING BOARD					
03/15/11	Dennis Cook, Yellowstone County Planning Board	Tom S. Martin, PE, MDT	Invitation to be a Participating Agency		Supplement
03/17/11	Dennis Cook, Yellowstone County Planning Board	Tom S. Martin, PE, MDT	Notice for Cooperating/ Participating Agency Meeting		Supplement
03/18/11	Tom S. Martin, PE, MDT	Dennis L. Cook, Planning Board President	Acceptance of Participating Agency Request		Supplement

Source: DEA Team, 2014

CITY OF BILLINGS

City of Billings

Public Works Administration

Public Works Department
2224 Montana Avenue
Billings, MT 59101
Office (406) 657-8230
Fax (406) 657-8252

Public Works
"Working for You"

November 3, 2010

Tom Martin, P.E., Chief
Environmental Services Bureau
Montana Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620 – 1001

RE: Billings Bypass Environmental Impact Statement (EIS)

Dear Mr. Martin:

This letter is a follow-up to the letter you sent to the Mayor of Billings and the follow-up e-mail I sent to you on October 15. As I stated in that e-mail, the City of Billings desires to be a cooperating agency in this EIS. You should have received a form to that effect signed by our City Administrator.

In your letter to Mayor Hanel, you asked the City to respond to a number of questions dealing with the study area. The study area south of the Yellowstone River is outside of the city limits and as such there are no capital projects in that area. The area north of the river includes all areas within the city limits from Main Street to the river. This is a large area that is either fully developed or nearly developed. It has been our understanding that the Billings Bypass was to be located north of the study area shown.

The city has capital projects planned in a 5-year Capital Improvement Project list (CIP) for roads, storm sewer, water and sanitary sewer projects among others. These CIPs include sanitary sewer replacement projects, sidewalk projects, ADA projects and pavement maintenance projects whose locations are determined on a year to year basis. In addition, the city recently completed a storm water master plan that ranked projects based on a number of factors. These storm water projects will be addressed yearly as funding allows. Some of these projects will be in this study area. In addition, there may be special improvement districts and private contract work as well. It is also important to note that much of the study area as shown is served by the Heights water department and they should be contact as well. The study area also includes a number of parks and public lands.

All things considered, it may be in the best interest of all involved for your office to meet with city staff to specifically address the questions raised in your letter to help us help you. Please let me know how you would like to proceed. Thank you.

Signed,

Vern Heisler, P.E.
Deputy Public Works Director

LOCKWOOD FIRE / RESCUE

Lockwood Fire / Rescue

3329 Driftwood Lane Office (406) 252-1460
Billings, Montana 59101

FAX (406) 256-8237
firefighters@lockwoodfire.com

William D. Rash - Fire Chief

January 31, 2011

Mr. Stefan Streeter
MDOT District Administrator-Billings
P.O. Box 20437
Billings, MT. 59104-0437

Mr. Streeter,

The Board of Trustees for the Lockwood Rural Fire District has been reviewing the progress on the Billings By-Pass project.

After review, the Lockwood Rural Fire District would like to go on record as supporting the concept of rebuilding the Johnson Lane interchange as soon as possible in lieu of building a second interchange farther to the east. The fire district believes that the Johnson Lane interchange would have to be rebuilt eventually as the interchange, in its present form, can't even handle the traffic traveling on it today. The fire district feels that an improved Johnson Lane interchange would better facilitate emergency responses as the fire district has acquired land and is in the planning stages of building a new fire station on Johnson Lane.

Thank you very much,

William Rash, Fire Chief
Lockwood Fire District

MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS

Gocksch, Thomas

From: Timmerman, Walt
Sent: Thursday, October 14, 2010 8:23 AM
To: Colegrove, James
Cc: Gocksch, Thomas; Habermann, Doug; Kuser, Allan
Subject: RE: 4199 - Billings bypass

Categories: Red Category

James:

Yes, thanks for catching that. However, it is still good information for MDT. East River may not trigger Section 6(f), but it would still be of Section 4(f) concern. In fact, Allan Kuser just told me that East River is a Dingell-Johnson Sports Fish Restoration Act (federally funded) site.

Thanks,

Walt

From: Colegrove, James
Sent: Thursday, October 14, 2010 8:08 AM
To: Timmerman, Walt; Gocksch, Thomas
Cc: Habermann, Doug
Subject: RE: 4199 - Billings bypass

Walt, I may have misunderstood something about your request.
The East River Bridge FAS {at T 1 N, R 26 E Sec 34 –in lot 5} is in the EIS study area but our records indicate no LWCF funding was affiliated with the acquisition of this land. I did see a note in our records that a boat ramp project at the site involved DJ funding.
Perhaps LWCF funds are tied to development activity at the site but we do not maintain that information in our records.

James

From: Timmerman, Walt
Sent: Wednesday, October 13, 2010 2:40 PM
To: Gocksch, Thomas
Cc: Habermann, Doug; Colegrove, James
Subject: FW: 4199 - Billings bypass

Dear Tom:

As far as we can tell, there are two LWCF-assisted sites within your study area (Billings Bypass EIS). The first is East Bridge FAS (T1N; R26E; Sec 34). The second is Lockwood School Recreation Area (T1N; R26E; Sec 36). I currently do not have access to the LWCF database for technical reasons, and cannot check whether the City

of Billings has a park encumbered with LWCF in that shaded area. I think you could find that out pretty quickly by having the Billings Parks & Recreation folks check your map.

Please let me know if there is anything else you need.

Thanks,

Walt

Walter W. Timmerman
Parks Recreation Bureau Chief

Montana Fish, Wildlife & Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620

Tel: 406-444-3753
FAX: 406-444-4952

From: Gocksch, Thomas
Sent: Wednesday, October 13, 2010 8:26 AM
To: Timmerman, Walt
Subject: 4199 - Billings bypass

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Gocksch, Thomas

From: Martin, Tom
Sent: Wednesday, October 13, 2010 2:26 PM
To: Gocksch, Thomas
Subject: FW: Billings Bypass EIS
Attachments: Billings Bypass Participating Agency.pdf

From: Bollman, Jeff
Sent: Wednesday, October 13, 2010 9:40 AM
To: Martin, Tom
Subject: Billings Bypass EIS

Tom:

I was recently forwarded a copy of the letter that you sent to Mary Sexton, DNRC Director, dated 27 September 2010 regarding the Billings Bypass EIS. Attached, please find a signed copy of the Agency Participation form.

Based on the revised Study Area, our biggest area of involvement most likely will be the crossing of the navigable riverbed of the Yellowstone River, which is owned by the State and administered by DNRC. The crossing of the Yellowstone River will require an easement to be submitted to and reviewed by the DNRC Southern Land Office and ultimately approved by the Board of Land Commissioners.

In your letter, you also requested some additional information and below are my initial responses:

- Cultural Resources: There were no studies listed for the potentially impacted Trust lands or known historical resources on them.
- Mineral Leases: The DNRC does have an active (not producing) Oil & Gas lease on the section listed below:
  Section 36-2N-26E – Oil & Gas Lessee
  Elk Petroleum Oil & Gas
  123 West 1st Street, Suite 550
  Casper, WY 82601
  307-265-3326

- Leases or Licenses Impacted: The DNRC has an active grazing lease on the section listed below:
  Section 36-2N-26E (except SW¼) Grazing Lessee
  Leonard Houser
  4210 Highway 312 East
  Billings, MT 59105
  406-860-1654
  406-373-6386

- Merchantable Timber: None on Trust lands.
- State or local park: None.
- Land & Water Conservation Fund Purchases: None by DNRC
- Ongoing DNRC Projects: DNRC does not have any projects in the Study Area that would be impacted by the proposed action.

Please feel free to contact me with any questions.

Cordially,
Jeff

Jeff Bollman, AICP
Planner
Southern Land Office
MT Dept of Natural Resources & Conservation
1371 Rimtop Drive
Billings, MT 59105
406.247.4404 (Phone)
406.247.4410 (Fax)

SECTION 4(F) CORRESPONDENCE

MDT

Montana Department of Transportation
2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Timothy W. Reardon, Director
Brian Schweitzer, Governor

November 3, 2011

Christina Volek
City Administrator
City of Billings
PO Box 1178
Billings MT 59103

SUBJECT: Information Request for "Significance" of City Park Sites
MDT – Billings Bypass EIS
Project Number: NCPD 56(55) CN 4199

Dear Ms. Volek:

I am writing on behalf of the Montana Department of Transportation (MDT) to request the City's assistance in providing information on two sites owned by the City. This information will be used for the Draft Environmental Impact Statement (DEIS) for the Billings Bypass project being prepared by MDT and the Federal Highway Administration (FHWA). The DEIS assesses potential impacts that may occur from construction of the proposed transportation improvements.

Our review of the Montana Cadastral Database Geographical Information Systems (GIS) parcel data and Yellowstone County GIS data for parks indicate **ten publicly owned City park and recreation facilities in the Billings Bypass EIS study area** (see attached figure). These park resources include: Kiwanis Trail, a park parcel designated for the planned extension of the Kiwanis Trail, Bitterroot Heights Subdivision 1st Park, Brewington Park, Clevenger Park, Daniels Park, Hawthorne Park, Heritage Walk Town Home Park, J&E Park, and Primrose Park. Additionally, two planned trails (not on publicly owned land) were identified; the Heights Upper Loop Trail and the Two Moon Park to Five Mile Creek Trail.

Due to the scale and scope of this project, the EIS study area far exceeds the area potentially impacted by the three project alternatives currently under consideration (see attached figure). **Of the park resources listed above, only the Kiwanis Trail, the park parcel designated for the planned extension of the Kiwanis Trail, the Heights Upper Loop Trail, and the Two Moon Park to Five Mile Creek Trail were determined to be within the potential area of impact for the proposed project alternatives.**

Input Needed From City

Your input is needed to 1) determine if a certain federal regulation might be applicable to the park and recreational resources in proximity to the proposed project alternatives, and 2) identify additional existing or planned park or recreational resources within the Billings Bypass EIS study area (see attached figure).

To provide the needed information, please have the "official with jurisdiction" verify, edit (if necessary), and complete the attached form. If additional park or recreational facilities (not included on the form) exist or are planned in proximity to the proposed project alternatives, please add them to the attached form.

Section 4(f)

The federal regulation referred to as "Section 4(f)" is codified at 49 USC 303 (Section 4(f) of the 1966 US Department of Transportation Act) and the USDOT regulations at 23 CFR 774. According to the Section 4(f) regulations, the FWHA must follow specific procedures in regard to

> "publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state or local significance as determined by the Federal, State, or local officials having jurisdiction thereof…"

Under Section 4(f), FWHA is prohibited from approving the use of land from a significant publicly owned public park, recreation area, or wildlife or waterfowl refuge, or any significant historic site unless a determination is made that (1) there is no feasible and prudent alternative to the use of land from the property, and (2) the action includes all possible planning to minimize harm to the property. The determination of whether or not a site is considered "significant" is to be made by the official(s) having jurisdiction over the site in question.

For purposes of applying this regulation, City officials should consider four criteria in evaluating the park parcel. All four of the criteria discussed below must be met for Section 4(f) to be applicable to a parcel. To follow is each criterion, our understanding of information relevant to determining whether or not the criterion is met, and a request for verification of that information from the "official with jurisdiction".

Publicly Owned Land

First, the site must be publicly owned. Our review of the Montana Cadastral Database Geographical Information Systems (GIS) parcel data indicate that the Kiwanis Trail and the park parcel for future extension of the Kiwanis Trail are on publicly owned City parcels. The planned Heights Upper Loop Trail and the planned Two Moon Park to Five Mile Creek Trail are on privately owned land.

Public Access

Second, in addition to being publicly owned, the site must be open to the public to meet the definition of a Section 4(f) site. The entire public park or public recreation area must permit visitation by the general public at any time. Section 4(f) would not apply when visitation is permitted to only a select group and not the entire public. Based on site observations, the Kiwanis Trail corridor does not appear to be fenced or gated and would be open to the general public at all times. The planned Heights Upper Loop Trail and the planned Two Moon Park to Five Mile Creek Trail are not currently accessible to the public.

Definition of Park or Recreation Area

Third, one of the major purposes and functions of the site must be a park or recreation area. Publicly owned land is considered to be a park or recreation area when the land has been officially designated as such by a Federal, State, or local agency and the official with jurisdiction determines that one of its major purposes or functions is for park or recreation purposes. Please note that incidental, secondary, occasional or dispersed recreational activities do not constitute a major purpose.[1] Management plans that address or officially designate the major purpose(s) of the property should be reviewed as part of this determination.

---

[1] US Department of Transportation Federal Highway Administration, Office of Planning, Environment and Realty Project Development and Environmental Review, *FHWA Section 4(f) Policy Paper*, page 11, March 1, 2005.

We conducted research in an effort to make a preliminary conclusion as to whether or not the Kiwanis Trail, the Kiwanis Trail extension, planned Heights Upper Loop Trail, and the planned Two Moon Park to Five Mile Creek Trail have been designated as park or recreation areas. These recreational facilities are identified in the *Billings Area Bikeway and Trails Master Plan* (2011). Our conclusion based on review of the plan is that these trails are designated parks or recreational facilities and their major function is (or would be) for park and recreation purposes.

Significance of Publicly Owned Parcels

If all of the criteria discussed above are met, then the fourth criterion must be considered. For the fourth criterion to be met, the site must be a "significant property." Significance means that in comparing the availability and function of the park, recreation area or wildlife and waterfowl refuge with the park, recreation or refuge objectives of the community or the authority, the land in question plays an important role in meeting those objectives. Management plans or other official forms of documentation regarding the land, if available and up-to-date, can be important in this determination. We are asking that the "official with jurisdiction" for the Kiwanis Trail, the planned Kiwanis Trail extension, the planned Heights Upper Loop Trail, and the planned Two Moon Park to Five Mile Creek Trail to identify if these facilities would be considered "significant."

Please return the attached form to the address indicated. We respectfully request that the City provide a response as soon as possible so that MDT can move forward with conducting a thorough environmental analysis for the DEIS for the Billings Bypass project.

Please contact Laura Meyer of David Evans and Associates, Inc. at 720-225-4632 with any questions. Thank you for your assistance in this matter.

Sincerely,

Tom S. Martin, PE, Chief
Environmental Services Bureau

Copies: Mike Whitaker (Billings Parks, Recreation and Public Lands); Candi Beaudry (City and County Planning); Stefan Streeter, Tim Conway (MDT); Brian Hasselbach (FHWA); Laura Meyer (DEA); File

Enclosures: Park Map, Section 4(f) Applicability Table

Section 4(f) Applicability

Site	Facility is on Publicly-Owned Parcel[1] (yes or no)	Facility is open to the General Public (yes or no)	Facility is officially Designated as a Park or Recreation Area/Facility? (yes or no)	Is Major Purpose or Function for Park or Recreation? (yes or no)	What are the Functions or Activities on the Site? (i.e. recreational trail, play lot, open space, etc.)	Is This a Significant[2] Park or Recreation Area? (yes or no)
Kiwanis Trail	Yes	Yes	Yes			
Planned Kiwanis Trail Extension	Yes	Yes	Yes			
Planned Heights Upper Loop Trail	No	No	Yes			
Planned Two Moon Park to Five Mile Creek Trail	No	No	Yes			

Note: Space in the table is provided to identify additional existing or planned park and recreational facilities in proximity to the project alternatives.

[1] For trail facilities, please indicate what the parcel ownership is where the trail crosses the proposed alignment(s). If the trail/sidewalk is on private land and there is a public easement for public recreational access, the land can be considered publicly owned. Please attach documentation of public easements (if available) for these recreational facilities and return with this form.

[2]Significant means that in comparing the availability and function of the recreation, park, wildlife, and waterfowl refuges with the recreational, park, and refuge objectives of the community, the land in question plays an important role in meeting these objectives.

Official with Jurisdiction:

Name: _____

Title: _____

Date: _____

Please return to:

Tom S. Martin, PE, Chief
Environmental Services Bureau
Montana Department of Transportation
2701 Prospect Avenue
Helena, Montana 59620-1001

Study Area

Alternatives

- Alternative Alignment
- Service Interchange

Park & Recreation Resources

- Park
- Master Planned Park (private)
- Future Park (private)
- Existing Multi-Use Trail
- Proposed Multi-Use Trail
- Existing Soft-Surface Trail
- Conceptual Trail Alignment

Existing Transportation Network

- Interstate
- Highway
- Local Route
- Railroad

Base Map Information

- 100-Year Floodplain
- Yellowstone River
- Stream
- Parcel Boundaries

BILLINGS BYPASS EIS
NCPD 56/55:CN 4199

Mc Girl Rd
Drury Ln
Pioneer Rd
Five Mile Road
Five Mile Rd
Dover Rd
Oxbow Park
Homestead Park
Madsen Park
Old Hwy 312
Quarter Horse Park
John H. Dover Memorial Park (planned)
Heights Upper Loop Trail
Mary Street Option 2
Bitterroot Heights Subdivision 1st Park
Mary St
Mary Street Option 1
Daniels Park
Coulson Rd
Pinehill Subdivision Park
94
Main St
Bench Blvd
Kiwanis Trail
Hawthorne Ln
Bitterroot Dr
Brewington Park
Hawthorne Park
Wicks Ln
Heritage Walk Town Home Park
Shamrock Acreage Park
J&E Park
Primrose Park
Yellowstone River Rd
Two Moon Park to Five Mile Creek Trail
Shawnee Park
90
Old Hardin Rd
Hilltop Rd
Clevenger Park
Two Moon Park
Johnson Ln
Lockwood Park
Brookdale Park
East River Bridge Fishing Access

N

0 0.5 1 Miles

Sources: DOWL HKM August 2011, FEMA (preliminary floodplain data) August 2011, Montana Fish, Wildlife and Parks (streams, public land information)
USDA National Agricultural Imagery Program (July 2009 aerial photography), Yellowstone County (schools, public water supply, parks) 2010

Date Plotted: 11/2/2011

Section 4(f) Applicability

Site	Facility is on Publicly-Owned Parcel[1] (yes or no)	Facility is open to the General Public (yes or no)	Facility is officially Designated as a Park or Recreation Area/Facility? (yes or no)	Is Major Purpose or Function for Park or Recreation? (yes or no)	What are the Functions or Activities on the Site? (i.e. recreational trail, play lot, open space, etc.)	Is This a Significant[2] Park or Recreation Area? (yes or no)
Kiwanis Trail	Yes	Yes	Yes	Yes	recreational trail	yes
Planned Kiwanis Trail Extension	Yes	Yes	Yes	Yes	recreational trail	yes
Planned Heights Upper Loop Trail	No	No	Yes	Yes	recreational trail	yes
Planned Two Moon Park to Five Mile Creek Trail	No	No	Yes	Yes	recreational trail	Yes

Note: Space in the table is provided to identify additional existing or planned park and recreational facilities in proximity to the project alternatives.

[1] For trail facilities, please indicate what the parcel ownership is where the trail crosses the proposed alignment(s). If the trail/sidewalk is on private land and there is a public easement for public recreational access, the land can be considered publicly owned. Please attach documentation of public easements (if available) for these recreational facilities and return with this form.

[2]Significant means that in comparing the availability and function of the recreation, park, wildlife, and waterfowl refuges with the recreational, park, and refuge objectives of the community, the land in question plays an important role in meeting these objectives.

Official with Jurisdiction:

Name: CANDI BEAUDRY

Title: Director, Planning & Comm. Svcs Dept.

Date: 12-12-11

Please return to:

Tom S. Martin, PE, Chief
Environmental Services Bureau
Montana Department of Transportation
2701 Prospect Avenue
Helena, Montana 59620-1001

November 3, 2011

Bill Kennedy
County Commissioner
Yellowstone County
PO Box 35000
Billings MT 59107

SUBJECT: Information Request for "Significance" of County Park Sites
MDT – Billings Bypass EIS
Project Number: NCPD 56(55) CN 4199

Dear Mr. Kennedy:

I am writing on behalf of the Montana Department of Transportation (MDT) to request the County's assistance in providing information on park and recreational sites owned by the County. This information will be used for the Draft Environmental Impact Statement (DEIS) for the Billings Bypass project being prepared by MDT and the Federal Highway Administration (FHWA). The DEIS assesses potential impacts that may occur from construction of the proposed transportation improvements.

Our review of the Montana Cadastral Database Geographical Information Systems (GIS) parcel data and Yellowstone County GIS data for parks indicate **ten publicly owned County parks in the Billings Bypass EIS study area** (see attached figure). These park and recreational facilities under the County's jurisdiction include: East River Bridge Fishing Access, Homestead Park, Lockwood Park, Madsen Park, Shawnee Park, Oxbow Park, Pine Hill Subdivision Park, Quarter Horse Park, Shamrock Acreage Tracts Subdivision Park, and Two Moon Park**.**

Due to the scale and scope of this project, the EIS study area far exceeds the area potentially impacted by the three project alternatives currently under consideration (see attached figure). **All of the identified park resources were determined to be outside the potential area of impact for the proposed project alternatives.**

Input Needed From County

Your input is needed to 1) identify additional existing or planned park or recreational resources within the Billings Bypass EIS study area (see attached figure), and 2) determine if a certain federal regulation might be applicable to these resources.

- **Form A:** If there are no additional park or recreational facilities (existing or planned) under the jurisdiction of the County within the Billings Bypass EIS study area, please provide written confirmation by signing and returning Form A.
- **Form B:** If there are additional park or recreational facilities (existing or planned) under the jurisdiction of the County that are within the Billings Bypass EIS study area, please provide information on these resources by filling out and returning Form B. Information provided in Form B will help MDT to determine if Section 4(f) of the US Department of Transportation Act is applicable to these resources.

Environmental Services Bureau
Phone: (406) 444–7228
Fax: (406) 444–7245

Rail, Transit and Planning Division
TTY: (800) 335-7592
Web Page: www.mdt.mt.gov

Section 4(f)

The federal regulation referred to as "Section 4(f)" is codified at 49 USC 303 (Section 4(f) of the 1966 US Department of Transportation Act) and the USDOT regulations at 23 CFR 774. According to the Section 4(f) regulations, the FWHA must follow specific procedures in regard to

> "publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state or local significance as determined by the Federal, State, or local officials having jurisdiction thereof…"

Under Section 4(f), FWHA is prohibited from approving the use of land from a significant publicly owned public park, recreation area, or wildlife or waterfowl refuge, or any significant historic site unless a determination is made that (1) there is no feasible and prudent alternative to the use of land from the property, and (2) the action includes all possible planning to minimize harm to the property. The determination of whether or not a site is considered "significant" is to be made by the official(s) having jurisdiction over the site in question.

For purposes of applying this regulation, County officials should consider four criteria in evaluating the park parcel. All four of the criteria discussed below must be met for Section 4(f) to be applicable to a parcel.

Publicly Owned Land

First, the site must be publicly owned. Our review of the Montana Cadastral Database Geographical Information Systems (GIS) parcel data and Yellowstone County GIS data for parks indicate no publicly owned County park parcels in proximity to the project alternatives.

Public Access

Second, in addition to being publicly owned, the site must be open to the public to meet the definition of a Section 4(f) site. The entire public park or public recreation area must permit visitation by the general public at any time. Section 4(f) would not apply when visitation is permitted to only a select group and not the entire public.

Definition of Park or Recreation Area

Third, one of the major purposes and functions of the site must be a park or recreation area. Publicly owned land is considered to be a park or recreation area when the land has been officially designated as such by a Federal, State, or local agency, and the official with jurisdiction determines that one of its major purposes or functions is for park or recreation purposes. Please note that incidental, secondary, occasional or dispersed recreational activities do not constitute a major purpose.[1] Management plans that address or officially designate the major purpose(s) of the property should be reviewed as part of this determination.

Significance of Publicly Owned Parcels

If all of the criteria discussed above are met, then the fourth criterion must be considered. For the fourth criterion to be met, the site must be a "significant property." Significance means that in comparing the availability and function of the park, recreation area or wildlife and waterfowl refuge with the park, recreation or refuge objectives of the community or the authority, the land in question plays an important

[1] US Department of Transportation Federal Highway Administration, Office of Planning, Environment and Realty Project Development and Environmental Review, *FHWA Section 4(f) Policy Paper*, page 11, March 1, 2005.

role in meeting those objectives. Management plans or other official forms of documentation regarding the land, if available and up-to-date, can be important in this determination.

Please return the appropriate form to the address indicated on the form. We respectfully request that the County provide a response as soon as possible so that MDT can move forward with conducting a thorough environmental analysis for the DEIS for the Billings Bypass project.

Please contact Laura Meyer of David Evans and Associates, Inc. at 720-225-4632 with any questions. Thank you for your assistance in this matter.

Sincerely,

Tom S. Martin, PE, Chief
Environmental Services Bureau

Copies: Cal Cumins (Yellowstone County); Stefan Streeter, Tim Conway (MDT); Alan Woodmansey (FHWA); Laura Meyer (DEA); File
Enclosures: Park Map, Form A, Form B

Yellowstone County concurs with the following findings:

1. Within the Billings Bypass EIS study area, Yellowstone County has jurisdiction over the following park and recreational resources:

state FW&P → ~~East River Bridge Fishing Access~~

- Homestead Park
- Lockwood Park
- Madsen Park
- Shawnee Park
- Oxbow Park
- Pine Hill Subdivision Park
- Quarter Horse Park
- Shamrock Acreage Tracts Subdivision Park
- Two Moon Park

2. There are no additional park or recreational resources under the jurisdiction of Yellowstone County that exist or are planned within the Billings Bypass EIS study area.

(CAL CUMIN)

County Parks Director — 12.12.11

for Bill Kennedy
Commissioner
Yellowstone County

Date

Please return to:

Tom S. Martin, PE, Chief
Environmental Services Bureau
Montana Department of Transportation
2701 Prospect Avenue
Helena, Montana 59620-1001

Yellowstone County Parks

P.O. Box 35000
Billings, MT 59107

BILLINGS MT 591
12 DEC 2011 PM 1 T

Tom Martin
Environmental Services
MDT
2701 Prospect Ave.
Helena, MT 59620-1001

5560189746

U.S. Department of Transportation
Federal Highway Administration

Montana Division

585 Shepard Way, Suite 2
Helena, MT 59601
Phone: (406) 441-3900
Fax: (406) 449-5314
www.fhwa.dot.gov/mtdiv

January 29, 2014

In Reply Refer To:
HDA-MT

Candi Millar, AICP
Director, Planning & Community Services
2825 3rd Avenue North
4th Floor
Billings, MT 59101

SUBJECT: *de minimis* determination for Kiwanis Trail and Planned Kiwanis Trail Extension
NCPD-MT 56(55)
Billings Bypass EIS
Control Number: 4199 000

Dear Ms. Millar:

The Montana Department of Transportation (MDT) is completing the Final Environmental Impact Statement (FEIS) for the Billings Bypass, a proposed principal arterial connecting I-90 east of Billings with Old Highway 312. On December 12, 2011 and July 11, 2013, the city of Billings (City) provided concurrence that two resources within the project impact area, the Kiwanis Trail and the Planned Kiwanis Trail Extension are significant park resources eligible for regulation under Section 4(f) of the U.S. Department of Transportation Act of 1966.

MDT's analysis demonstrates that the project's impacts to the Kiwanis Trail and Planned Kiwanis Trail Extension would not adversely affect any of the activities, features, and attributes that qualify these resources for protection under Section 4(f), thus supporting a Section 4(f) *de minimis* impact determination.

The purpose of this letter is to request the City's concurrence that the Billings Bypass project will not adversely affect the existing Kiwanis Trail and Planned Kiwanis Trail Extension, allowing the Federal Highway Administration (FHWA) to make a *de minimis* impact determination.

Pursuant to the Act, impacts of a transportation project on a park, recreation area, or wildlife and waterfowl refuge that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

1. The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);

2. The official(s) with jurisdiction over the property are informed of FHWA's or Federal Transit Administration's intent to make the *de minimis* impact finding based on their

written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f); and

3. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.

These criteria are applied herein to each build alternative analyzed in the FEIS, and demonstrate that all of the build alternatives would result in a *de minimis* impact determination.

1. *The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f).*

   A. Mary Street Option 1 and Mary Street Option 2 (Preferred Alternative)

   Kiwanis Trail: Neither Mary Street Option 1 nor Mary Street Option 2 (the Preferred Alternative) include any improvements to Mary Street in the vicinity of the existing Kiwanis Trail. Under both of these alternatives, the proposed corridor parallels Mary Street to the north. The existing Mary Street corridor remains a local access road for residents and would not be altered in the vicinity of the existing Kiwanis Trail. None of the existing Kiwanis Trail right of way would be converted to a transportation use, and the recreational use of the facility would be maintained as it currently exists without negatively impacting the activities, features, and attributes that make it eligible for protection under section 4(f).

   Planned Kiwanis Trail Extension: Under both of these alternatives, the new principal arterial corridor paralleling Mary Street to the north would be designed to accommodate the planned extension of the Kiwanis Trail. Approximately 0.43 acres of the 10.5 acres of city owned right of way set aside for the future extension of the Kiwanis trail would be intersected by the new alignment. (See exhibit X) The design of the Billings Bypass in the vicinity of the planned Kiwanis trail extension would be completed in consultation with the City to ensure that the activities, features, and attributes that make it eligible for protection under section 4(f) are not adversely impacted. Therefore, these alternatives would result in a *de minimis* impact determination.

   B. Five Mile Road Alternative

   Kiwanis Trail and Planned Kiwanis Trail Extension: The Five Mile Road Alternative would reconstruct Mary Street to City standards for an urban arterial roadway. Mary Street would be designed to accommodate the planned extension of the Kiwanis Trail and would include a new pedestrian crossing where the existing Kiwanis Trail, the planned Kiwanis Trail Extension, and Mary Street intersect. Approximately 0.16 acres of the 10.54 acre of city owned right of way set aside for the future extension of the Kiwanis trail would be required by MDT to reconstruct Mary Street. The design of Mary Street in the vicinity of the planned Kiwanis trail extension would be completed in consultation with the City to ensure that the activities, features, and attributes that make it eligible for protection under section 4(f) are not adversely impacted. Construction activities could require a temporary partial closure of the existing trail for pedestrian safety resulting in minor, temporary impacts to the recreational

use of the existing trail. Because the impacts of the project to the existing trail and planned trail extension would be minimal, and the recreational use of the facility would be maintained without negatively impacting its activities, features, and attributes, that make it eligible for protection under section 4(f), this alternative would result in a *de minimis* impact determination.

C. Avoidance, Minimization, and Mitigation Measures

The following avoidance, minimization, and mitigation measures are proposed to minimize project effects:

- MDT will coordinate with the City throughout final design to ensure that the final project provides for safe and effective pedestrian and bicycle movement across the project corridor at the Kiwanis Trail crossing.
- MDT will coordinate with the City to include appropriate signage and/or public notifications regarding temporary trail closures during construction.
- If the Five Mile Road Alternative were constructed, MDT would accommodate a new pedestrian crossing at the intersection of the existing Kiwanis Trail with Mary Street.

With incorporation of the measures identified above, MDT's analysis indicates that none of the three build alternatives would adversely affect the activities, features, and attributes that qualify the existing and planned trail for protection under Section 4(f).

2. *The official(s) with jurisdiction over the property are informed of FHWA's or FTA's intent to make the de minimis impact finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).*

   Project applicability: This letter serves as a request to the "official with jurisdiction" to provide written concurrence with the assessment of impacts to the Kiwanis Trail and Planned Kiwanis Trail Extension.

3. *The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.*

   Project applicability: The public was afforded an opportunity to review and comment on this impact assessment during the public review period for the Draft Environmental Impact Statement. Only one comment received from the public related to the Kiwanis Trail or Planned Kiwanis Trail Extension, which requested clarification about access to the trail and expressed concern about additional traffic in the vicinity. The public will have an additional opportunity for review of this decision with the distribution of the Final Environmental Impact Statement.

Based upon the fulfillment of the above criteria, FHWA seeks concurrence from City (via the signature block below) with the Billings Bypass project impact assessment on Section 4(f) properties and that therefore the Billings Bypass is in compliance with the provisions of Section 4(f) of the U.S. Department of Transportation Act of 1966.

Please provide your signature below as a written concurrence of these findings and return it to my attention at the following address:

Brian Hasselbach
Federal Highway Administration
Montana Division
585 Shepard Way, Suite 2
Helena, MT 59601

Feel free to contact me with your questions or concerns at (406) 441-3908.

Sincerely,

Brian Hasselbach

Brian D. Hasselbach
Statewide Planner, Environmental & Right of Way Engineer

Concurrence

The city of Billings hereby concurs that we have consulted with the FHWA on the impacts to the Kiwanis Trail and the planned Kiwanis Trail Extension from the subject project, and that the city concurs with the FHWA's finding that the Project will have *de minimis* impacts on the city's property for the purposes of Section 6009 of SAFETEA-LU (to be codified at 23 USC 138(b) and 49USC 303(d).

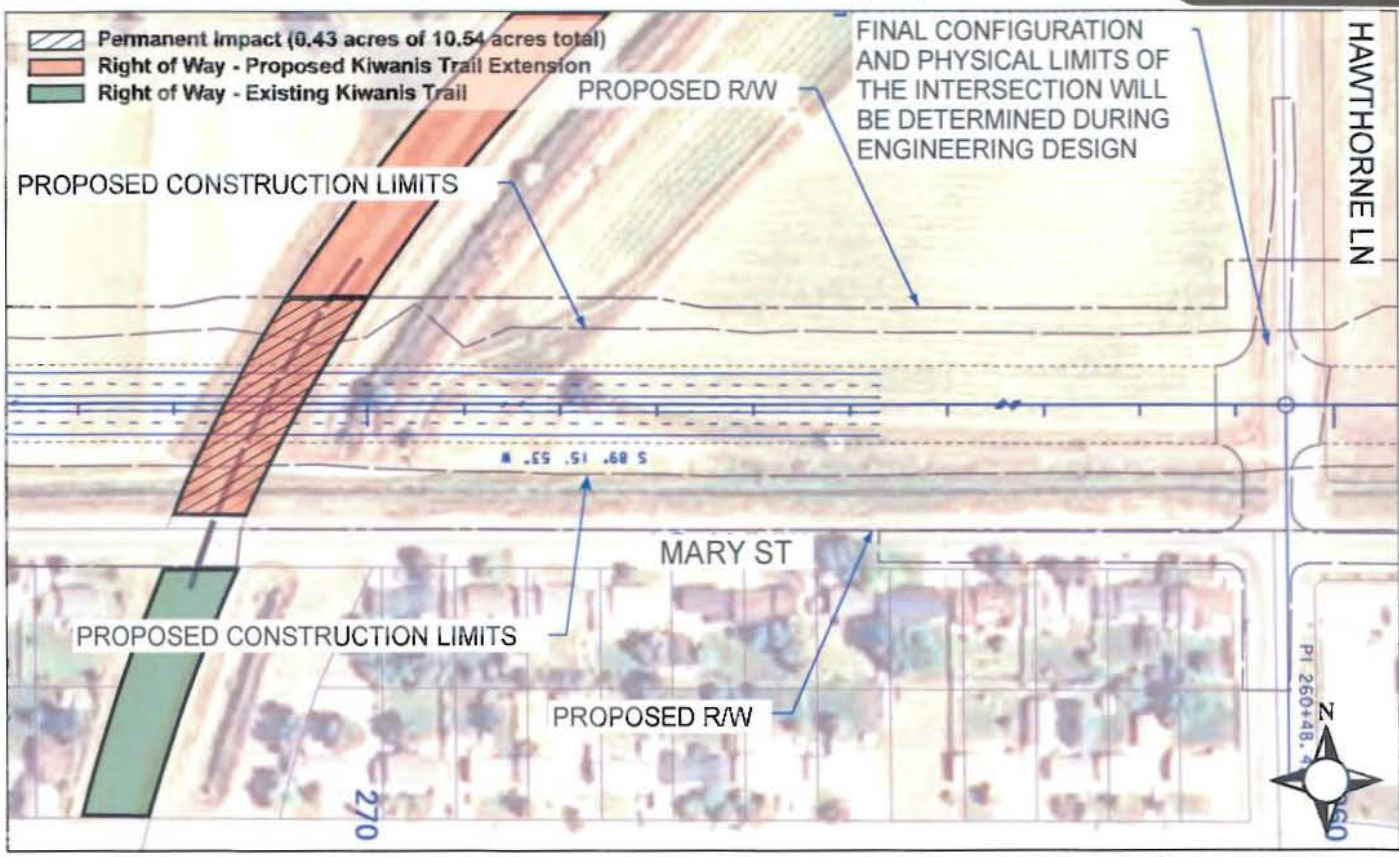
By: Chris Mullen (Beaudry) Date: 2-3-2014
Director, Planning & Community Services Dept.
City of Billings / Yellowstone Co.

cc: Fred Bente, MDT

EXHIBIT

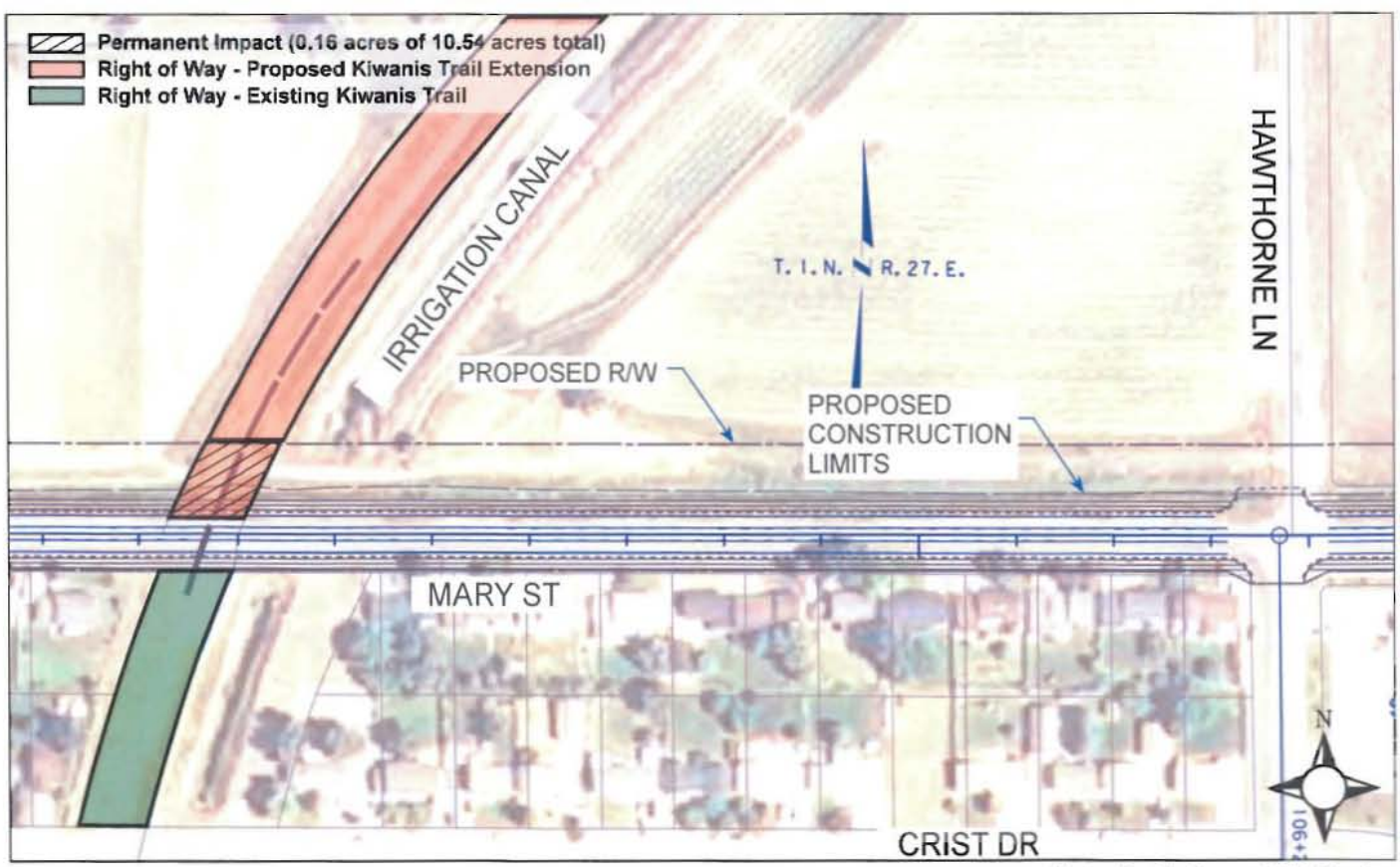
tabbies

Mary Street Option 1 and Option 2 Alternatives – Primary Improvements



Note: Preliminary 30% Design

Five Mile Road Alternative – Secondary Improvements



Note: Preliminary 30% Design

U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
BILLINGS REGULATORY OFFICE
2602 FIRST AVENUE NORTH, ROOM 309
BILLINGS MT 59101

Please reply to attention of:

February 8, 2011

Regulatory Branch
Montana State Program
Corps No: **NWO-2006-90399-MTB**

Subject: Billings Bypass EIS, Proj. No. NCPD 56(55), CN 4199

Attention: Mr. Tom Martin
Montana Department of Transportation
Post Office Box 201001
Helena, Montana 59620-1001

Dear Mr. Martin:

Reference is made to your request for comments on the purpose and need statement of the Billings Bypass EIS as well as the range of alternatives under consideration.

As presented, the purpose of the project precludes a no-bridge alternative because construction of a new bridge over the Yellowstone River is an element of all proposed build alternatives. The Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material found at 40 CFR 230 states that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences."

The overall project purpose, as determined by the Corps, is to improve the safety and efficiency for all vehicles, pedestrians, and members of the public traveling between Interstate 90 and Old Highway 312. Improvement of surface transportation and road networks is not water dependent; at a minimum, at least one alternative must be considered that explores future improvements to existing transportation networks without a new Yellowstone River crossing.

For the purpose of Corps permit reviews, practicable alternatives for improvement of transportation in the project area should include practicable alternatives which do not involve a discharge of dredged or fill material into the WUS or structures over the Yellowstone River. An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose. In other words, there needs to be a comparison between suggested alternatives requiring and not requiring construction of a new bridge across the Yellowstone River.

Finally, CEQ regulations found at 40 CFR 1500.2(c) require that the environmental review for required permits should be integrated into the NEPA process so that the alternatives analysis and permit review procedures can be done concurrently rather than consecutively. This prevents un-permittable alternatives from being carried forward, and can prevent the least environmentally damaging practicable alternative (LEDPA) from being eliminated as an alternative that is carried forward in the NEPA review. Normally, for projects expected to require a Section 404 permit, this review takes the form of a Draft 404(b)(1) Analysis. It is recommended that a Draft 404(b)(1) Analysis be performed and included as part of the Billings Bypass EIS.

If you have any questions feel free to contact myself in the Billings Regulatory Office at (406) 657-5910, and reference File No. NWO-2006-90399-MTB.

Sincerely,

Shannon Johnson

Shannon Johnson
Project Manager

Copies Furnished:

Steve Potts,
US EPA – Region 8 Montana Office
10 West 15th Street Suite 3200
Helena, MT 59626

Kevin McLaury
FHWA - Montana Division
585 Shepard Way
Helena, MT 59601

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
BILLINGS REGULATORY OFFICE
2602 FIRST AVENUE NORTH, ROOM 309
BILLINGS MT 59101

Please reply to attention of:

April 22, 2011

ENVIRONMENTAL ENGINEERING
SECTION SUPERVISOR

Regulatory Branch
Montana State Program
Corps No: **NWO-2006-90399-MTB**

Subject: Comment on Preliminary Alternatives Analysis – Billings Bypass # 4199

Attention: Mr. Tom Martin
Montana Department of Transportation
Post Office Box 201001
Helena, Montana 59620-1001

Dear Mr. Martin:

Reference is made to your request for comments on the Preliminary Alternatives Analysis for the Billings Bypass EIS.

In a letter dated February 8, 2011, the Corps provided comments that the draft purpose of the project precludes a no-bridge alternative because construction of a new bridge over the Yellowstone River is an element of all proposed build alternatives. At an April 1, 2011 interagency meeting, the Corps and the EPA again expressed concerns that the draft purpose and need limited the range of alternatives to be evaluated. It was suggested that the purpose and need be broadened and that river crossing alternatives and alternatives that avoid impacts to aquatic resources both be evaluated during the alternatives analysis in the EIS.

Transportation projects are not water dependent, and a transportation alternative that avoids impacts to aquatic resources will be presumed to be available unless it is demonstrated that such an alternative is not practicable. An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

It is our understanding that MDT has agreed to modify the draft purpose and need and to provide a review of alternatives that would not require a new crossing of the Yellowstone River. Alternatives involving improvements to existing roads and bridges could include, but are not limited to, adding traffic lanes, expanding emergency routes through Metra Park or along Bench Boulevard, an additional Alkali Creek crossing, the construction of frontage roads or an elevated road, reworking existing intersections, etc. MDT will provide a comprehensive review of a wide range of potential alternatives that meet the project purpose along with supporting information as to why any alternatives removed from further consideration were not considered to be practicable.

In accordance with our Public Service commitment, the Corps is committed to providing timely reviews of this information as it is made available, including reviews of draft or preliminary information.

The Corps preliminary review of the known range of alternatives submitted to date indicated that the various river crossing alignments appeared reasonable, but a lack of specific information regarding each alternative limited review of specific issues. However, Johnson Lane Alignment Option 2 appears to have the potential to impact an existing wetland mitigation area located in the NE ¼ of Section 19, and the SE ¼ of Section 18, Township 1 North, Range 27 East. Additionally, extensive wetlands are located adjacent to the river in the study area, and the potential exists for significant floodplain impacts as well. As a reminder, only the least damaging practicable alternative to aquatic resources can be permitted under Section 404 of the Clean Water Act.

Finally, as a reminder, the Yellowstone River is also a Section 10 waterway. Department of Army permits, if any are needed, would be issued in accordance with Corps Regulatory Authorities under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.

If you have any questions feel free to contact myself or Shannon Johnson in the Billings Regulatory Office at (406) 657-5910, and reference File No. NWO-2006-90399-MTB.

Sincerely,

Todd N. Tillinger
Montana State Program Manager

Copies Furnished:

Steve Potts,
US EPA – Region 8 Montana Office
10 West 15th Street Suite 3200
Helena, MT 59626

Kevin McLaury
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U.S. ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 W. 15th STREET, SUITE 3200
HELENA, MONTANA 59626

Ref: 8MO

October 4, 2010

Mr. Brian Hasselbach
Environmental Programs Manager
Federal Highway Administration
585 Shepard Way
Helena, Montana 59601

and

Mr. Fred Bente
Consultant Design
Montana Dept. of Transportation
2701 Prospect Ave., P.O. Box 201001
Helena, MT 59620-1001

Re: EIS for Yellowstone County Route Connection Between I-90 and Old Highway 312 Near Billings, Montana

Dear Mr. Hasselbach and Mr. Bente:

The U.S. Environmental Protection Agency (EPA) Region 8 Montana Office has reviewed the September 7, 2010 Federal Register Revised Notice of Intent (NOI) to prepare an Environmental Impact Statement for a proposal to construct a connection between Interstate 90 and Old Highway 312 in or near the City of Billings, Yellowstone County, Montana.

The revised NOI states that the proposed project involves revision of the scope of the earlier Yellowstone County Bypass Route North of Billings EIS project for which an NOI was issued on August 13, 2003. The revised NOI states that re-scoping of the earlier project is necessitated by funding constraints. The revised scope of the proposed Yellowstone County Route Connection Between I-90 and Old Highway 312 Near Billings will include an additional Yellowstone River crossing for transportation system reliability; an additional connection between the Lockwood and Billing areas; and improved mobility to and from Billings Heights.

EPA provided EIS scoping comments in response to the earlier 2003 NOI for the Yellowstone County Bypass Route North of Billings project on September 3, 2003. We have reviewed and updated those scoping comments and are enclosing a revised set of scoping

comments for this Yellowstone County Route Connection Between I-90 and Old Highway 312 near Billings, Montana EIS (see enclosed).

EPA will review the EIS for this proposed transportation project in accordance with its authority and responsibilities to review EISs under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 of the Clean Air Act directs EPA to review and comment in writing on the environmental impacts of any major federal agency action. The EPA's comments will include a rating of both the environmental impact of the proposed action and the adequacy of the NEPA document. Our experience has shown that when environmental concerns are thoroughly evaluated, the EIS is a more meaningful document.

If you have any questions regarding our EIS scoping comments please call Mr. Stephen Potts of my staff in Helena at (406) 457-5022, or in Missoula at (406) 329-3313. Thank you for your consideration.

Sincerely,

Julie A. DalSoglio
Director
Montana Office

cc: Larry Svoboda/Connie Collins, EPA, 8EPR-N, Denver

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) INFORMATION/COMMENTS FOR DEVELOPMENT OF EIS FOR THE YELLOWSTONE COUNTY ROUTE CONNECTION BETWEEN I-90 AND OLD HIGHWAY 312 NEAR BILLINGS, MONTANA

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Introduction

Each project analysis has its own unique scope, affected environment, past and proposed impacts, and will require its own level of analysis. For this reason, it is not our intent to provide either a checklist or standard format. Instead, we have attempted to discuss and provide information on the primary issues we consider most relevant for this project as well as those items that have occasionally not been sufficiently addressed in similar analyses. Our goal is to promote comprehensive assessment of the environmental effects, public disclosure of all foreseeable direct, indirect, and cumulative environmental impacts, and ultimately an improved decision-making process for selecting among the project alternatives.

All activities and associated impacts related to project implementation must be disclosed. Clear, in-depth analysis of all relevant issues is a requirement in the development of an EIS. Readability, a logical presentation of information, consistency between sections of the assessment and clarity are important to the reader.

It is EPA's goal that the EIS fulfill the basic intent of NEPA, and encompass to the maximum extent possible the environmental and public involvement requirements of State and Federal laws, Executive Orders, rules, programs, and policies (e.g., Clean Water Act, Clean Air Act, Endangered Species Act, E.O.11990-Protection of Wetlands, etc.,). EPA appreciates the effort and resources that are committed to the preparation of documents of this nature and hopes to facilitate the process with these comments.

NEPA Issues

1. Purpose and Need

Documents must have a clear and logical Purpose and Need Statement, including adequate explanation of the purpose and need for the project and rationale for the establishment of the analysis area boundary. An appropriate analysis area should encompass the environment potentially affected by implementation of the alternatives, and should be able to serve as a baseline to compare projected impacts and for measuring actual effects. Road projects are generally confined to the narrowly defined impact areas along the roadway, however, potential impacts to biodiversity, wildlife and fish, water quality, air quality, wetlands, stream drainage patterns, fragmentation and connectivity to other projects, and socioeconomics, may extend beyond such boundaries. An appropriate analysis area should encompass the potentially affected environment, and should be able to function as appropriate unit of analysis for projecting anticipated impacts and for measuring actual effects, including indirect and cumulative effects.

Potential indirect and cumulative effects of providing a bypass route north of Billings with a potential new Yellowstone River crossing to alleviate traffic congestion may have significant indirect and cumulative effects on land use, growth rate, and patterns of growth, and resources affected by that growth. The EIS analysis area should be broad enough to assess and disclose these effects. We believe this analysis boundary should extend sufficiently far to

include potential areas that could be influenced by indirect growth related effects of the proposed bypass route.

2. Alternatives

The EIS should support the purpose and need with a range of alternatives that will meet the objectives of the purpose and need and that address issues of concern. In accordance with 40 CFR 1502.14 the alternatives should:

a. Rigorously explore and objectively evaluate all reasonable alternatives that meet the purpose and need for the project.
b. Include reasonable alternatives not within the jurisdiction of the lead agency.
c. Include a no action alternative. The no action alternative should be constructed to cover a period at least equal to the time over which environmental effects will be evaluated.
d. Identify the agency's preferred alternative(s).
e. Include appropriate mitigation measures not already included in the proposed action or alternatives.

Also, if there are any proposed nearby actions or adjacent developments that are closely related to the proposed action it would be appropriate to analyze and discuss those related developments as a connected action (40 CFR 1508.25).

We recommend that tables, maps, and figures, be used to present and display specific features of alternatives so that features of the different alternatives can be understood and evaluated in a comparative manner. Modified alignments and varying design standards should be considered among the features of alternatives. It is helpful if the rationale for inclusion and location of features is also discussed. Such rationale enhances public understanding of the proposed project, better achieves the public disclosure purpose of the EIS, and better explains to the public the trade-offs involved in making transportation design decisions.

Sustainability/Transportation Demand Management

The EPA publication "Transportation Planning in the Northwest; Framework for Sustainability" (available at http://yosemite.epa.gov/R10/EXTAFF.NSF/webpage/General+Subject+Publications) suggests that sustainable solutions to transportation problems are more likely to be realized by focusing on longer-term approaches that provide increased transportation choices (multi-modal mobility), that bring people to the activities or the activities to the people (accessibility), that foster community vitality, environmental justice, and quality of life (livability), and that meet our social, economic, and ecological needs without compromising the ability of future generations of all species to do likewise (sustainability).

Transportation solutions that shift the focus from addressing only mobility in terms of level of service (speed), to solutions that focus on achieving multi-modal mobility, accessibility, livability, and sustainability should be considered. A package of alternatives could include alternative transportation modes, trip reduction, land use adjustments, parking controls, pricing mechanisms, other incentives and/or disincentives, new route design or traffic circulation patterns, public transit improvements, and more. We encourage planners and decision makers to think in terms of reducing transportation demand, and where demand exists, address the real and underlying transportation need: to move people and goods --- *not only cars.*

3. Existing Conditions

The EIS should succinctly describe the existing conditions (using watershed analysis where applicable) within the analysis area. The discussion of existing conditions should include, but are not limited to a discussion of existing:

1. Water Resources
2. Air Quality (Present summary of monitoring data if available)
3. Wildlife Effects
4. Other (Noise, Pollution Prevention, Cultural Resources, Tribal, Env. Justice)

More detailed information on these topics follows in the **"Resource Issues"** section.

4. Environmental Consequences

The EIS should analyze and disclose the environmental impacts of the management alternatives, including the effect of implementing the alternative on the physical, chemical and biological resources such as air and water quality, biologic components or ecosystems, and the likelihood of success of mitigation measures. The discussion should include analysis of impacts resulting from activities on all land ownerships, and consider the issues discussed under Resource Issues below as well as unavoidable adverse environmental effects, short-term and long-term environmental considerations, and any irreversible or irretrievable commitments of resources involved with the alternatives should they be implemented. In accordance with 40 CFR 1502.16 this section should address:

a. Direct effects and their significance.
b. Indirect effects and their significance.
c. Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.
d. The environmental effects of alternatives including the proposed action.
e. Energy requirements and conservation potential of various alternatives and mitigation measures.
f. Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

g. Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
h. Means to mitigate adverse environmental impacts.

Statements made in the assessment should be substantiated either by data and analysis included in the document, or by reference to readily available supporting documents. When referencing documents or data not included in the NEPA document, information should be included to ensure the reader understands the quality and type of analysis actually completed. Environmental analysis documents should reflect the level of analysis and data compilation actually completed. Unless clearly documented, the reviewer may be unable to establish whether data exists to support conclusions within the analysis. Public accessability to supporting documents is also important.

Indirect Effects

The Council of Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA state that the environmental consequences section of an EIS should include: "Indirect effects and their significance (40 CFR 1502.16(b))." Indirect effects are defined as "...caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include **growth-inducing effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems**" (40 CFR 1508.9(b)). The CEQ regulations also indicate that the EIS should include the "means to mitigate adverse environmental effects" (40 CFR 1502.16(h)). This provision applies to indirect effects as well as direct effects. Since the CEQ regulations require an analysis of indirect effects, the best time to identify these effects is early in project planning, when there is better opportunity to mitigate them.

New road construction that improves traffic flow and eliminates congestion could increase access and contribute to induced or accelerated residential, commercial, and industrial growth. In many situations, one can argue that this type of growth is an inevitable, natural progression. However, *increased rates of growth* in these areas, caused by a highway project, constitute indirect effects and should be evaluated in the EIS. Induced or increased rates of residential, commercial, and industrial growth can adversely affect water quality, wetlands, wildlife habitat loss and fragmentation, ecosystem, farm land and other natural resources. Roads can change land use and the face of the landscape, and contribute to the loss of the very values people seek in an area. Road projects often result in induced growth effects (urban sprawl, loss of rural character), and stimulate increased use of privately owned vehicles and vehicle miles traveled. This in turn, leads to increased auto dependency. These types of indirect effects and appropriate measures to mitigate these effects should be fully disclosed in the EIS.

Much of the mitigation for indirect effects is subject to regulation by the city/county in which the highway will be constructed. The EIS should serve the function of offering the

city/county adequate notice of the foreseeable environmental consequences, thus providing the opportunity to plan and implement corrective measures, if needed, in a timely manner.

The EIS should identify the local land use controls that affect new development with regard to induced growth. If this analysis occurs before the highway project is completed, the city/county will be in a better position to effectively plan for future growth and develop mitigation measures for the impacts resulting from induced growth. Although the analysis of indirect effects should not rely solely on compliance with existing comprehensive land use plans. While comprehensive land use plans are an important component of the analysis of indirect effects, compliance with these plans could still result in adverse environmental effects.

EPA also fully supports and encourages local government efforts to control the location of development and reduce environmental impacts through the local planning process, by means such as stipulating in zoning and land use plans that development occur in designated growth areas, and integrating and coordinating land use planning with transportation and environmental planning and review. EPA encourages utilization of "smart growth" concepts to minimize effects of growth and development on the environment and proper planning and design of new infrastructure (see http://www.epa.gov/smartgrowth/). Local government infrastructure costs, including roads, can be significantly reduced by smart growth planning concepts. The EIS should identify potential mitigation techniques for induced growth and associated environmental effects, such as:

-access controls (location of interchanges)
-context sensitive designs
-local land use plans that affect or regulate new development
-zoning controls
-transfer of development rights
- growth management regulation (public facilities ordinances, development moratoria, urban growth boundaries, extraterritorial zoning/annexation)
- resource management and preservation regulations
-land acquisition and conservation easements
-incentives for Brownfields/infill development
-development fees and exactions.

Cumulative Effects

NEPA requires that cumulative impacts be addressed as a summary of the individual impacts of this and all other past, present, and "reasonably foreseeable" future plans and actions, regardless of what agency (Federal or non-Federal) or person undertakes such actions. The cumulative, site-specific effects of these projects on the analysis area's environment must be analyzed and disclosed. This should include identification of all the direct and indirect effects that are known, and a good faith effort to explain the effects that are not known but are reasonably foreseeable.

In January 1997 the President's Council on Environmental Quality (CEQ) published, "*Considering Cumulative Effects Under the National Environmental Policy Act*", guidance that provides a framework for analyzing cumulative effects (http://ceq.hss.doe.gov/nepa/ccenepa/ccenepa.htm). In 1999 EPA published a document entitled, "*Consideration of Cumulative Effects in EPA Review of NEPA Documents.*" This document can be found at http://www.epa.gov/compliance/resources/policies/nepa/ecological-processes-eia-pg.pdf http://es.epa.gov/oeca/ofa/legis.html . The cumulative effects analysis should:

1)Identify the area in which effects of the proposed project will be felt.

2) Determine resources within the project impact area that could be affected by the proposed action, particularly the resource most likely to be significantly impacted (i.e., resources of concern), and determine the geographic areas in which those resources will be affected. The important factor in determining cumulative impact is the condition of the resource (i.e., the extent to which it is degraded).

Use appropriate analysis area boundaries for the resource and time period over which the cumulative effects have occurred or will occur. In most cases, the largest of these areas will be the appropriate area for analysis of cumulative effects. The selection of geographic boundaries and time periods should be, whenever possible, based on the natural boundaries of resources of concern (e.g., watershed boundary for water quality issues). The temporal scope requires estimating the length of time that effects of the proposed action singly or in combination with other anticipated actions will last and be significant to the resources of concern. The period of time that the proposed action's impacts persist can extend beyond the project life. The analysis should extend until the resources have recovered from the impact of the proposed action.

3) Identify impacts that are expected to resources of concern in that area from the proposed project through analysis of cause-and-effects relationships. Knowing how a particular resource responds to environmental change (cause-and-effect relationship) is essential for determining the cumulative effects of multiple actions. Cause-and-effect pathways should be identified to understand how the resources respond to environmental change (i.e., what the effect is). The cause-and-effect relationships for each resource should be understood to determine the magnitude of the cumulative effect resulting from all actions included in the analysis.

4) Identify other actions -past, present, and reasonably foreseeable future actions- that have had or are expected to have impacts in the same area, and the impact or expected impacts from these other actions. Even unrelated actions conducted on by other agencies or persons on all land ownerships, if they contribute to cumulative effects on a resource, should be incorporated into the analysis.

The identification of the effects of past actions is critical to understanding the environmental condition of the area. The EIS should consider how past and present activities have historically affected and continue to affect the resources, ecosystems, and communities of concern. The concept of a baseline or environmental reference condition against which to compare predictions of the effects of proposed actions and reasonable alternatives is critical to the NEPA process. The baseline condition of the resource of concern should include a description of how conditions have changed over time and how they are likely to change in the future with and without the proposed action.

It is also important to incorporate future actions of agencies and the public into cumulative impact analyses. Good cumulative effects analysis requires close coordination among agencies and the public to ensure that all past, present and reasonably foreseeable future actions are considered. Reasonably foreseeable future actions need to be considered even if they are not specific proposals. The criterion for excluding future actions from analysis whether they are "speculative." In general future actions can be excluded from the analysis of cumulative effects if: a) the action is outside the geographic boundaries or time frame established for the cumulative effects analysis; b) the action will not affect resources of concern that are the subject of the cumulative effects analysis; and c) including the action would be arbitrary.

5) Determine the overall cumulative impacts that can be expected if the individual impacts are allowed to accumulate, and provide comparisons of cumulative impacts for the proposed actions and the reasonable alternatives in relation to the no action alternative and/or an environmental reference point. The analyses should provide a clear basis for choice among options by the decision maker and the public. Monitoring should be put in place to evaluate predictions and mitigation effectiveness.

A summary listing of other projects occurring in the vicinity without the accompanying analysis is insufficient. A common inadequacy of documents is the lack of analysis or disclosure of the sum of individual effects of all projects on the local environment. Connected actions which result in increased cumulative effects are of concern to the EPA. Some examples are:

- Linked Developments - If the construction of a new road or reconstruction of an existing road will likely facilitate or cause additional developments, the effects of these linked impacts must also be analyzed.

- Maintenance and Debris Disposal - Road standards and design have a major effect on scheduled and unscheduled maintenance needs. The needs for normally scheduled maintenance debris from ditch cleaning, sanding as well as anticipated but unscheduled maintenance, such as debris from slumps, should be analyzed and planned for during the design phase of construction and reconstruction projects. Past practices of expediently sidecasting material over the shoulder, filling depressions and widening shoulders have an adverse effect on wetlands and riparian areas and are inappropriate. Plans for long term normal as well as emergency maintenance programs should be disclosed in the

NEPA document and a specific site disposal plan describing proper site development, disposal of debris and timely rehabilitation of completed portion to prevent invasion by noxious or undesirable vegetation should be prepared. Plans for management of roadside vegetation through the use of herbicides also require disclosure.

- Winter maintenance - The EPA is concerned about the proximity of wetlands, riparian areas and streams to many roads. Winter maintenance often results in the introduction of sediment and salt either directly or indirectly to the stream and associated riparian and wetland resources. The impacts of winter maintenance activities are more a matter of a long term indirect and cumulative effects than of one specific incident. Snow plowing subsequent to sanding moves sand and salt off the roadbed to the adjacent ditchline and fill slopes. It then migrates downhill until it is deposited in streams or forms a carpet on gentle ground. When this occurs in a wetland, the area's functional abilities are altered. When winter maintenance may potentially affect wetlands, riparian areas or water quality, the effects of the program must be disclosed in a NEPA document. This should include the steps taken to minimize and mitigate the unavoidable effects on waters of the United States (i.e. sediment traps, reuse of sanding material, maintenance program requirements, etc.) as well as a discussion of the effects themselves.

  Road agencies often initiate winter maintenance on roads neither designed nor previously managed as all-weather roads. Therefore, even if winter maintenance is not anticipated at the time the NEPA document is developed, it must still be analyzed. Alternatively, a mechanism may be initiated that would explicitly disallow the practice of winter maintenance until documentation of the effects of such a program and its associated impacts is completed.

Mitigation

A comprehensive discussion of proposed mitigation for direct, indirect and cumulative impacts is required by the CEQ Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1502.14(f)). The CEQ regulations state that an EIS should include the means to mitigate adverse environmental effects (40 CFR 1508.7). Mitigation measures must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated. A reasoned analysis of potential detrimental effects and measures to mitigate those effects is required. Simply listing the mitigation measures is insufficient to qualify as the reasoned discussion or "hard look" required by NEPA.

Judicial reviews of NEPA cases have supported not only the need for identifying mitigation measures, but for discussing mitigation effectiveness as well. The EIS should provide a quantitative (if possible) and/or a qualitative description of site-specific mitigation effectiveness. Mitigation effectiveness is determined by using a monitoring procedure designed to compare baseline data with existing conditions. It should also address coordination efforts required to undertake mitigation measures.

Resource Issues

1. Water Resources

Surface Water/Aquatics

The EIS should clearly describe water bodies within the analysis area which may be impacted by project activities. Identifying affected watersheds and drainages on maps of the various alternatives helps convey their relationship with project activities.

The EPA considers the collection of baseline water quality and aquatic habitat data at the project level important to provide a comparison with projected impacts as well as actual project impacts. Water quality and aquatic habitat impacts associated with implementation of the alternatives should be fully evaluated and disclosed. Where water quality and aquatic habitat information for individual water bodies exists, it should be presented. This would include inventories; baseline data information such as temperature, sediment, turbidity, channel morphological conditions, the presence of toxic substances; water quality and the existence of any known point or non-point pollution sources or other problems. Other information relevant to the analysis, such as hydrologic condition and aquatic species habitat and the condition and productivity of that habitat, should also be included.

Existing water quality standards applicable to the affected water bodies should be presented to provide a basis for determining whether beneficial uses will be protected and water quality standards met. The EIS should clearly demonstrate that project implementation will comply with State Water Quality Standards (ARM 17.30 Subchapter 6), including an antidegradation analysis, as specified in the EPA Antidegradation Policy (40 CFR 131.12) and Montana Nondegradation Rules (ARM 17.30 Subchapter 7).

The EIS should provide a quantitative basis to judge whether biological, chemical, and physical parameters, such as sediment accumulation, nutrient loading, temperature, turbidity, and aquatic habitat, will be kept at levels that will protect and fully support designated uses and meet Montana Water Quality Standards under each of the action alternatives. A discussion of area developments, geology, topography, soils and stream stability in terms of erosion and mass failure potential may be necessary to adequately portray the potential risk to water quality, aquatic habitat and other resources from the implementation of specific alternatives.

Fisheries information such as fish species present, populations, and important fisheries habitats such as spawning gravels, over-wintering pools, etc., particularly near river crossing locations, should be described and project effects upon fisheries disclosed. The EIS should clearly describe the effect of each alternative on designated uses for area surface waters with particular attention to fisheries spawning and rearing habitat. It should also identify which water quality parameters, if any, are limiting factors to local fisheries under each alternative. This information should identify the extent to which fish habitat could be impaired by road and bridge

construction activities including effects on stream structure, seasonal and spawning habitats, large organic material supplies, and riparian habitats.

Section 319 of the Clean Water Act requires that Federal actions be consistent with State Nonpoint Pollution Management Plans. The Federal consistency provisions of Section 319 represent an opportunity for State and Federal agencies to more closely coordinate their activities and cooperate in achieving water quality goals. If a State determines that a Federal project is not consistent with the provisions of the non-point source pollution program, the Federal agency must make efforts to accommodate the State's concerns. Executive Order 12372 provides guidelines for using the State intergovernmental review process for conducting Section 319 federal consistency reviews.

The appropriate State-identified Best Management Practices (BMPs) to reduce potential non-point sources of pollution from road and bridge construction and maintenance must be designed into the alternatives under consideration and disclosed. All possible efforts should be made to avoid and minimize siltation during construction of roads near streams and roads that require bridges or culverts. Direct or indirect non-point source water quality effects should be reduced through planning and design, and through mitigation measures to ensure consistency with the state's non-point source pollution program. The State contact for Federal consistency and non-point source pollution issues is, Robert Ray at MDEQ in Helena at 444-5319.

River/Stream Crossings

Road and bridge construction can result in increased surface water runoff, stream channel and hydrologic alteration, wetland modification and other water quality related problems. Culverts and bridges should be designed to accommodate flood flows with no substantial changes in flood elevation, and culverts should be designed to match the hydraulic traits (depth, velocity, and patterns) of natural streams. Bridges should avoid encroachment upon floodplains and should not increase base flood elevation above 0.5 feet from the natural condition. Impacts to biota and stream stability and deposition patterns due to restrictions in stream bedload transport by highway bridge spans and/or culverts should be evaluated and disclosed (i.e., bedload transport should be an important design criterion for bridges and culverts to avoid sediment deposition above river crossings or scour below river crossings).

Construction of bridges with wide spans on pilings as opposed to fill, and at stable river locations that avoid sensitive resources is preferred. Bridges with wide spans also afford opportunities for wildlife passage, and reduced wildlife-vehicle collisions, and minimize impacts to riparian ecosystems. Bridges or open bottom arch culverts that allow natural stream bed substrate and stream grade, and sufficient width and capacity to pass flood flows, and bedload transport with minimal encroachment upon the river channel and riparian area are preferred. We recommend that culverts simulate the natural stream grade and substrate as much as possible to avoid concerns with fish passage. Bridge road runoff should be collected so that it is not allowed to directly enter surface waters without treatment.

Stream channel modifications should be avoided. If channel modifications are unavoidable (which will have to be well documented and concurred upon by regulatory agencies), they should simulate the original natural channel lengths and aquatic habitat features as much as possible. It is preferable to restore channel length and natural riffle/pool sequences as much as possible without installation of artificial grade control structures, although if channel length cannot be restored, grade control structures may be necessary in certain circumstances to maintain channel stability. We also recommend that aquatic biologists and staff with training and knowledge of fluvial geomorphology be consulted during design of stream channel modifications.

Storm Water Runoff

Storm water discharges associated with highway construction are an industrial activity according to EPA's Storm Water Regulations (40 CFR 122.6). Highway construction projects must obtain an NPDES (MPDES in Montana) storm water permit if construction activities will disturb five or more acres of land. For projects within the jurisdiction of small municipalities (less than 100,000 people), and under five acres, other requirements may apply. Construction activities may be covered by a general NPDES (MPDES) permit rather than an individual permit. If a storm water permit is required, on site notification must be posted, along with a pollution prevention plan.

Normal highway runoff, aside from significant spills of hazardous material, contains contaminants which could affect surface and ground water quality. The EIS should characterize the quality of rivers, streams, lakes, and ground water resources in the vicinity of the project as well as the quality of the anticipated highway runoff. BMPs for collecting and treating storm water during construction and post-construction should be outlined in the EIS. If increases in storm water flows occur due to increases in impervious surfaces these increases should be described and addressed. Provisions for hazardous waste containment in case of a spill, and means of collection and treatment of storm water runoff should also be included. If there are any questions about storm water permitting activities, contact Brian Heckenberger of MDEQ in Helena at 444-5310.

Road Maintenance and Construction

Road standards and design have a major effect on scheduled and unscheduled maintenance needs. The needs for normally scheduled maintenance debris from ditch cleaning, sanding as well as anticipated but unscheduled maintenance, such as debris from slumps, should be analyzed and planned for during the design phase of construction and reconstruction projects. Past practices of expediently sidecasting material over the shoulder, filling depressions and widening shoulders have an adverse effect on wetlands and riparian areas and are inappropriate. Plans for long term normal as well as emergency maintenance programs should be disclosed in the NEPA document and a specific site disposal plan describing proper site development, disposal of debris and timely rehabilitation of completed portion to prevent invasion by noxious

or undesirable vegetation should be prepared. Plans for management of roadside vegetation through the use of herbicides also require disclosure.

Winter maintenance often results in the introduction of sediment and salt either directly or indirectly to the stream and associated riparian and wetland resources. The impacts of winter maintenance activities are more a matter of a long term indirect and cumulative effects than of one specific incident. Snow plowing subsequent to sanding moves sand and salt off the roadbed to the adjacent ditchline and fill slopes. It then migrates downhill until it is deposited in streams or forms a carpet on gentle ground. When this occurs in a wetland, the area's functional abilities are altered. When winter maintenance may potentially affect wetlands, riparian areas or water quality, the effects of the program must be disclosed in a NEPA document. This should include the steps taken to minimize and mitigate the unavoidable effects on waters of the United States (i.e. sediment traps, reuse of sanding material, maintenance program requirements, etc.) as well as a discussion of the effects themselves.

Road agencies often initiate winter maintenance on roads neither designed nor previously managed as all-weather roads. Therefore, even if winter maintenance is not anticipated at the time the NEPA document is developed, it must still be analyzed. Alternatively, a mechanism may be initiated that would explicitly disallow the practice of winter maintenance until documentation of the effects of such a program and its associated impacts is completed.

303(d) Listed Water Bodies & TMDLs

It is important that any water bodies in the project area that are listed by the State of Montana as having impaired water quality (on Montana 303(d)-list) be identified. Section 303(d) of the Clean Water Act (CWA) requires that States develop a list of water bodies where existing pollution controls or requirements are inadequate to attain and maintain WQS. The 303(d)-list includes water bodies that are impaired or threatened by pollutants from point sources, nonpoint sources, or a combination of both. The Montana Department of Environmental Quality (MDEQ) website, http://cwaic.mt.gov/ provides information on water bodies on the Montana 303 (d) list.

Stream segments designated as "water quality impaired" and/or "threatened" listed on State 303(d) lists require development of a Total Maximum Daily Load (TMDL). Information on TMDL development can be found at the DEQ's website, including their Understanding TMDLs pamphlet at, http://deq.mt.gov/wqinfo/TMDL/default.mcpx .

Pending completion of a TMDL in Montana, new and expanded nonpoint source activities may commence and continue, provided those activities are conducted in accordance with "reasonable soil, land and water conservation practices" (MCA 75-5-703). The Administrative Rules of Montana (17.30.602) define these as "methods, measures, or practices that protect present and reasonably anticipated beneficial uses." EPA's policy is that activities conducted in the watershed of 303(d) listed streams should avoid further degradation of the

impaired streams, and should be consistent with TMDLs and associated WQRPs intended to restore water quality and beneficial use support in the long term.

The EIS should describe how the proposed project might affect impaired streams in the analysis area, particularly how the water quality parameters causing the impairment and 303(d) listing may be effected. The proposed project should avoid aggravating water quality impairments. Proposed road and bridge development should be discussed with MDEQ and any local watershed groups that are involved in preparing TMDLs and watershed restoration plans for the impaired streams. The MDEQ should be asked to indicate if the proposed road and bridge developments are consistent with the State's development of TMDLs for the water quality impaired streams (i.e., contact Robert Ray, MDEQ at 406-444-5319 or Dean Yashan at 406-444-5317).

Wetlands

Wetlands are significant environmental resources that provide a wide range of important functions and values. They have experienced severe cumulative losses nationally. For these reasons protection of wetlands and other important aquatic resource habitats is a high EPA priority.The EIS must clearly describe the existing wetlands within the analysis area; their acreage, type and ecological function and how both acreage and function will be protected. Road construction clearing and earthwork generally include sedimentation and hydrologic impacts which at some level may cause changes to surface and subsurface drainage patterns and, ultimately, wetland integrity and function. Executive Order 11990 requires that all Federal Agencies protect wetlands.

Where dredge or fill activity is proposed in waters of the United States, all aquatic resource areas, including wetlands, should be clearly identified and assessed in relation to project impacts in accordance with Clean Water Act Section 404 permit requirements. The Section 404(b)(1) Guidelines provide the substantive environmental criteria for protecting waters of the U.S. under Section 404 of the Clean Water Act. Wetlands in the project area should be identified and delineated consistent with the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report and its recent guidance on implementation. Delineation should be followed by a functional assessment to determine the extent and importance of existing wetland and aquatic resources.

Avoidance of wetland losses is a primary requirement of the Section 404(b)(1) guidelines [40 CFR 230.10(a)]. The Corps of Engineers and EPA, through their Mitigation Memorandum of Agreement, state they will ".... strive to avoid adverse impacts and offset unavoidable adverse impacts to existing aquatic resources, and for wetlands, will strive to achieve a goal of no overall net loss of values and functions." Planning and design should seek to avoid impacts wherever possible, to minimize impacts which are unavoidable, and, as a final alternative, to provide adequate compensation for all unavoidable impacts. This will require a thorough evaluation of all less environmentally damaging project alternatives. For non-water dependent activities, such

as roads, alternatives to siting in wetlands are presumed to be available unless demonstrated otherwise. Avoidance is required before compensatory mitigation will be considered.

The document must provide a clear description of anticipated direct, indirect and cumulative adverse impacts to wetlands from all planned activities. Wetland mitigation strategies, methods and programs should be disclosed in the assessment and included in the overall site mitigation plan. We recommend that a detailed compensatory mitigation plan be developed for unavoidable wetland and aquatic resource impacts (see attached Mitigation Plan Requirements). This mitigation plan should include consideration of both direct, indirect, and cumulative effects. It should contain a statement of goals, a monitoring plan, long-term management/protection objectives and a contingency plan (a commitment to conduct additional work if required to meet the goals of the plan). The mitigation plan should also include best management practices and mitigation measures that will manage stormwater runoff from roadways before it reaches wetlands, streams and other aquatic habitats. In general, wetlands, including mitigation wetlands, should not be used for treatment of stormwater. EPA guidance on wetland mitigation can be found at http://www.epa.gov/owow_keep/wetlands/wetlandsmitigation/index.html , and the latest EPA/Corps of Engineers regulations on Compensatory Mitigation for Losses of Aquatic Resources can be found at, http://www.epa.gov/owow/wetlands/pdf/wetlands_mitigation_final_rule_4_10_08.pdf .

To assure consistency with the 404(b)(1) Guidelines, a thorough analysis of all possible alternatives to avoid and minimize wetland and aquatic resource habitat impacts should be addressed through the NEPA EIS process. These alternatives can include project design changes including roadway alignment reconfiguration, modifications to size and configuration, bridges, construction on pilings as opposed to fill, abandonment of realignment proposals in highly sensitive areas, or use of safety devices to meet road safety objectives. We recommend that a draft 404(b)(1) analysis be prepared for the preferred alternative and appended to the EIS. We also recommend coordination with the Corps of Engineers staff (Todd Tillinger in Helena at 441-1375 or Catherine Juhas in Billings at 657-5910) and MDEQ 401 certification staff (Mr. Jeff Ryan at 444-4626) and other state and federal resources agencies when developing alternatives to determine whether impacts to wetlands can be eliminated or reduced.

Ground Water

Ground water under a road construction area may serve as a drinking water supply and/or a recharge source of nearby surface water bodies. Accordingly, contamination from road construction activities could have an adverse public health or ecological impact on such resources. An assessment of activities and potential contaminants used in the highway project should be conducted to determine risk of the project to ground water. Mitigation measures should be developed to assure that the ground water is adequately protected from the identified risks.

With regard to water supply wells or springs, the Federal Highway Administration should work with State environmental authorities and water purveyors (including private well owners) to identify what part, if any, of the project crosses present or planned water supply recharge areas. Highway authorities should also determine whether the project is located in a delineated Source Water Protection Area. Locally mandated wellhead program mitigation measures should be followed to protect the water supplies. The state contact for the Source Water Protection Program is Joe Meek at MDEQ at 444-4806.

Underground Storage Tanks

EPA considers leaks from Underground Storage Tanks (UST's) a serious threat to human health, soil, and ground water resources. Unidentified UST's containing petroleum and hazardous substances could be encountered during highway construction. Many of these tanks have been abandoned and still contain petroleum residues . If any UST's are found in the proposed right-of-way Tillman McAdams of EPA at 457-5015 must be notified. The State contact for UST's is Jim Hill of MDEQ at 444-0481.

The EIS should address any known impacts associated with the closure (in situ or removal) of the tanks. For unknown impacts the EIS should address site assessments, initial response (if a leaking tank is discovered), corrective action plans to treat contamination caused by leaking UST's, disposal procedures for the tank, and contaminated soils and ground water.

Hazardous Waste Sites

Highway routes and potential rights of way should be examined for proximity to hazardous waste sites. Projects that located near hazardous waste sites should provide mitigation measures that will safely avoid hydrologic and other disturbances of these sites. Mr. Mike Trombetta of MDEQ at 444-5877 may be contacted as an information source for hazardous waste sites in the area. A commonly used source for identification of known hazardous waste sites is the CERCLIS inventory generated from the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

2. Air Quality

The effects of the various alternatives on air quality must be quantified. Generally, the primary air quality concern with highway construction is the effect of motor vehicle emissions on air quality and their impact on 1) non-attainment areas, 2) Class I and II protection areas and 3) areas where an air quality standard could be violated by increases in emissions due to increased motor vehicle use facilitated by completion of the project. Existing air quality and meteorological monitoring data should be presented, as well as needed data gathering to adequately perform air quality analysis and any monitoring proposed. Air quality program information may be found at MDEQ's website, http://deq.mt.gov/AirQuality/AQinfo.mcpx .

The air quality analysis must demonstrate that the proposed alternative would not cause or contribute to any violations of the National Ambient Air Quality Standards, that it will not cause the air quality to degrade by more than any applicable PSD (Prevention of Significant Deterioration) increment, and that it will not cause or contribute to visibility impairment.

The following discussion presents the general criteria by which an EIS dealing with mobile sources is evaluated for air quality impacts. This discussion presents the areas to be considered rather than the details of the analysis. A project with potentially minimal effects on air quality may not need to consider all the points mentioned below.

(1) A description of the existing air quality should be presented, including the study areas designation of attainment or non-attainment of National Ambient Air Quality Standards. We note that portions of Billings are classified as nonattainment areas for carbon monoxide and for sulfur dioxide, see http://deq.mt.gov/AirQuality/Planning/AirNonattainment.mcpx . It will be important for the proposed project to demonstrate conformity with the State Implementation Plan (SIP) for the Billings nonattainment areas.

(2) A localized analysis of pollutants particularly carbon monoxide (CO) is needed. In most cases the eight-hour standard of 9 ppm is the controlling standard. However, it is useful to provide both one-hour and eight-hour concentrations. This analysis is required and should be proportional to the scope of the project.

(3) Areawide analysis should be done for CO, PM_{10} (emissions and particulates made airborne from automobile use), and Volatile Organic Compounds as well as any other criteria pollutants or hazardous pollutants which may be affected by the project. Attention to fugitive dust may also be important considering the particulate matter nonattainment status. Some of this analysis may not be necessary if the project is included in the State Implementation Plan (SIP) emission inventory.

(4) The analysis should include a comparison of the "No Build" and all Build alternatives for existing conditions, worst case conditions, and the design years.

(5) The traffic analysis should show the project's impact on average daily traffic and speeds. The assumed population growth used to project traffic volumes should be identified to assure consistency with the population projections in the SIP, and local long range plans. The analysis should include any increase in travel arising from improved travel conditions, which should be explained in the document.

(6) Construction impacts, such as fugitive dust and equipment emissions, and appropriate control measures to be taken should be discussed.

(7) Monitoring should be conducted at areas of maximum concentration to which the public may be exposed. Refer to 44 FR 27586 (May 10, 1979) for monitoring guidance.

(8) An appropriate model should be used, based on the project scope. MOBILE 6 is the most recent mobile source emission factor model released by EPA.

(9) A determination of whether the project conforms to the State Implementation Plan is required in Section 176(c) of the Clean Air Act (as amended November 15, 1991), and a description of any State or local air quality regulations on SIP requirements covering specific activities occurring as part of the project construction and/or implementation.

The conformity provisions of the Section 176(c) of the Clean Air Act requires that all Federal actions conform to existing State Implementation Plans (SIP's), and prohibits Federal agencies from taking any action that causes or contributes to a new violation of the NAAQS, increases the frequency or severity of an existing violation, or delays the timely attainment of a standard. Under section 176(c), the Federal agency responsible for a proposed action is required to determine if its action will conform to the applicable SIP before the final EIS is completed. The final rule on the conformity provision can be found in 40 CFR Parts 51 and 93.

You may want to contact Tim Russ of EPA Denver at 303-312-6479 if you have questions regarding the extent of appropriate air quality analysis or air quality issues or Clean Air Act requirements. Bob Habeck of MDEQ at 444-7305 is a State contact on Clean Air Act issues.

3. Wildlife Effects

In the case of new road alignments or widening of existing roads, the EIS should evaluate direct and indirect (induced growth) wildlife effects. Affected environment sections should include current quality and capacity of habitat, usage by wildlife near the proposed project, and known wildlife corridors/trails and wildlife fragmentation and connectivity. Existing wildlife mortality should be disclosed if known. Environmental Consequences sections need to evaluate increased mortality from higher traffic levels, habitat removal, reduced access to available habitat and habitat fragmentation, effects on biodiversity (see Biodiversity below), and estimated reductions in impact from mitigation. Route alignment, road design standards, key topographic features, and the linear nature of roads often result in a road which has a predilection to affect wildlife or another component of the environment. The classic example of this is the road in the bottom of a narrow valley and its effects on the stream and associated riparian and wetland areas and resident wildlife. Construction of long, continuous segments of guardrail and snowplowing can have unfortunate effects on wildlife. These types of effects should be disclosed and mitigated.

Road wildlife crossings should be dedicated for wildlife use to reduce wildlife mortality, connect habitat areas, and reduce traffic accidents. Crossings should be of sufficient width, contain minimal dark passages, and employ wing fencing techniques. The extent to which river/stream crossings can also serve as wildlife crossings (assuming stream crossings coincide with areas where there is wildlife movement or an opportunity to reduce mortality rates) should be evaluated. We note that information regarding wildlife and highway conflicts and mitigation may be found at, : http://www.fhwa.dot.gov/environment/wildlifecrossings/overview.htm ; http://www.hsus.org/wildlife/issues_facing_wildlife/wildlife_crossings_wild_animals_and_roads/ , and www.berrymaninstitute.org .

There are two documents that we suggest as references for evaluation of wildlife crossing issues: "*Critter Crossings, Linking Habitats and Reducing Roadkill,*" U.S. Dept. Of Transportation, FHWA, Office of Natural Environment, February 2000; and "*Evaluation of Ecological Impacts From Highway Development,*" U.S, EPA, April 1994, http://www.epa.gov/compliance/resources/policies/nepa/ecological-impacts-highway-development-pg.pdf .

Route selection, alignment, road design standards, key topographic features, and the linear nature of roads often result in a road which has a predilection to affect a particular component of the environment. The classic example of this is the road in the bottom of a narrow valley and its effects on the stream and associated riparian and wetland areas and resident wildlife. Construction of long, continuous segments of guardrail and snowplowing may also have unfortunate effects on wildlife. These types of effects must be disclosed.

Threatened and Endangered Species

If the proposed activities could affect threatened or endangered species (e.g., bull trout, bald eagle, gray wolf, lynx, etc.,), the EIS should include the Biological Assessment and the associated U.S. Fish and Wildlife Service (FWS) Biological Opinion or formal concurrence for the following reasons:

(1) NEPA requires public involvement and full disclosure of all issues upon which a decision is to be made;
(2) The CEQ Regulations for Implementing the Procedural Provisions of NEPA strongly encourage the integration of NEPA requirements with other environmental review and consultation requirements so that all such procedures run concurrently rather than consecutively (40 CFR 1500.2(c) and 1502.25); and
(3) The Endangered Species Act (ESA) consultation process can result in the identification of reasonable and prudent alternatives to preclude jeopardy, and mandated reasonable and prudent measures to reduce incidental take. These can affect project implementation.

Since the Biological Assessment and EIS must evaluate the potential impacts on listed species, they can jointly assist in analyzing the effectiveness of alternatives and mitigation

measures. EPA recommends that the final EIS and Record of Decision not be completed prior to the completion of ESA consultation. If the consultation process is treated as a separate process, the Agencies risk USFWS identification of additional significant impacts, new mitigation measures, or changes to the preferred alternative. If these changes have not been evaluated in the final EIS, a supplement to the EIS would be warranted.

Biodiversity

While generally not a major issue of concern for smaller road improvement projects, biodiversity may be a critical consideration for new alignments, major reconstruction or when special habitats (i.e., wetlands, threatened and endangered species habitat) will be affected. The state of the art for this issue is changing rapidly. CEQ prepared guidance entitled, "Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act," http://ceq.hss.doe.gov/publications/incorporating_biodiversity.html .

4. Other Issues

Noise

We recommend that the following information be included in the EIS to describe the existing environment and to evaluate the noise effects of the proposed project and the alternatives.

(1) the existing and anticipated land uses near the project site or route that have a sensitivity to noise and the number of people living near the route;
(2) the existing noise levels adjacent to the proposed alignments;
(3) the predicted noise levels from alternatives;
(4) the noise abatement measures that will be used to reduce noise from the completed project and noise generated during construction including noise walls, building insulation and acquisition;
(5) the number of residences/businesses exceeding noise thresholds for each alternative;
(6) the number of residences/businesses exceeding a 10 dBa increase in noise levels (show on a map); and
(7) the facilities that can not be protected by noise abatement measures and the impact on the occupants.

Pollution Prevention

Pollution Prevention, also known as "source reduction," encompasses practices which reduce, eliminate, or prevent pollution at its source. By reducing the total amount of pollution that is produced, there is less waste to control, treat, or dispose of, and there are less hazards posed to public health and the environment. Under Section 6602(b) of the Pollution Prevention Act of 1990, Congress established a national policy that organizes preferences for pollution

prevention. CEQ provided guidance for incorporating pollution prevention into NEPA through a memorandum to Federal Department and Agency heads (Federal Register, January 29, 1993, pages 6478 – 6481.The Montana Pollution Prevention Program may be of assistance see http://www.montana.edu/wwwated/ .

Cultural Resources

The environmental impact analysis for the road and bridge should include evaluation and protection of cultural, historical and archaeological resources. Cultural, historical, and archaeological resource analyses should be conducted and completed as much as possible as part of the environmental analysis for the EIS. Knowledge of the presence or absence of significant cultural, historical and archaeological resource protection needs may be important for a reasoned choice among management alternatives.

Tribal Coordination

Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," was issued on November 6, 2000 to assure meaningful consultation and collaboration with tribal officials in the development of Federal policies with tribal implications, and to strengthen U.S. government-to-government relationships with Indian tribes. Agencies are directed to respect Indian tribal self-government and sovereignty, honor tribal treaty & other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments, and have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Tribal trust resources are located within the exterior boundaries of reservations and outside the reservation in Usual and Accustomed fishing and hunting areas. Agencies should assess all impacts to tribal trust resource and include those impacts in the agencies' environmental documents, and should consult to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. The environmental document shall fully disclose the potential environmental impacts, both negative and positive, on tribal trust resources.

Environmental Justice

E.O. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," requires that Federal agencies make environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations. Environmental justice encompasses a broad range of impacts covered by NEPA, including impacts on the natural or physical environment and interrelated social, cultural, and economic impacts. Guidance on addressing Executive Order 12898 in NEPA documents is available at http://www.epa.gov/compliance/resources/policies/nepa/enviro_justice_309review.pdf .

U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

Definitions and Follow-Up Action*

Environmental Impact of the Action

LO - - Lack of Objections: The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC - - Environmental Concerns: The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO - - Environmental Objections: The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU - - Environmentally Unsatisfactory: The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 - - Adequate: EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 - - Insufficient Information: The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 - - Inadequate: EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE
FEDERAL BUILDING, 10 W. 15th STREET, SUITE 3200
HELENA, MONTANA 59626

Ref: 8MO

April 19, 2011

Mr. Thomas S. Martin, P.E., Chief
Environmental Services Bureau
PO Box 201001
Helena, MT 59620-1001

Re: EPA Comment on Preliminary Alternatives
Analysis Information for Billings Bypass EIS

Dear Mr. Martin:

This letter is in response to the e-mail message EPA staff received on April 8, 2011 from your Billing Bypass Project EIS consultant (David Evans and Associates, Inc.) regarding the preliminary alternatives analysis for this project.

It may be helpful to provide some background in regard to EPA's review of the preliminary alternatives analysis information attached to the above referenced e-mail. At an April 1, 2011 interagency meeting on the Billing Bypass EIS project, EPA's representative expressed concerns that the draft purpose and need for the Billings Bypass EIS project, which specified a need for a new Yellowstone River crossing, had potential to be construed as limiting the range of reasonable alternatives evaluated during the EIS analysis. It was noted that Courts have held that purpose and need statements should be defined to reflect the objective, general need for the proposed activity rather than a specific narrow course of action preferred by the agency. EPA suggested that it may be better to identify a need for improved travel access and north-south connectivity between I-90 and old highway 312 in the purpose and need statement, and then let river crossing alternatives emerge out of the alternatives analysis in the EIS.

The Corps of Engineers representative stated at this meeting that transportation projects are not water dependent, and a transportation alternative that avoids impacts to aquatic resources was presumed to be available unless it was demonstrated that such an alternative is not "practicable" in accordance with the Clean Water Act (CWA) 404(b)(1) Guidelines (40 CFR Part 230). The Corps noted that only the "least damaging practicable alternative" in terms of impacts to aquatic resources can be permitted under Section 404 of the CWA. The term "practicable" is defined in 40 CFR 230.3(q) as available and capable of being done after taking into consideration cost, existing technology and logistics in light of overall project purposes. It was also noted that permitting requirements should be integrated into the EIS process as much as possible so that permitting and EIS processes occur concurrently to avoid project delays (40 CFR 1500.2(c)).

The MDT, FHWA and local government officials responded at the April 1 meeting that they strongly believed that there was a need for a new Yellowstone River crossing to improve mobility and connectivity in the eastern area of Billings. They preferred to retain their current purpose and need statement identifying a new Yellowstone River crossing as a project need, although they said they would check with their legal counsel regarding NEPA process and legal risks. Local, state and federal transportation officials said they had been studying Billings area transportation needs for over 10 years and they knew they needed a new Yellowstone River crossing to connect I-90 and old Highway 312 in Billings; add redundancy to the transportation system; provide an additional connection between Billings and Lockwood; and improve mobility to and from Billings Heights. The MDT and FHWA officials also stated that it was their intent to discuss alternatives that did not involve a new river crossing in an "Alternatives Considered But Dismissed" section of the EIS, and indicated that a draft 404(b)(1) analysis would be appended to the EIS.

With this background information provided, EPA's preliminary review of the information in the range of alternatives packet indicates that the various river crossing alignments in the packet appear to be reasonable, however, we do not see a discussion of "Alternatives Considered But Dismissed" in the packet. Information must be provided to demonstrate that alternatives that avoid impacts to aquatic resources were evaluated adequately to dismiss them (i.e., alternatives involving improvements to existing roads and bridges). While EPA gives deference to the lead transportation agencies in determining purpose and need for the EIS project under NEPA, it is also important that CWA 404 permit procedures be followed when a NEPA project may require a 404 permit.

The preferred alternative emerging out of the NEPA analysis must be considered the least damaging practicable alternative to aquatic resources in order for the Corps of Engineers to proceed with authorization under Section 404 of the CWA. It is the responsibility of the 404 permit applicant to prove that the least damaging alternative has not been inappropriately screened out during the review process. Potential alternatives that are less damaging to aquatic resources need to be determined not to be "practicable" in accordance with 40 CFR Part 230.

The rationale and supporting information for dismissing alternatives without a new river crossing may be included in the "Alternatives Considered But Dismissed" section of the EIS, as well as in the draft 404(b)(1) analysis, however, it is important that these EIS sections include adequate supporting information to demonstrate that less damaging alternatives to aquatic resources are not "practicable" in the context of the CWA.

Accordingly, we recommend that the draft "Alternatives Considered But Dismissed" section in the EIS and the draft 404(b)(1) analysis be prepared and distributed for review to assure that the Billings Bypass project is determined to be consistent with both NEPA and CWA requirements. If this project has a 10+ year planning history such information is likely available. This will facilitate both EIS environmental review and permitting, and thus, help avoid project delays. It is relevant to note that integration of NEPA and 404 permit processes has long been an important topic in transportation planning, http://www.environment.fhwa.dot.gov/projdev/tdmnepa404.asp.

If you have any questions please feel free to call me in Helena at 406-457-5002 or you may call Mr. Steve Potts of my staff at 406-329-3313 or 406-457-5022. We thank you for your consideration.

Sincerely,

FOR Julie A. DalSoglio
Director
Montana Office

cc: Larry Svoboda/Connie Collins, EPA 8EPR-N, Denver
Toney Ott/Jim Luey, EPA, EPR-EP, Denver
Robert Ray/Jeff Ryan, MDEQ, Helena
Todd Tillinger, USACE, Helena
Shannon Johnson, USACE, Billings
Mark Wilson, USFWS, Helena

U.S. FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
ECOLOGICAL SERVICES
MONTANA FIELD OFFICE
585 SHEPARD WAY
HELENA, MONTANA 59601
PHONE (406) 449-5225, FAX (406) 449-5339

File: M.44. MDT (I) November 23, 2010

Tom S. Martin, Chief
Environmental Services Bureau
Montana Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, Montana 59620-1001

Dear Mr. Martin:

This is in response to your September 27, 2010 letter on behalf of the Federal Highway Administration (FHWA) inviting participation by the U.S. Fish and Wildlife Service (Service) in the environmental review process for the Billings Bypass Environmental Impact Statement (EIS). The completed Participating Agency Designation is attached.

The environmental review process will develop a proposed action and alternatives for a bypass road from Interstate 90 in the vicinity of Lockwood to Old Highway 312 north of Billings Heights. Of necessity, this project will entail a new bridge spanning the Yellowstone River. All activities will occur in Yellowstone County, Montana. Species that are listed under the Endangered Species Act that may occur in the vicinity of this project include: black-footed ferret (*Mustela nigripes*), whooping crane (*Grus americana*), mountain plover (*Charadrius montanus*), a proposed species, and greater sage-grouse (*Centrocercus urophasianus*), a candidate species. In the past we have been concerned about the possible presence of pallid sturgeons (*Scaphirhynchus albus*) in this area. However, information obtained in the last decade indicates that pallid sturgeons are unlikely to be found upstream of the confluence with the Big Horn River, and are not expected to occur within the vicinity of the project area. No wildlife refuges are contained within the project study area.

We have indicated our status as a Participating Agency because the project may affect listed species. However, as you are undoubtedly aware, we are extremely short-staffed at this time, and we do not anticipate being able to provide substantial review or participation in meetings, field reviews, and other activities. Once the preferred alternative is identified, consultation regarding effects to listed species will be handled from this office.

We recommend that you consider locations for the new bridge across the Yellowstone River that minimize impacts to the floodplain, riparian habitat, and the channel migration zone. Designs to be considered should include, if practicable, as clear-span bridge that has no footings or supports within the active river channel.

We appreciate your efforts to ensure the conservation of threatened and endangered species as part of our joint responsibilities under the Endangered Species Act, as amended. If you have questions or comments related to this correspondence, please contact Shannon Downey of my staff at 406-449-5225, ext 214.

Sincerely,

R. Mark Wilson
Field Supervisor

Billings Bypass EIS
Project No. NCPD 56(55)
Control No. 4199

PARTICIPATING AGENCY DESIGNATION

☒ Yes U.S. FISH AND WILDLIFE SERVICE wishes to be designated as a participating agency for the proposed Billings Bypass EIS Project

☐ No U.S. FISH AND WILDLIFE SERVICE does not wish to be designated as a participating agency for the proposed Billings Bypass EIS Project because:*

- ☐ Agency has no jurisdiction or authority with respect to the project
- ☐ Agency has no expertise or information relevant to the project
- ☐ Agency does not intend to submit comments on the project

Please check (✓) appropriate box or boxes.

R. Mark Wilson (Signature Authorized Representative)

R. Mark Wilson (Print)

Project Leader (Title)

4-22-10 (Date)

Please return to:

Thomas S. Martin, P.E.
MDT Environmental Services Bureau Chief
2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Fax: 406-444-7671

* Please note that if Federal agencies do not state their position in these terms, then the Federal agency should be treated as a participating agency. Designation as a "participating agency" does not imply that the agency supports the proposed project or has any jurisdiction.

United States Department of the Interior

Fish and Wildlife Service

Ecological Services
Montana Field Office
585 Shepard Way
Helena, Montana 59601-6287

Phone: (406) 449-5225 Fax: (406) 449-5339

M.17 FHWA (I) July 26, 2012

Bill Semmens
Montana Department of Transportation
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Dear Mr. Semmens:

This is in response to your June 28, 2012 request from the Montana Department of Transportation (Department) for concurrence with your effects determinations on federally listed species affected by the proposed Billings Bypass (NCPD 56(55)) project in Yellowstone County, Montana. The purpose of this project is to improve access, connectivity, and mobility between I-90 and Old Highway 312 in the eastern area of Billings, Montana through construction of a new arterial roadway and a new bridge across the Yellowstone River. This letter addresses only project-related effects to listed species that may occur in the project vicinity in accordance with the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), and does not address the overall environmental acceptability of the proposed actions.

We have reviewed the biological assessment and amended biological assessment for the proposed project and concur with your determination that the project is not likely to adversely affect whooping crane (*Grus americana*), and acknowledge your determination that the proposed project would have no effect on the black-footed ferret (*Mustela nigripes*). We also acknowledge your determinations that the proposed action is not likely to jeopardize the existence of the greater sage-grouse (*Centrocercus urophasianus*) and Sprague's pipit (*Anthus spragueii*), which are candidate species. We base our concurrences on the information displayed in the biological assessment, amended biological assessment, and biological resource report.

This concludes informal consultation pursuant to regulations 50 CFR 402.13 implementing the Act. This project should be re-analyzed if new information reveals effects of the action that

may affect federally-listed species or critical habitat, or if the project is modified in a manner that causes an effect not considered in this consultation.

We appreciate the Department's efforts to conserve fish and wildlife resources. If you have questions about this letter, please contact Mike McGrath at (406) 449-5225, extension 201, or at mike_mcgrath@fws.gov.

Sincerely,

R. Mark Wilson
Field Supervisor

Copies to:
Bonnie Gundrum, Montana Department of Transportation, Helena, MT
Brian Hasselbach, Federal Highways Administration, Helena, MT

COOPERATING AND PARTICIPATING AGENCY MEETING
APRIL 1, 2011

DAVID EVANS
AND ASSOCIATES INC.

MEETING MINUTES

PROJECT:	Billings Bypass Environmental Impact Statement (EIS) **MDT Project No. NCPD 56(55)CN 4199**
PURPOSE:	Cooperating and Participating Agency Meeting
DATE HELD:	April 1, 2011 (1:00 – 3:00 PM)
LOCATION:	MDT Billings District Office and MDT Helena Office Video- Conference Call
ATTENDING:	Cooperating and Participating Agencies Mike Ruggles – Montana FWP Shannon Johnson – USACE Steve Potts – EPA Jeff Ryan – DEQ Nick Vira – NRCS Jeff Bollman – DNRC Vern Heisler – City of Billings Bill Kennedy, John Ostlund – Yellowstone County Commissioners Dennis Cook, Paul Gatzemeier – Yellowstone County Planning Board Project Team: Fred Bente, Tom Gocksch, Carol Strizich, Stefan Streeter – MDT Alan Woodmansey and Brian Hasselbach – FHWA Laura Meyer, Lee Stragis – DEA Todd Cormier – DOWL HKM Guests Evelyn Pyburn – Yellowstone County News
COPIES:	Attendees; File

Meeting Purpose

To review the coordination plan, discuss the purpose and need, discuss the range of alternatives, and allow for collaboration on the impact assessment methodologies to be used for the EIS.

Summary of Discussion

Designated Agency Representative

Laura Meyer noted that the sign-in sheet included a column for agencies to specify the designated representative for each agency. MDT requests one point of contact for each agency and this person should coordinate all comments submitted by the agency.

Key Input Needed from Cooperating and Participating Agencies:

- Do you have any concerns about the comment/review periods in the Coordination Plan?
- Have we considered a reasonable range of alternatives?

- Are the impact assessment methodologies sufficient to provide the information you need for EIS topic areas relevant to your agency?

Coordination Plan

Agency roles and responsibilities

- Participate in the scoping process
- Provide comments on purpose and need, range of alternatives, and impact methodologies
- Identify any issues of concern regarding the project's environmental or socio-economic impact
- Provide timely input on unresolved issues
- Agency-specific responsibilities are listed in Table 3 of the Coordination Plan

Overview of Project Schedule

- Field Work – July 2011
- Administrative DEIS – February 2012
- Public Review DEIS – July 2012
- Public Hearing – August 2012
- FEIS – December 2012
- ROD – February 2013

Key Agency Coordination Points

- Purpose and Need: Comments were due February 18, 2011
- Range of Alternatives: Two-week review period - comments due April 15, 2011
- Impact Assessment Methodologies: Two-week review period - comments due April 15, 2011
- Administrative DEIS: 30-day review period – anticipated deadline for comments - April 9, 2012
- Public Review DEIS : 30-day review period – anticipated deadline for comments - August 22, 2012

Steve Potts said EPA may not be able to provide their review in 30 days depending on workload at that time. Tom Gocksch noted that the SAFETEA-LU process of early coordination is intended to allow agencies to plan ahead based on the schedule outlined in the coordination plan. If agencies have concerns about the duration of the review periods or know of specific conflicts with the schedule, these issues should be discussed now. No additional comments were provided by the agency representatives.

Purpose and Need (P&N)

Laura Meyer explained the process for developing the P&N, reviewed the P&N for the project, and outlined comments received on the P&N.

How was the P&N developed?

This project was initiated as a bypass route between I-90 and MT 3 to improve the Camino-Real International Trade Corridor, which currently passes through downtown Billings. Funding constraints prompted the local Policy Coordinating Committee (PCC) to recommend rescoping the project to focus on a connection between I-90 and Old Hwy 312. This was the eastern most segment of the larger original project.

The proposed project between I-90 and Old Hwy 312 must have independent utility – it must function as a useful component of the transportation system even if the remainder of the project is never built. The project team reviewed local plans to identify the key issues for regional transportation in the focus area. The following plans were reviewed:

- Billings Urban Area Long-Range Transportation Plan (2009 Update)
- Lockwood Community Plan
- Lockwood Transportation Study
- Billings Heights Community Plan

The project team also reviewed the federal grants that were obtained by the city and county to fund the project. Public input was also reviewed as well as input from the Yellowstone County Disaster and Emergency Services Department, which has expressed concern regarding emergency access to the Billings Heights area. Main Street is the only direct access to and from Billings Heights. This is a highly congested route and an alternate route is needed to maintain access in case this route is temporarily shut down. This need was highlighted by the tornado that hit the Metra in June 2010. Main Street was shut down and emergency service efforts were severely impacted as a result.

Purpose and Need

- Project Purpose: Provide a connection between I-90 and Old Highway 312 that improves mobility in the eastern area of Billings and supports long-term planning for the Billings urban area.
- Project Needs:
    - Provide an additional Yellowstone River crossing for transportation system reliability/redundancy
    - Provide an additional connection between Lockwood and Billings
    - Improve mobility to and from Billings Heights.

These needs were identified from the following adopted local plans.

- Billings Urban Area Long-Range Transportation Plan:
    - Reduction of barrier impacts to transportation is one of the key transportation goals for the region.
    - Improved truck/commercial vehicle access to state highways serving the Billings area is another key issue identified.
    - Includes a future bypass connection between I-90, Old Hwy 312, US 87, and MT 3. The proposed connection between I-90 and Old Hwy 312 is included in the fiscally constrained plan.
- Lockwood Community Plan and Lockwood Transportation Study both identify lack of connectivity to Billings as a factor that severely limits growth and economic opportunities in Lockwood. The segment of US 87 that crosses I-90 and the Yellowstone River is the only connection between Lockwood and Billings and is highly congested.

- The Billings Heights Neighborhood Plan identifies the difficulty of traveling to and from the Billings Heights as a key concern of residents.
- The City of Billings Capital Improvement Plan (2006 – 2011) includes 16 projects that would address traffic congestion in Billings Heights. This project is the only one that would address access between Billings Heights and the interstate, which is limited primarily by a lack of Yellowstone River crossings.

Comments Received on the P&N

- Public comments focused on concern about stopping the project at Old Hwy 312 instead of MT 3. The public was concerned about how the new proposed project would remove truck traffic from Main Street near the Metra and what kind of traffic impacts the project would create along Old Hwy 312. These are issues that will be evaluated as part of the EIS, but they do not require changes to the P&N.
- The USACE was the only agency to submit a comment on the P&N. The USACE commented that for permit reviews, practicable alternatives should include alternatives which do not involve a discharge of dredged or fill material into waters of the US or structures over the Yellowstone River. Needs that MDT has identified and included in the P&N would preclude a no-bridge alternative.

Laura Meyer asked the USACE if they would like to make any clarifications to their comments and asked if other agencies had any input. Shannon Johnson of the USACE confirmed that they need to evaluate a no-bridge alternative as part of their permit review. If that information is included in the EIS, it would be very helpful.

Steve Potts said he did not receive the P&N by February 14th, but that his general recommendation was the P&N should be more general with a discussion of access and connectivity needs rather than identifying the Yellowstone River crossing as a specific need. NEPA requires coordination of agencies, however, it is MDT and FHWA's decision. The 404 process needs to minimize impact to water resources.

Commissioner Ostlund stated that the local transportation network needs another connection to the interstate. This has been studied for years and the need is clear. This project should address the needs of the community. This process should be expedited and taking time and money to study no-bridge alternatives is a waste. Jeff Ryan noted that the analysis requested will expedite the permitting process. Steve Potts offered that MDT and FHWA should consider potential legal implications of the current P&N statement.

Brian Hasselbach stated that FHWA will be looking at potential legal issues and pointed out that this project is not starting from scratch. SAFETEA-LU and CEQ guidance encourages agencies to reconcile differences and meet public desires. Some projects are broad, others localized and fairly focused. Legal counsel needs to be involved on specifics of the P&N. If improvements to existing crossings are captured in the "considered but rejected" documentation in the EIS, would that address the permitting concerns without stepping back from the P&N? Shannon Johnson indicated that documentation of these alternatives would be of value to USACE during the permitting process.

Commissioner Kennedy commented that $20 million in funding was obtained for this project and that a couple million dollars has already been spent studying it. Someone needs to decide if we are going to build it. If not, we should give the dollars back to Congress. We can continue to study this until there is no money left to build it – that is a waste of public funds. The County went out on a limb to get funding. Decide if you can permit or scrap it.

Mike Ruggles with FWP asked for information about no-bridge alternatives that have been considered. Commissioner Ostlund noted that numerous options for addressing this issue have been studied over the years and the only way to address the issue is to build another bridge. That is the point of this project.

Laura Meyer noted that the project team can review past plans to identify alternatives that may have been evaluated for improving existing crossings without addition of a bridge. Brain Hasselbach added that the "alternative considered but rejected" section can include previously studied alternatives. If FHWA legal identifies no issues with the P&N as stated, we will proceed with the P&N and document no-bridge alternatives in the "alternatives considered but eliminated" section of the EIS.

Alan Woodmansey expressed concerns about slowing the process down and about potential issues with USACE permitting. He suggested that the project team meet with USACE to discuss the issue further. EPA, DEQ and FWP also expressed interest in participating in this meeting. Alan noted that he understands local needs and unless a legal issue is identified, the P&N will remain the same. MDT and FHWA will schedule a meeting with these agencies to clarify the approach rather than change the P&N.

Range of Alternatives
"Range of alternatives" refers to all reasonable alternatives, as well as other alternatives eliminated from a detailed study. Alternatives are considered reasonable if they are practical and feasible from a technical and economical standpoint.

Design Objectives
Laura Meyer reviewed the design objectives hand out, which categorized design objectives as follows:

- Roadway functionality
- Yellowstone River crossing
- Safety considerations
- Community and Environmental considerations
- Cost considerations

Overview of Alternatives
Laura Meyer reviewed the alternatives development and screening process. The project team started by reviewing all of the alternatives that had been suggested through the course of the project. Many suggestions from the public had been eliminated based on the previous purpose and need. Because we now have a new purpose and need, some of these alternatives may be feasible. One example of this is using the Johnson Lane interchange as a connection location to the interstate. The alternatives that provided a connection between I-90 and Old Hwy 312 were advanced to a second level of screening. New potential alignment alternatives were also identified. This collective set of alternatives included use of existing roadway corridors and new corridors that would traverse agricultural and residential land. These alternatives were evaluated to identify fatal flaws and determine if certain alternatives provided similar benefits with less cost or fewer impacts. The alternatives with connections too far north of Billings and Lockwood were eliminated because they would not provide a travel time benefit – therefore they would not meet the needs of the project. The Bitterroot Drive and River Edge alternatives located in the Billings Heights neighborhood provided good travel time benefits, but were eliminated because they would have high impacts to the neighborhood, the river, and could potentially impact the refinery. Some of the preliminary alignments identified under the previous purpose and need were eliminated because a historic battlefield site was identified during the 2007 field work. This was determined to be a fatal flaw. Laura then reviewed the alternatives that were advanced to the third level

of screening and are currently under consideration. Laura explained that the project team is seeking input from the agencies on the range of alternatives considered for the project. Is this a reasonable range of alternatives based on the P&N?

Comments and Discussion
Steve Potts asked if MDT could provide information about the alternatives including no-bridge alternatives. Laura Meyer explained that the team has not completed the alternatives screening process and the detailed alternatives report won't be ready for another few weeks. The information we do have at this point is screening tables and maps of all the alternatives that have been considered through the process. No-bridge alternatives have not been evaluated as part of the NEPA process thus far. Based on input from the local representatives, alternatives that don't involve a bridge have likely been looked at over the years. The project team would need to research this in order to provide information on these alternatives. Tom Gocksch noted that through the transportation planning process, the MPO identified a number of improvements to the existing transportation network and some of these projects have been completed. This project is one element of the overall plan and is the only one of these projects to provide an additional river crossing. Commissioner Kennedy added that we still need to move the truck route out of the metro area. The project team indicated that information on the alternatives would be distributed to the agency representatives to assist them in assessing if the range of alternatives evaluated for the projects is "reasonable."

Impact Methodologies
Laura Meyer and Lee Stragis reviewed the impact assessment methodologies hand-out and asked the agency representatives for input or comments. Two comments were provided:

- Steve Potts commented that he was glad to see that the potential for future changes in land use that could be indirectly related to the project would be evaluated.
- Jeff Ryan commented the bridge design needs to incorporate design features that don't allow direct deck drainage into the river.

Laura noted that comments on these methodologies were due on April 15, 2011. MDT will compile the comments received and distribute to the agencies for reference.

Next steps:
- Complete the alternatives screening
- Field work anticipated for June/July
- Resource studies prepared to document field work
- Refinement of alternatives if necessary
- Detailed evaluations of alternatives for EIS

Action Items:
- Laura will send a summary of alternatives and the power point presentation to agency representatives.
- MDT/FHWA will schedule a meeting with USACE, EPA, DEQ, and FWP to discuss P&N and permitting needs.
- Agencies will provide comments on impact assessment methodologies by April 15, 2011.

Handouts

- Agenda
- Purpose and Need (P&N) Summary
- Design Objectives
- Map of Draft Conceptual Alternatives
- Coordination Plan for Agency and Public Involvement March 2011
- Impact Assessment Methodologies