

Environmental Assessment

MDT/CSKT Land Exchange F-5-1(9)6



Fishing along the bank of the Flathead River at Perma.

Prepared For:
Montana Department of Transportation



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MEPA ENVIRONMENTAL ASSESSMENT

MDT/CSKT LAND EXCHANGE

MONTANA DEPARTMENT OF TRANSPORTATION

Project F-5-1(9)6

This document is prepared in conformance with *Montana Environmental Policy Act (MEPA)* requirements and contains the information required for an Environmental Assessment under the provisions of ARM 18.2.237(2) and 18.2.239.

Submitted pursuant to **Section 75-1-101, et seq. M.C.A.**
by
The Montana Department of Transportation

Approved:



Montana Department of Transportation

Date 11-5-03

With concurrence from



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I. Purpose and Need

I. Purpose and Need

A. Purpose and Need for the Exchange

The fundamental purpose of the proposed exchange is to transfer one or more properties from the Montana Department of Transportation (MDT) to the Confederated Salish and Kootenai Tribes (CSKT) as compensation for a long-term easement for the Hoskin's Landing Wetland Mitigation Site in Sanders County, Montana and for future acquisition of right-of-way and other highway purposes within the Flathead Indian Reservation.

The provision of replacement land is a requirement of the January 10, 2002 Deferred Exchange Agreement between MDT and the CSKT. The exchange of properties would settle MDT's obligation to the CSKT for its use of the Hoskin's Landing Wetland Mitigation Site. The exchange of properties is also consistent with the CSKT's general policies of acquiring available properties on the Reservation and consolidating Tribal landholdings. The CSKT has an active policy of buying back fee (private) lands on the Reservation to increase its land base.

Further, the proposed land exchange would facilitate the implementation of future MDT projects within the Flathead Indian Reservation. The land exchange would establish a process whereby MDT's excess land can be exchanged for Tribal trust or fee lands needed for highway purposes. MDT's projects within the Flathead Indian Reservation would occur on or near state-maintained highways and would include the following general categories of improvements:

- **Construction/Reconstruction.** Highway construction is the complete rebuilding of a roadway on either existing or new alignment. Highway reconstruction includes all phases of design and construction of roadways on present alignments (may involve rebuilding or upgrading of existing facilities and minor alignment revisions).
- **Rehabilitation & Widening Projects.** Highway rehabilitation is a strategy to extend the useful life of a highway, to achieve appropriate levels of safety and operational characteristics without necessarily improving existing geometrics. It includes all phases of design and construction of milling, recycling, overlaying and major widening of existing roadway.
- **Resurfacing Projects.** Highway resurfacing is the addition of a pavement layer or layers over the existing roadway surface to provide additional structural capacity and improved serviceability. It includes all phases of design and construction of overlaying the existing roadway.

- **Spot Improvement & Safety Projects.** Spot improvements include all phases of design and construction of lighting, signals, signing guardrail, fencing, intersection improvements, slope flattening, drainage or structural repair, and related small projects. Safety projects are designed to improve safety at hazardous locations throughout the Highway System.
- **Bridge Replacement/Rehabilitation.** This improvement type includes all phases of design and construction of structures on or near existing alignments. It is different than reconstruction projects in that the length of the project is limited to replacing a deficient structure or structures.
- **Miscellaneous Improvements.** The miscellaneous improvement type includes all phases of design and construction for any project that is not included in the above categories. These may include, but are not limited to the following: environmental projects (like the development of wetland mitigation sites), enhancement projects, rest areas, lighting, historical monuments, scale sites, culvert and slide repair, and bicycle and pedestrian facility projects.

Most notably, this proposed land exchange would facilitate MDT's efforts to reconstruct U.S. Highway 93 North between Evaro and Polson and implement other highway projects. MDT's most apparent and pressing right-of-way needs are associated with eight U.S. Highway 93 North projects presently in the design stages, including:

- 1) **Evaro to McClure Road**, Project NH 5-1 (30) 7;
- 2) **McClure Road to the North End of Arlee**, Project NH 5-1 (31) 13;
- 3) **North End of Arlee to White Coyote Road**, Project NH 5-2 (119) 19;
- 4) **White Coyote Road to South Ravalli**, Project NH 5-2 (120) 20;
- 5) **South Ravalli to Old US 93 (Medicine Tree)**, Project NH 5-2 (121) 27;
- 6) **Old US 93 (Medicine Tree) to Red Horn Road**, Project NH 5-2 (122) 32;
- 7) **Spring Creek/Baptiste Road to Minesinger Trail/North Reservoir Road**, Project NH 5-2 (123) 48; and
- 8) **Minesinger Trail to MT Highway 35**, NH 5-2 (124) 55.

The segment of U.S. Highway 93 between Red Horn Road to the south and Spring Creek Road to the north is the subject of a Supplemental Environmental Impact Statement (SEIS) project. Additional highway improvement projects will occur within this segment when the SEIS is completed. MDT, CSKT, the City of Ronan and the Federal Highway Administration recently announced the "preliminary preferred alternatives" for the both Ronan and rural areas within this segment.

The final version of MDT's 2003-2005 Montana Statewide Transportation Improvement Program (STIP) and the 2004-2006 Draft STIP identifies the following other ongoing or planned highway projects within the Flathead Indian Reservation area.

- a) **Polson-East**, MT Highway 35, reconstruction, STPP-NH 52-1(17) 0, CN 4036;
- b) **Paradise-East (East Section)**, MT Highway 200, reconstruction, STPP 6-1(36) 83, CN 1011;
- c) **Moiese-NE**, Secondary Route 212, resurfacing, STPS 212-2(9) 5, CN 4633
- d) **Dayton-Lake Mary Ronan**, Secondary Route 352, overlay, STPS 352-1(5) 0 CN 5088;
- e) **Yellow Bay-North**, MT Highway 35, overlay, seal and cover, STPP 52-1(25) 18, CN 5075;
- f) **Division/5th Street-Polson**, reconstruction, CN 24(18), CN 4556;
- g) **Turn Bays-Ninepipes**, US 93, reconstruction, STPHS 5-2(89) 37, CN 3598;
- h) **Hot Springs-South**, MT Highway 28, resurfacing and widening, STPS 36-1(16) 7 CN 4037;
- i) **8 km South of Polson-S**, reconstruction, STPS 354-1(9) 5, CN 3606
- j) **Lone Pine-N&E**, reconstruction, STPP 36-1(4) 26, CN 1289
- k) **Polson Urban**, US 93, seal and cover, NH 5-2() 59
- l) **Polson-Elmo**, US 93, seal and cover, NH 5-2() 67
- m) **Dixon-Ravalli**, Montana Highway 200, seal and cover, STPP 6-1()109

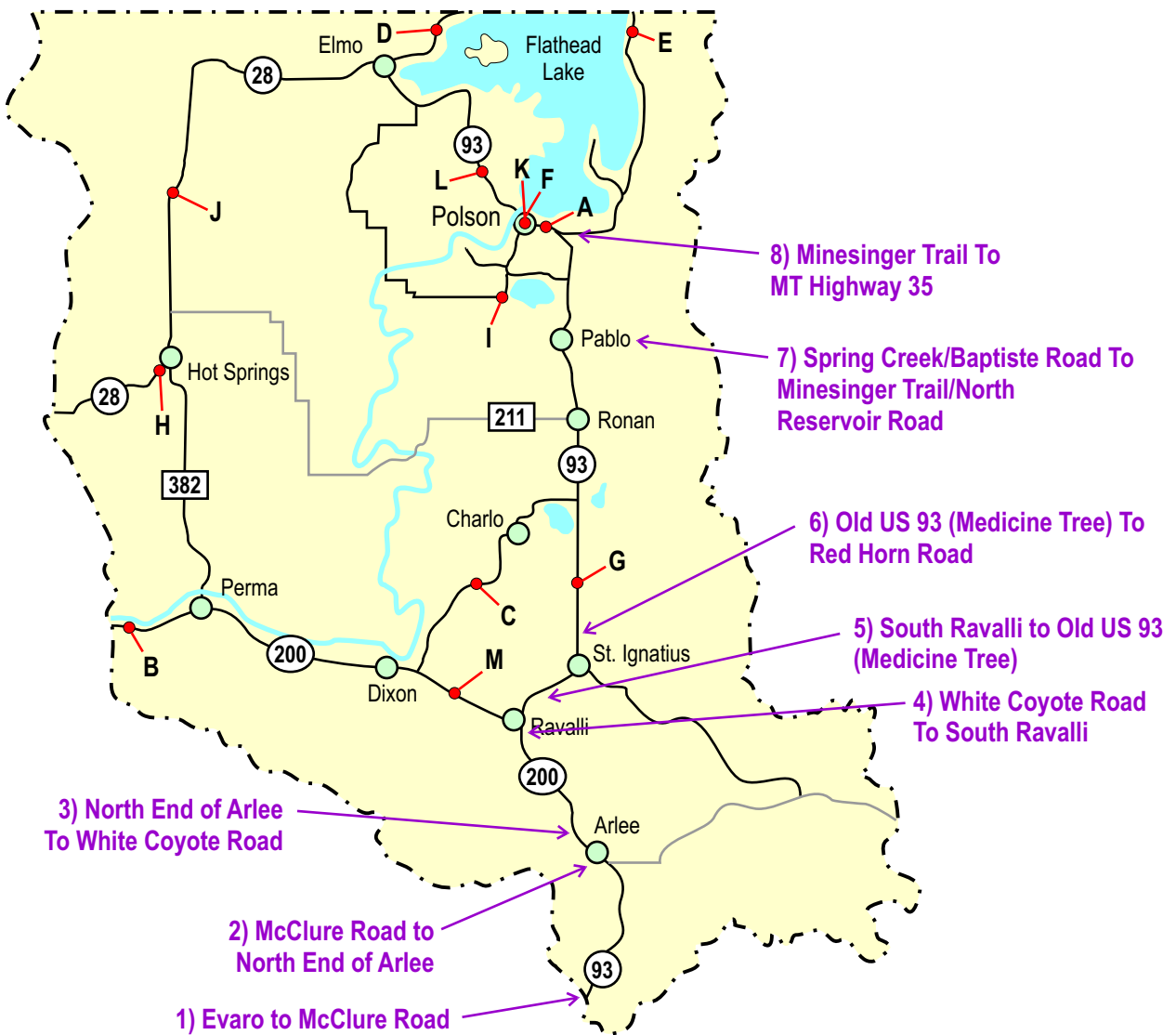
The general locations of these projects are shown in **FIGURE 1**.

Some of these projects may require the use of Tribal trust or fee lands and/or the acquisition of private lands within the Reservation. It should be recognized that other highway projects may also arise in the future that could require the use of such lands. MDT's project needs would be facilitated by the proposed land exchange since excess MDT lands within the Flathead Indian Reservation would be available to exchange for CSKT lands needed for highway purposes. At this point, the MDT excess properties identified in **FIGURE 2** are the only ones made available for exchange with the CSKT. However, additional properties may be identified and made available to the CSKT in future procedures.

**Proposed Land Exchange
Montana Department of Transportation
and
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and Kootenai Tribes**

- A) Polson-East
- B) Paradise-East (East Section)
- C) Moiese-NE
- D) Dayton-Lake Mary Ronan
- E) Yellow Bay-North
- F) Division/5th Street-Polson
- G) Turn Bays-Ninepipes
- H) Hot Springs-South
- I) 8km South of Polson-S
- J) Lonepine-N&E
- K) Polson Urban
- L) Polson-Elmo
- M) Dixon-Ravalli

FLATHEAD INDIAN RESERVATION



**Figure 1:
MDT Projects Within The
Flathead Indian Reservation**

B. Goals and Objectives

MDT's primary goal for the proposed land exchange is to establish an agreement with the CSKT to provide right-of-way and/or wetland mitigation areas for reconstruction of U.S. Highway 93 and other transportation projects within the Flathead Indian Reservation.

The primary goals for the CSKT in participating in this agreement are to acquire land holdings within the Reservation and to protect the cultural resources found on the Perma properties.

C. Background

MDT's Dixon-West and Paradise East and West projects resulted in the permanent loss of over four acres of wetlands because of highway reconstruction. Due to MDT's obligations to mitigate wetland losses, the agency pursued the acquisition of land within the affected watershed for the purposes of creating, enhancing, or protecting wetlands. Ultimately, a site known as the Hoskin's Landing property was identified as an appropriate wetland mitigation site.

The Hoskin's Landing property is located on the Flathead Indian Reservation near Dixon in Sanders County. MDT initiated efforts to obtain the use of this property in 2001. An agreement between MDT and the CSKT for use of the property as a wetland mitigation site was negotiated in late 2001. On January 10, 2002, MDT and the CSKT signed a Deferred Exchange Agreement under which MDT agreed to provide replacement land for the Hoskin's Landing property it acquired from the CSKT for use as a wetland mitigation site. The Agreement granted MDT a 25-year easement from the CSKT on 48.23 acres of land for the purposes of restoring, protecting, managing, maintaining and enhancing wetlands as mitigation for the loss of wetlands associated with MDT's Dixon-West and Paradise East & West projects. In exchange for the use of CSKT land, MDT agreed to provide replacement land.

As an initial step toward securing replacement land, MDT initiated an exchange of lands with the Montana Department of Natural Resources and Conservation (DNRC). The land exchange presented an opportunity for MDT to obtain ownership of land within the Flathead Indian Reservation for a future exchange with CSKT and help offset a large debt DNRC owed MDT as a result of a prior land exchange between MDT and DNRC. The exchange also provided MDT with the opportunity to acquire another property for the construction of a much needed highway maintenance facility in southwestern Montana.

Through the land exchange, MDT acquired ownership of about 383 acres of land in and around Perma in Sanders County and a 20-acre parcel in Beaverhead County near

Wisdom in return for a valuable 3.49-acre tract near the I-90 interchange at Belgrade in Gallatin County and 45.92 acres near Troy in Lincoln County. An Environmental Assessment (EA) was prepared for the MDT/DNRC land exchange in accordance with the Montana Environmental Policy Act. The EA was duly made available for public review and comment and a series of public hearings on the proposed exchange were held in early 2002. The land exchange was approved by the Montana Board of Land Commissioners on April 15, 2002. The DNRC formally transferred ownership of the lands at Perma and near Wisdom to MDT on March 6, 2003.

MDT is also in the midst of efforts to reconstruct U.S. Highway 93 North between Evaro and Polson. Reconstruction of this important route in western Montana requires additional and new right-of-way due to changes in alignment and the fundamental design of the highway. Considerable amounts of the land needed to accommodate the reconstruction of the highway must come from within the Flathead Indian Reservation. Additionally, other state highway routes exist within the Reservation. Over time, improvements or reconstruction projects along these routes may necessitate additional right-of-way from the CSKT. This proposed land exchange is essential to the reconstruction of U.S. Highway 93. MDT will not be able to reconstruct this route without access to the right-of-way and wetland mitigation sites that would be provided by this proposed agreement.

MDT is now seeking to initiate an exchange of property with the CSKT to meet its obligation under the January 10, 2002 Deferred Exchange Agreement. MDT also hopes to identify a means by which future land exchanges between MDT and the CSKT can occur if future highway projects within the Flathead Indian Reservation require additional Tribal land. To advance this process, the preparation of an EA is necessary. This EA examines the potential effects of exchanging excess MDT properties at Perma and elsewhere on the Flathead Indian Reservation for the Hoskin's Landing property and other future lands needed from the CSKT for highway purposes.

It is important to note that detailed analyses of the potential environmental effects of MDT's proposed reconstruction of U.S. Highway 93 North between Evaro and Polson have already been performed. These effects are analyzed and disclosed in the following documents:

- Final Environmental Impact Statement (FEIS), completed June 17, 1996;
- FEIS Record of Decision (ROD), completed August 12, 1996;
- ROD modification, completed February 9, 1998;
- Memorandum of Agreement for preferred conceptual roadway improvements, completed December 20, 2000;
- FEIS re-evaluation, completed April 30, 2001;
- ROD for FEIS re-evaluation, completed October 23, 2001.

Skillings-Connolly, Inc. is preparing a Supplemental EIS to identify and evaluate the effects of several reconstruction alternatives for U.S. Highway 93 in the Ninepipes area

between Red Horn Road north of St. Ignatius and Spring Creek Road north of Ronan. The SEIS should be completed in 2004.

MDT already completed a Programmatic Categorical Exclusion (PCE) document analyzing the potential environmental effects of constructing the Hoskin's Landing Wetland Mitigation project [Project STPP 45(29), Control Number 4144]. The project reestablished the historic floodplain and associated riverine wetland complex on the property by restoring or creating 8.1 acres of wetlands and enhancing 5.17 acres of wetlands previously impacted by livestock grazing. The Federal Highway Administration (FHWA) concurred with the PCE on September 14, 2001. The conclusion reached in the PCE was that constructing the proposed wetland mitigation project would not cause any significant individual, secondary, or cumulative environmental impacts. A copy of the PCE is included in **Appendix D**.

The environmental effects of other ongoing or planned projects on the State road system within the Flathead Indian Reservation have been or will be addressed in separate project-specific environmental documents prepared by MDT.

D. Scope of the Proposed Exchange

The proposal involves transferring excess properties MDT owns on the Flathead Indian Reservation to the CSKT in exchange for the Hoskin's Landing Wetland Mitigation Site near Dixon, Montana and for right-of-way needed for ongoing and future highway-related projects within the boundaries of the Reservation. The proposed land exchange would be implemented with a "ledger" system whereby MDT would identify the amount and value of lands it needs for right-of-way and wetland mitigation within the Reservation for its highway projects. The CSKT would then select lands of equivalent dollar-value from MDT's list of excess properties for acquisition. These properties would be exchanged between MDT and the CSKT to fulfill their respective needs. The ledger of MDT's properties and their values would be kept until MDT completes its projects within the Reservation or until it transfers all of its available excess properties to the CSKT.

The proposed land exchange would convey excess MDT tracts to CSKT in exchange for the Hoskin's Landing easement and future easements across CSKT "trust" or "fee" lands needed for highway purposes. "Trust" lands are parcels assigned to the Flathead Indian Reservation under the General Allotment Act of 1887, also commonly known as the Dawes Act (**25 U.S.C. §§ 331-334, 339, 341, 342, 348, 349, 354 and 381**) and the Flathead Allotment Act of 1904. "Fee" lands are those that CSKT has acquired outside of its original allotment under the Dawes Act. Tribal fee lands require payment of taxes while trust lands have no such requirement.

It should be noted that the right-of-way and wetland mitigation easements to be acquired by MDT from CSKT have yet to be specifically identified. MDT will identify

Tribal land requirements for right-of-way and/or wetland mitigation as the U.S. Highway 93 North and other projects develop.

CSKT would select available excess MDT properties on the Flathead Indian Reservation in exchange for Tribal properties needed for ongoing and future highway projects. MDT intends to complete these exchanges and associated projects within ten years of approval of this proposed land exchange. Any and all exchanges will be completed on a dollar-for-dollar basis considering the appraised value of the properties.

E. General Locations of Properties Being Considered for Exchange by MDT

A map showing the general locations of the excess MDT properties at Perma and elsewhere on the Flathead Indian Reservation is included as **FIGURE 2**. Detailed maps of these properties are provided in **Appendix G**.

The Hoskin's Landing Wetlands Mitigation Site is located in Sanders County near Dixon.

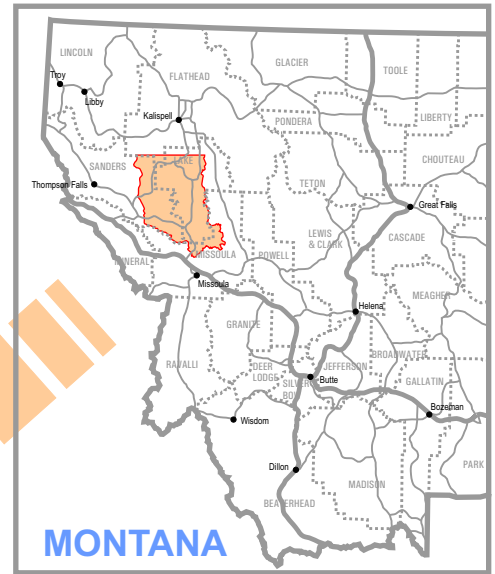
MDT's Perma properties are located in the platted townsite of Perma and on lands to the north and south of the Flathead River. These properties are approximately 20 miles west of the Hoskin's Landing Site. These properties are identified as Parcels 1, 2, 3 and 4 on **FIGURE 2**.

MDT's excess lands at Schley Creek are located along U.S. Highway 93 North in between Evaro and Arlee in Missoula County. The Schley Creek properties are shown as Parcels 5 and 6 on **FIGURE 2**.

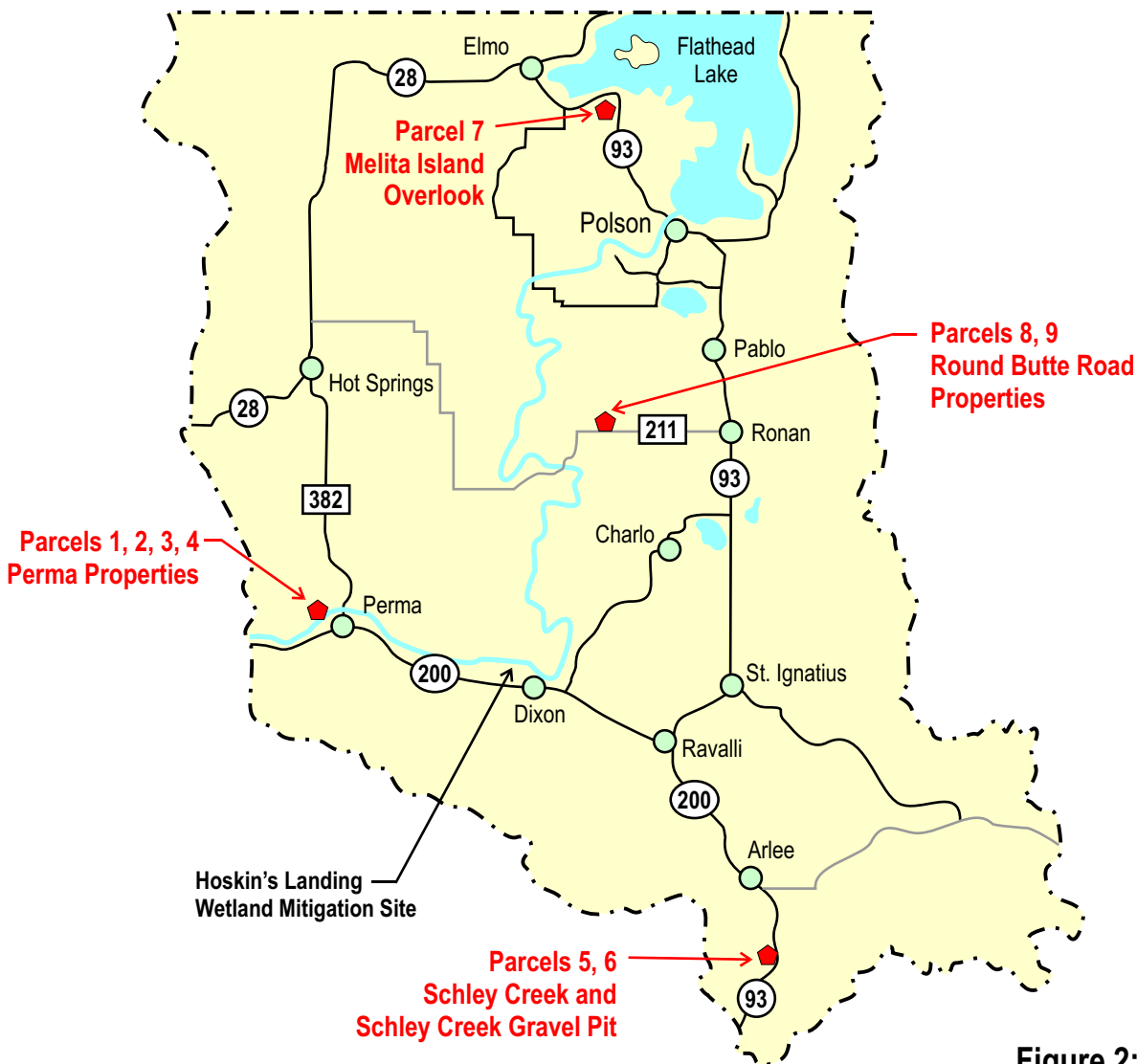
The Melita Island Overlook (Parcel 7 on **FIGURE 2**) is located along U.S. Highway 93 North and overlooks Flathead Lake. This property is about 11 miles west of Polson and about 3 miles east of Big Arm in Lake County.

MDT's excess lands along Round Butte Road (Parcels 8 and 9 on **FIGURE 2**) are located along Route 211 west of Ronan in Lake County.

**Proposed Land Exchange
Montana Department of Transportation
and
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FLATHEAD INDIAN RESERVATION



**Figure 2:
General Location Map
MDT's Excess Lands Within the Flathead
Indian Reservation**

F. Funding

The proposed property transfer would require no expenditures from MDT or CSKT other than the staff time and resources necessary to administer and implement the land transfer process. The properties would be exchanged on an equal dollar for dollar basis, according to the appraised values of the involved properties. If a monetary balance remains upon completion of MDT's projects within the Flathead Reservation or upon transfer of MDT's excess properties to the CSKT, the debtor would pay the remainder it owes to the creditor.

G. Legal Authority

Jurisdiction for land exchanges involving state agencies is provided in the Montana Constitution, Article X, Section 11(4) and in Title 60, Chapter 4, Section 201, Montana Code Annotated (M.C.A.)

Legal authority for the CSKT to participate in a land exchange is provided by 25 U.S.C., Chapter 24, Section 2203 "Adoption of land consolidation plan with approval of Secretary" which allows tribes to exchange lands for the purpose of consolidating tribal landholdings.

Further justification for this proposed agreement is provided by the Memorandum of Agreement (MOA) regarding reconstruction of U.S. Highway 93 between Evaro and Polson signed by the FHWA, MDT and the CSKT on December 12, 2000. The MOA stated that these groups would "continue to work cooperatively in order to achieve physical construction of improvements to US-93 that meet the needs of each party government and that are in the best interest of the traveling public, the residents of the Flathead Indian Reservation, and the members of CSKT."

II. Alternatives Considered

II. Alternatives Considered

A. Introduction

This Part describes the alternatives considered to address the purpose and need for (or the reasons for undertaking) a land exchange as described in Part I. Alternatives for the proposed land exchange are restricted because MDT has only limited excess property within the Flathead Indian Reservation available for exchange with the CSKT.

This Part analyzes two alternatives in detail—the Preferred Alternative (Proposed Action) which involves the exchange of property between MDT and the CSKT—and the No Action Alternative. Both alternatives include reasonably foreseeable actions resulting from implementation.

B. No Action Alternative

In accordance with the Montana Environmental Policy Act (MEPA) Title 75, Chapter 1 of Montana Code Annotated (M.C.A.), an analysis of the alternative of taking no action must be included in the EA. The No Action Alternative allows for a comparison of environmental conditions without the proposal and establishes a baseline for evaluating the Proposed Action and any other alternatives.

The No Action Alternative represents a continuation of the present situation—the exchange of land between MDT and the CSKT would not take place. MDT and the CSKT would retain ownership of their respective properties and the management and land uses on each parcel would be unchanged from present conditions.

MDT would retain ownership of some 383 acres of land near Perma within the Flathead Indian Reservation and would have the ability to dispose of its excess properties through sales or other methods. MDT would be required to seek other suitable replacement land for the Hoskin's Landing Wetland Mitigation Site to comply with the January 10, 2002 Deferred Exchange Agreement between MDT and the CSKT. MDT would also have to pursue the acquisition other lands within the Flathead Indian Reservation through outright purchases of land or by other means to accommodate land needs for U.S. Highway 93 North reconstruction and other highway projects. Purchasing (tribal trust or fee) land outright from the CSKT for highway purposes is not an option for MDT because the CSKT is actively seeking to acquire and consolidate lands within the Flathead Indian Reservation.

The CSKT would lose the opportunity to acquire ownership of the Perma pictograph site—a property the Tribes consider to be culturally significant. Moreover, the CSKT would lose an opportunity to acquire a sizable parcel and further their efforts to increase the Tribal land base within the Flathead Indian Reservation.

The No Action Alternative does not meet the purpose and need for the proposed land exchange. This alternative has been rejected from further consideration because it prevents both MDT and the CSKT from achieving their respective goals that would otherwise be realized with the exchange. Not implementing an exchange would create a significant obstacle to implementing future highway projects within Flathead Indian Reservation, including the planned reconstruction of U.S. Highway 93 North. This proposed land exchange is essential to its reconstruction. MDT will not be able to reconstruct this route without access to the right-of-way that would be provided by this proposed agreement.

The environmental effects of the No Action alternative will be discussed in Part III as a means of comparing and contrasting the impacts of MDT's Preferred Alternative.

C. Preferred Alternative (Proposed Action)

The Preferred Alternative (MDT's Proposed Action) is to transfer excess lands within the Flathead Indian Reservation owned by MDT to the CSKT in exchange for a 25-year easement from the CSKT on 48.23 acres of land for the Hoskin's Landing Wetland Mitigation Site. Additionally, future exchanges of excess MDT properties would be transferred to the CSKT as needed in return for Tribal trust or fee property required for new rights-of-way and/or other highway purposes.

MDT and the CSKT have conducted preliminary negotiations regarding the possible exchange of lands. These discussions resulted in the development of a Deferred Exchange Agreement between MDT and the CSKT (see **Appendix A**) and agreement on an acceptable method for exchanging properties. Under this proposal, the CSKT would be provided the opportunity to select from available excess MDT properties on the Flathead Indian Reservation in exchange for the long-term easement on the Hoskin's Landing Wetland Mitigation Site and other Tribal properties needed for ongoing and future highway projects.

The exchange of property would occur on a dollar-for-dollar basis considering the appraised value of the involved parcels. The cumulative value of the excess properties selected by the CSKT would not be less than \$24,000—the appraised value of the easement for the Hoskin's Landing Wetland Mitigation Site.

Table 1 identifies the excess lands MDT available for exchange with the CSKT and provides estimates of their appraised values.

Table 1: Excess MDT Properties Available for Exchange

Rank	Parcel Name	Route/Mile	Location	Acres	Appraised Value
1	Perma Pictographs	MT 200/95	Government Lot 3, S36, T19N, R24W	43.89	\$57,057
2	Perma Quarry	MT 200/95	NE1/4NW1/4, S36, T19N, R24W	40.00	\$235,000
3	Perma Lands/North	MT 200/95	Government Lots 1,2,4 & NW1/4, S36, T19N, R24W	129.46	\$193,443
4	Perma Lands/South	MT 200/95	Government Lots 9,10,11,12 & S1/2SE1/4; Perma Townsite Lots 1,2,6 Block 1, Lots 3-6 Block 2, Lots 6-8, 15-17 Block 5, Lots 1-8 Block 6; S36, T19N, R24W	154.27	\$257,500
5	*Schley Creek	US 93/11	SE1/4, NE1/4, S6, T15N, R19W	1.75	\$5,000
6	Schley Gravel Pit	US 93/11	SE1/4, NE1/4, S6, T15N, R19W	1.05	\$4,000
7	Melita Is. Overlook	US 93/71	S26, T24N, R21W	3.44	\$10,000
8	Round Butte Rd.#1	S211/7	S35, T21N, R21W	0.44	\$1,000
9	Round Butte Rd.#2	S211/6.8	S2, T20N, R21W	0.90	\$25,000

*MDT is currently considering an exchange with the landowner of the property adjacent to this property.

Table 1 also provides a general ranking of the CSKT's preferences for acquiring MDT's excess properties within the Flathead Indian Reservation. As the table shows, MDT's excess properties at Perma were identified as the CSKT's highest priorities for acquisition. These properties are located in south central Sanders County—less than 20 miles west of the Hoskin's Landing Wetland Mitigation Site. The Perma properties consist of vacant lots within the platted Townsite of Perma, the Perma rock quarry, and other lands located north and south of the Flathead River. Pictographs and other features of cultural significance to the CSKT exist on portions of the Perma properties. The Perma properties being considered for exchange do not include a number of privately-owned lands within the platted townsite.

Appendix G, pages 1 through 6 shows the properties included in this proposed exchange in greater detail.

The Perma property is located along Montana Highway 200 in between Dixon and Paradise in Sanders County. The majority of the property is considered rangeland, but the property also includes timbered forest and a rock quarry. The remaining property is characterized by riparian areas, bare ground and subdivided lots.

Although the Schley Creek and Schley Gravel Pit properties (Properties 5 and 6 in **Table 1**) are predominantly bare ground, the extended area around them is heavily forested. Evergreen and mixed forests comprise most of the landscape in these areas. These two properties are located along U.S. Highway 93 North in between Evaro and Arlee and are in Missoula County.

The Melita Island Overlook property (Property 7 in **Table 1**) is located along U.S. Highway 93 North between Polson and Big Arm in Lake County. The property rests on a hill above U.S. Highway 93 and several dozen Flathead lakeshore homes and cabins. Its landscape is almost entirely forested.

The Round Butte Road properties (Properties 8 and 9 in **Table 1**) are located on Secondary Route 211 west of Ronan in Lake County and are almost entirely made up of irrigated agricultural and pasture lands.

MDT would employ an administrative "ledger" system to account for and track the properties and values of lands involved in the proposed exchanges with the CSKT. The appraised values of Tribal properties needed by MDT for right-of-way and wetland mitigation would be tallied as needed to complete MDT projects. MDT would then transfer parcels from its excess land list to CSKT in equivalent values. If a cash balance exists after the MDT projects are completed, either the MDT or the CSKT would make a cash payment to the other party.

D. Other Alternatives Considered But Rejected by MDT

MDT rejected several other possible actions to acquire tribal trust or fee lands within the Flathead Indian Reservation needed for highway purposes. Other ways that tribal lands could potentially be acquired include: 1) purchasing needed property from the CSKT; 2) purchasing non-Tribal land from fee owners and exchanging that property with the CSKT; and 3) federal condemnation of tribal lands needed for highway projects. Each of these alternate actions were considered but dropped for reasons described below.

1. PURCHASE NEEDED PROPERTY FROM THE CSKT

Purchasing tribal trust or fee land needed for U.S. Highway 93 reconstruction and other future highway projects on the Reservation is not a viable option because the CSKT is unwilling to sell any of its land holdings for right-of-way or any other purpose. The CSKT's Constitution and Bylaws provides evidence of the Tribe's stance on the retention of tribal lands. This is clearly stated in the following excerpt from Section 2 of Article VIII of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation:

"The unallotted lands of the Flathead Reservation and all lands which may hereafter be acquired by the Flathead Confederated Tribes or by the United States in trust for the Flathead Confederated Tribes shall be held as tribal land and no part of such land shall be mortgaged or sold."

It is apparent from this statement that the CSKT has no interest in selling its landholdings.

2. PURCHASE OTHER NON-TRIBAL LAND TO EXCHANGE WITH THE CSKT

Other non-tribal fee land within the Reservation could be purchased by MDT and then transferred to the CSKT in exchange for tribal lands needed for highway purposes. However, pursuing this option is not necessary given the fact that MDT's excess lands within the Reservation are viewed as acceptable properties for exchange by the CSKT. MDT undertook a previous land exchange with the DNRC to acquire a sufficient amount of land within the Reservation. This effort would be wasted if MDT chose to seek non-tribal land for its projects within the Reservation.

If this course of action were pursued, MDT would need to find and purchase other properties within the Reservation. Due to the Tribe's active policy of seeking to acquire and consolidate lands within the Reservation, MDT would likely compete with the CSKT for the purchase of other non-Tribal properties.

MDT would also need to obligate state funds or sell its excess properties on the Reservation or elsewhere to generate funds for the purchase of non-tribal lands on the Reservation. If MDT offered its excess lands on the Reservation for sale, the CSKT may be the most interested and willing purchaser of the properties.

If efforts to buy other non-tribal lands were unsuccessful and MDT sold its excess properties on the Reservation, the implementation of needed improvements to the state highway system (including the pending reconstruction of U.S. Highway 93) could be halted. MDT would have no land to exchange with the CSKT for tribal land needed for highway purposes.

3. CONDEMN TRIBAL LAND FOR HIGHWAY PURPOSES

The condemnation of tribal property for highway purposes is not feasible since takings of the Reservation land would require Congressional action. The United States Congress has not authorized removal or conversion of Flathead Indian Reservation land holdings since 1920, when it passed the *Federal Water Power Act*—which authorized the development and utilization of hydroelectric power within public lands and reservations of the United States. Given that the *Indian Reorganization Act of 1934* provided the tribes with authority to acquire and manage their own lands and directed the federal government to allow tribes to adopt their own constitutions, it is unlikely that the U.S. Congress would now authorize condemnation of Reservation property for right-of-way acquisition.

MDT's projects are in various stages of development and not all future tribal land needs are known at this time. This suggests that Congressional actions to obtain tribal land needed for highway projects would have to occur many times in the future as individual highway projects are developed on the Reservation. It is doubtful that Congress would be willing to continually pass legislation to help MDT acquire property each time the agency chose to implement a highway project.

III. Affected Environment and Environmental Consequences

III. Affected Environment and Environmental Consequences

A. Introduction

This Part of the EA presents the existing environments that would be affected by the alternatives described in Part II. In addition to the specific properties involved in the proposed land exchange, the affected area in this EA generally includes lands within the Flathead Indian Reservation on and immediately adjacent to roads on the State Highway System maintained by MDT. The summary of the affected environment includes a discussion of the relevant physical, biological, and social conditions within the areas that would likely be impacted by the proposed land exchange and ongoing or planned highway projects. Resources likely to be affected were identified through agency contacts, literature reviews, research, and public comment.

Additionally, this Part discloses the potential environmental effects of implementing the Preferred Alternative (the proposed land exchange) and the No Action Alternative. Effects and impacts are synonymous in this EA. This EA examines the direct, indirect and cumulative effects of the proposed land exchange on the physical and human environments. Environmental effects considered in this EA include:

- **Direct effects.** Impacts caused by the proposed action and occur at the same time and place.
- **Indirect (or secondary) effects.** Impacts caused by the proposed action that occur later in time or farther removed in distance, but that are still reasonably foreseeable. Generally, these impacts are triggered by the initial action. Environmental resources that can be sensitive to change are things like wildlife habitat, the social and economic structure of a community, floodplains and area-wide water quality.
- **Cumulative effects.** Impacts that result from the incremental consequences of an action when added to other past and reasonably foreseeable future actions. These impacts are less defined than indirect effects and may even be undetectable. Nonetheless, such effects can add to other disturbances and eventually lead to measurable environmental change.

This section of the EA summarizes both beneficial and detrimental effects of the proposed land exchange on the Physical and Human Environments. The items addressed herein are consistent with factors that must be addressed according to the

Montana Environmental Policy Act (MEPA).

The proposed land exchange itself would have few direct impacts on the environment because only the ownership of the involved lands would change. However, changes in ownership create the potential for indirect effects to occur if management of the land substantially changes or new land uses are developed on affected properties. Such changes could cause effects to the physical and human environment.

The land exchange would facilitate implementation of MDT's highway projects requiring the use of Tribal trust or fee land. These projects could indirectly cause environmental effects. MDT's future highway projects on the Flathead Reservation would be subject to a variety of environmental laws and regulations administered by federal and state agencies and the CSKT. For this reason, the environmental analyses within this Part address federal, state, and Tribal regulations that may apply to future highway projects on the Reservation.

As indicated earlier in the EA, MDT's projects on state-maintained highways within the Flathead Indian Reservation may include:

- construction/reconstruction projects;
- rehabilitation and widening;
- resurfacing;
- spot and safety improvements; and
- bridge rehabilitation/replacements.

Other miscellaneous actions like environmental and enhancement projects; rest areas; lighting; historical monuments; scale sites; culvert and slide repair, and bicycle and pedestrian facility projects may also be conducted on state-maintained highways. Virtually all of these project types could require additional right-of-way, including the use of Tribal trust or fee land. However, only MDT's reconstruction, road rehabilitation and major widening, and bridge replacement projects present the greatest opportunities for affecting Tribal lands since such projects typically require notable changes in right-of-way.

This EA will consider only the potential environmental impacts on the properties included in this proposed exchange. The potential environmental impacts associated with the planned reconstruction of the U.S. Highway 93 through the Flathead Indian Reservation have already been analyzed in detail in the Evaro - Polson Final Environmental Impact Statement (FEIS) completed June 17, 1996 and in a subsequent re-evaluation of the Evaro - Polson FEIS completed on April 30, 2001. The Federal Highway Administration approved Records of Decision for these FEIS documents on August 12, 1996 and October 23, 2001, respectively.

A Supplemental EIS (SEIS) is currently being prepared for the "Ninepipe Segment" of US Highway 93 which will include a detailed analysis of the potential impacts of reconstructing 11.2 miles of the route from the beginning of the "Ninepipes" area through Ronan.

As stated earlier, MDT completed an environmental document analyzing the potential effects of constructing the Hoskin's Landing Wetland Mitigation project in September 2001. The document concluded that constructing the proposed wetland mitigation project would not cause any significant individual, secondary, or cumulative environmental impacts. The impacts of the proposed wetland mitigation project are not specifically recounted in this document; however, a copy of the Programmatic Categorical Exclusion and other pertinent materials are included in Appendix E.

B. Projects by Others in the Areas Affected by the Proposed Land Exchange

In order to help evaluate possible secondary and cumulative effects of the proposed land exchange, research was conducted to identify other known or planned projects in the vicinity of the properties being proposed for exchange. Ongoing and reasonably foreseeable projects by others are described in the following paragraphs. Projects planned by other agencies and private developers in the vicinity of the properties considered in the proposed land exchange were also reviewed to help assess the potential for cumulative impacts.

- **CSKT Projects.** CSKT planning staff were consulted about commercial or residential developments currently underway or planned in the vicinity of the properties considered for exchange or near U.S. Highway 93. No commercial or residential developments were identified near the properties included in this proposed exchange. However, CSKT is involved in two proposed projects along U.S. Highway 93.

The first proposed project is construction of a "green parkway" at Salish Point on Flathead Lake. Salish Point is a cooperative project between CSKT and the City of Polson between the City Park and the KwaTaqNuk Resort on Flathead Lake. This area, which is currently an undeveloped dirt parking area with an existing dock on Flathead Lake, would be developed with landscaping and trails connecting the Resort to the City Park. However, no beaches or new docks would be constructed.

The second project—construction of a U.S. Highway 93 bypass around the City of Polson—has been under consideration by MDT, the City of Polson and CSKT for several years. Several public meetings have been held to discuss this idea, but no decision has been made whether or not to proceed with designating such a route.

- **Projects in Lake County.** According to the Lake County Planning Office, no commercial or residential developments are underway or planned around the Melita Island Overlook or Round Butte Road Properties. The only significant developments planned or discussed in the County in the vicinity of U.S. Highway 93 are the Salish Point and U.S. Highway 93 bypass proposals discussed in the previous paragraph and the construction of a large boat launch facility on the Flathead River near the Regatta site. In addition, an 18-lot (60 acre) residential subdivision development is underway on Meadowlark Lane near Big Arm.
- **Projects in Missoula County.** The Missoula County Planning Department stated that no commercial or residential developments were underway or planned for the Schley Creek area or anywhere near that part of U.S. Highway 93.
- **Projects in Sanders County.** The Sanders County Land Use Director stated that no commercial or residential developments were underway or planned in or around Perma and Dixon.
- **Lolo National Forest/Flathead National Forest Projects.** The United States Forest Service (USFS) administers lands in the Lolo National Forest to the west, south and east of the Flathead Indian Reservation and the majority of the properties included in this proposed exchange. The Schley Creek and Schley Creek Gravel Pit properties are located within the boundaries of the Lolo National Forest.

No USFS projects near the Flathead Indian Reservation and the properties included in this proposed exchange were identified from the Lolo National Forest Quarterly Project List—July through September 2003.

The Flathead National Forest administers land to the northwest and east of the Flathead Indian Reservation and the properties included in the proposed exchange.

No USFS projects near the Flathead Indian Reservation and the properties included in this proposed exchange were identified from the Flathead National Forest 2003 NEPA Report.

- **Private Developments.** No major new residential and commercial development proposals exist for lands in or near the lands proposed for exchange or U.S. Highway 93 North.

MDT's reasonably foreseeable projects (described in Part I) within the Flathead Indian Reservation and the above described projects were considered in the conclusions regarding potential secondary and cumulative effects expressed under individual subject or resource areas in this Part.

C. Impacts to the Physical Environment

1. IMPACTS TO LANDFORMS AND GEOLOGY

Existing Conditions. The Flathead Indian Reservation encompasses a wide variety of landforms including high elevation mountains, broad low elevation valleys, high and low elevation hills and buttes, prairie, and riparian and lakeside lands. The Mission Range and the Rattlesnake Mountains flank the eastern edge of the Reservation and the Salish Mountains are located at the northern boundary of the Reservation. Most notable peaks within these ranges are more than 7,000 feet in elevation with the highest peak in the Mission Range being more than 9,800 feet above sea level. Flathead Lake, the Flathead and Jocko Rivers, and Little Bitterroot River are other notable natural features within the Reservation.

The topography that exists today is the direct result of glacial action and erosion by wind and water. Evidence of Glacial Lake Missoula and other ancient glacial lakes can be found in many parts of the Reservation. The Giant Ripples of Camas Prairie and the kettle holes in the Ninepipes area are important geologic features that evidence glacial action in this region of Montana. Much of the geologic materials present in the valley regions of the Reservation consist of reworked glacial and lake deposits.

The majority of state-maintained roads within the Reservation are generally located in the broad Mission Valley, along the Jocko and Flathead Rivers, and across prairie lands in the western portion of the Reservations. Surface elevations along highway corridors typically range from 2,500 to 3,500 feet above sea level.

The Hoskin's Landing property was cleared, leveled, and bermed during the 1940's to allow for agricultural uses. The leveling of the property was partially responsible for the complete or partial filling of wetlands located in shallow depressions on the property.

A decorative rock quarry exists on about 40 acres of the property at Perma and gravel mining has occurred on one of MDT's properties at Schley Creek. Decorative rock has not been mined at the Perma quarry since MDT assumed its ownership.

Impacts of the Preferred Alternative. The proposed land exchange would not directly cause any impacts to the landforms or geologic substructure on MDT's excess lands or Tribal lands within the Flathead Indian Reservation.

Indirect Impacts. MDT's wetland mitigation project at Hoskin's Landing returned a portion of the property to pre-agricultural conditions by restoring more natural contours and elevations.

If the CSKT assumed ownership of the quarry at Perma and the gravel pit at Schley Creek, it would be the Tribes' decision whether or not to conduct further mining activities on the properties. Representatives from the CSKT Department of Natural Resources stated that the Tribes will not permit further mining activities at the Perma quarries.

The implementation of future MDT projects may affect terrain and landforms located on or adjacent to existing state-maintained roads within the Reservation. In most instances, work would typically involve minor cutting and filling to prepare a new foundation for the widened road and roadside slopes and to enhance the road's vertical alignment. Reconstruction projects involving major road widening and alignment changes to eliminate substandard curves and grades would disrupt, displace, compact and cover soils not currently associated with existing highways. The effects on adjacent landforms and geology would be minor for projects not requiring substantial changes to the vertical or horizontal alignment of roads.

To the extent practical, MDT's engineers design highway reconstruction projects in a manner that "balances" the amount of cut and fill materials needed within the project area. This typically minimizes the need for alternate borrow sources away from the project area. Surface and subsurface materials would be disturbed at locations away from the project areas if additional material were needed to build new roads. Typically, MDT's contractor provides any additional material imported to construct the proposed project.

The construction activities associated with highway projects, including clearing and grading, would increase the short-term and long-term potential for soil erosion and sediment transport. This potential for erosion and adverse sedimentation impacts would vary depending upon the amount of soil area disturbed, the nature of the soils disturbed, the steepness of slopes, the proximity of the disturbance to wetlands and surface waters, and the duration of the soil disturbances. MDT's projects would employ best management practices to control or minimize soil disturbances and erosion during and after construction. Highway projects would also be subject to federal, state and Tribal permits intended to protect water quality. MDT would also prepare the appropriate MEPA or NEPA document in conformance with the applicable statutes and rules at the time the subsequent project was proposed.

Cumulative Impacts. The proposed land exchange would not cause any cumulative effects to landforms and geologic conditions within the Flathead Indian Reservation.

MDT's highway projects, together with any other ongoing or future development activities on lands within the Flathead Indian Reservation, would not cause any notable cumulative effects to the landforms and geology present within the Reservation. This conclusion was made because most highway projects and other developments would occur in areas already disturbed.

Impacts of the No Action Alternative. The No Action Alternative would not cause any direct impacts to landforms or geologic conditions within the Flathead Indian Reservation.

Minor impacts to landforms would occur as an indirect impact because MDT's highway projects would continue to be developed and implemented. As discussed above, individual projects would result in new disturbances of land and may increase the potential for erosion and sedimentation during construction. Measures would be employed with each project to minimize erosion during and after construction. Federal, state, and Tribal permitting would help ensure that water quality is protected in the vicinity of each project.

Implementing MDT's projects and others developments within the Reservation would not result in notable cumulative effects.

2. IMPACTS TO IMPORTANT FARMLAND

Existing Conditions. The *Farmland Policy Protection Act* (FPPA) (7 U.S.C. 4201 et. seq.) requires special consideration be given to soils that are considered as prime farmland, unique farmland, or farmland of statewide or local importance by the U.S. Department of Agriculture—Natural Resources Conservation Service (NRCS). For simplicity, these soils are referred to as important farmland.

The NRCS published soil data for Lake and Sanders County show that many areas of important farmland exist along major road corridors and elsewhere within the Flathead Indian Reservation. Such soils are present along much of Montana Highway 200 within the proposed land exchange areas and near MDT's excess lands on Round Butte Road. Important farmland exists on the Hoskin's Landing property near Dixon.

Impacts of the Preferred Alternative. The proposed land exchange would not cause any direct impacts to prime farmland, unique farmland or farmland of statewide or local importance on MDT's excess lands or Tribal lands within the Flathead Indian Reservation.

Indirect Effects. MDT's Hoskin's Landing Wetland Mitigation project resulted in the direct conversion of about 6 acres of important farmland. A Farmland Conversion Impact Rating form completed in September 2001 calculated the *Total Points* for the wetland mitigation project to be 158. Since this total is less than 260, no further consideration for protection was necessary and no additional important farmlands evaluations were required.

However, due to the prevalence of soils classified by the NRCS as prime farmland, unique or important farmland, highway projects within the Reservation have a high likelihood for encountering such resources. MDT is obligated by the FPPA to coordinate with the NRCS to: identify the presence of prime, unique or important farmland; quantify the extent of impacts to such farmland project; and to evaluate the significance of any potential losses of important farmland. MDT must review soils information when design plans for future highway projects within the Reservation to determine if the proposed projects result in the direct or indirect loss (conversion) of important farmland. Form AD-1006 (Farmland Conversion Impact Rating) must be processed if any important farmland would be converted by future highway projects.

Cumulative Effects. The proposed land exchange, combined with other ongoing and planned developments, would not cause any notable cumulative environmental effects to important farmland.

MDT's highway projects, together with any other ongoing or future development activities on rural lands within the Flathead Indian Reservation, would convert minor amounts of farmland to other uses. Over time, such cumulative conversions could represent a notable loss of important farmland on the Reservation and within Lake, Missoula and Sanders Counties.

Impacts of the No Action Alternative. The No Action Alternative would prevent MDT and the CSKT from exchanging ownership of their respective properties and prevent reconstruction of U.S. Highway 93, since MDT would need to find and purchase other non-tribal "fee" properties within the Reservation. As described in Part II, Section D, "Other Alternatives Considered but Rejected by MDT," the Tribe's active policy of seeking to acquire and consolidate lands within the Reservation would likely result in the CSKT outbidding the MDT for the purchase of such properties. In addition, the No Action Alternative would prevent direct impacts to important farmlands within the Flathead Indian Reservation.

This alternative may indirectly impact important farmlands since MDT's highway projects would continue to be developed and implemented. Individual projects may impact important farmland if lands outside existing right-of-way corridors or other lands are needed for highway purposes. MDT would be obligated to coordinate with the NRCS and process Farmland Conversion Impact Rating forms for projects that may cause the direct or indirect conversion of important farmland.

Over time, the incremental losses of important farmland due to MDT's projects and others undertaken within the Reservation could represent a notable loss of farmland.

3. WATER RESOURCES AND QUALITY

Existing Conditions - Surface Waters. Notable surface waters within the Flathead Indian Reservation include the Flathead, Jocko and Little Bitterroot Rivers and their tributaries (Flathead Lake, Ninepipes and Kicking Horse Reservoirs) and various small ponds and wetlands. State highways also cross numerous minor perennial and seasonal streams and irrigation ditches.

The Perma and Hoskin's Landing properties border the Flathead River, which flows westerly through the properties before it drains into the Clark Fork River near Paradise. The Melita Island Overlook property rests on a hill above Flathead Lake. Schley Creek, which originates below Murphy Peak to the southwest of the Schley Creek Gravel Pit and U.S. Highway 93 frontage, flows north and west through the properties. Surface waters in the vicinity of the Round Butte properties consist of an irrigation canal and a variety of prairie potholes.

Surface Water Quality. The quality of surface waters is generally quite high in headwaters areas but decreases at lower elevations due to surface runoff and the influence of agriculture and other human developments. The principal sources of water quality degradation include increases in temperature, total dissolved solids, fecal coliform and alkalinity.

In February 1995, the CSKT received approval from the EPA to administer Section 303 of the federal *Clean Water Act* (33 U.S.C. 1251 – 1376). Subsequently, the Tribes established its "Surface Water Quality Standards and Antidegradation Policy" in April 1995. The water quality standards apply throughout the Flathead Indian Reservation.

Water quality in Flathead Lake has long been a concern due to increased nutrient loads from natural sources and a rapidly growing human population within its drainage basin. Every two years, the MDEQ prepares and submits a list of impaired or threatened waters to the EPA as required under Section 303(d) of the Clean Water Act. Flathead Lake is included on MDEQ's current 303(d) list of impaired waters that do not meet state water quality standards. Flathead Lake is considered an impaired water body for several reasons, including sedimentation, conventional and toxic pollutants and visual observation of impairment.

Ground Water. The occurrence, movement, and quality of groundwater are closely tied to the surrounding geological conditions. The physical and geochemical properties of the rock units used as aquifers to a large extent determine the quantity and quality of ground water available. The primary aquifers in the area are unconsolidated valley sediments and relatively shallow base rock formations. Groundwater is generally

considered to be of good quality. Wellhead protection areas have been established in Polson, in Pablo and near Arlee.

Water Rights. Two state water rights (76L-C-037494-00 and 76L-W-029650-00) exist on MDT's excess lands at Perma.

Impacts of the Preferred Alternative. The proposed land exchanges would have no direct impacts to water resources or quality on MDT's excess lands or Tribal lands within the Flathead Indian Reservation.

Indirect Effects. MDT's Hoskin's Landing Wetland Mitigation project resulted in beneficial effects to water quality since part of the bank and a backwater channel of the Flathead River were restored to more natural contours. This action helped reestablish the historic floodplain and an associated riverine wetland complex. Wetlands possess a variety of functions and values that benefit water quality.

Exchanging excess lands at Perma would necessitate the transfer of two state water rights from MDT to the CSKT. Other existing water rights would remain unaffected by this alternative.

The implementation of future MDT projects could indirectly affect water quality since vegetation clearing and grading would subject areas adjacent to existing roads to erosion. Lengthening or replacing culverts and reconstructing adjacent roadway approaches would expose soils and increase the potential for erosion. Although erosion occurs naturally to some extent, the erosion of areas disturbed by construction could contribute additional sediments to surface waters. Unless preventative measures are taken, erosion and sedimentation and highway runoff have the potential to affect water quality and aquatic resources.

Increased sediment loads have the potential to alter downstream deposition patterns, increase turbidity levels, contribute nutrients (nitrates and phosphorus), decrease the quality of existing fisheries, and promote algal growth in receiving waters. However, none of these adverse effects are anticipated as a result of highway projects within the Flathead Indian Reservation because best management practices to inhibit erosion would be designed and employed for each project.

Potential water quality impacts can also occur due to highway runoff during the operational life of a road. During the mid-1980s, the FHWA conducted extensive nationwide studies to determine highway runoff constituents, amounts relative to roadway types and traffic conditions, and the potential impacts to surface water resources (*Pollutant Loadings and Impacts from Highway Stormwater Runoff, Volume I*, FHWA, April 1990). FHWA's research concluded that pollutants in highway runoff are not present in amounts sufficient to threaten surface or groundwater where Average Daily Traffic (ADT) volumes are below 30,000. Since traffic volumes on state

maintained roads within the Flathead Indian Reservation (including those on the busiest sections of U.S. Highway 93) are not expected to approach 30,000 vehicles per day twenty years from now, it can be reasonably concluded that runoff from the state-maintained highways would not cause significant degradation of surface waters or ground water resources.

MDT's highway projects would be subject a variety of water-related permits administered by federal, state and Tribal authorities including:

- Section 404 permits - U.S. Army Corps of Engineers;
- National Pollutant Discharge Elimination System (NPDES) permits – U.S. EPA;
- Aquatic Lands Conservation Ordinance (ALCO) 87-A permits– CSKT; and
- 124 Stream Preservation Act permits – Montana Fish, Wildlife & Parks.

Because of these permitting processes and the implementation of preventative measures, MDT's highway projects would not be expected to cause notable adverse effects on surface water quality.

Cumulative Effects. The proposed land exchange, when considered with other ongoing and planned developments, would not cause any notable cumulative environmental effects to the quality or quantity of surface or groundwater.

Future highway improvements, together with the impacts of present and reasonably foreseeable developments in the area, would not cause any notable cumulative effects on the quality or quantity of surface or groundwater within in the Flathead Indian Reservation. MDT's engineered road design and the application of best management practices (BMPs) would avoid or mitigate potential water quality impacts.

MDT's highway projects could contribute to additional growth and development within the Reservation and surrounding region—although the relationship between highway improvements and population growth is tenuous. However, there does not appear to be a direct causal relationship between improving the highway and new development since the population of this general area has grown with only limited improvements to the existing road. Therefore, it is impossible to accurately estimate whether improving the state road system would cause new development in the area and what impacts, if any, that development might have on surface or groundwater resources. Environmental permitting associated with major new development activities offers some safeguards against adverse impacts to surface and groundwater resources.

Impacts of the No Action Alternative. There would be no direct impacts to water resources or water quality within the Flathead Indian Reservation under the No Action Alternative.

As with the Preferred Alternative, MDT's highway projects would continue to be

implemented providing the potential for minor indirect effects to water resources and quality. The inclusion of best management practices (BMPs) in the design of MDT's projects and environmental permitting would help safeguard against adverse impacts to surface and groundwater resources.

The cumulative effects of implementing MDT's highway projects under the No Action Alternative would be similar to those described for the Preferred Alternative.

4. FLOODPLAIN IMPACTS

Existing Conditions. Executive Order No. 11988 requires that the effects of the proposed action be evaluated to determine if any of its alternatives encroach on the "base" floodplain. The "base" floodplain is the area covered by water from the 100-year flood. The 100-year flood represents a flood event that has a one percent chance of being equaled or exceeded in any given year.

Flood insurance studies, under the National Flood Insurance Program (NFIP) have been performed for Lake, Missoula and Sanders Counties. These counties have adopted the standards for floodplain management and are participating in the NFIP. Floodplain permits are required for any encroachment or crossings of delineated floodplains on privately owned lands. The CSKT is not participating in the NFIP so the floodplain regulations are not in effect on Tribal lands.

According to the Flood Insurance Rate Maps (FIRM) numbers 0720025A and 0720026A, portions of the Perma properties immediately adjacent to the Flathead River and the entire Hoskin's Landing property are included in a "special flood hazard area" that is within the 100-year floodplain. Other excess MDT properties do not lie within delineated 100-year floodplains.

The state highway system crosses or is located near delineated 100-year floodplains at various locations within the Flathead Indian Reservation.

Impacts of the Preferred Alternative. The proposed land exchange would not result in any direct impacts to delineated floodplains.

Indirect Impacts. Individual highway and bridge projects could result in encroachments upon delineated 100-year floodplains. MDT would evaluate each future project to identify any floodplain encroachments and develop designs to avoid or minimize encroachments on designated floodplains. Depending upon whether private or Tribal lands are involved, MDT's projects would be subject to floodplain management regulations administered by Lake and Sanders Counties and other water-related permits administered by federal, state and Tribal authorities.

Cumulative Impacts. No notable cumulative effects on floodplains are foreseen. MDT's designs for future projects would attempt to avoid or minimize encroachments on designated floodplains. This action would limit the possibility for future cumulative effects on floodplains in the area due to highway projects.

The design and construction of MDT's highway projects and foreseeable developments by others within the Flathead Indian Reservation and adjoining region would be subject to county floodplain development permitting and other water-related permits administered by federal, state, and Tribal governments. Such permitting would be expected to minimize the potential for adverse floodplain impacts associated with future highway projects and other developments within the Reservation.

Impacts of the No Action Alternative. If the ownership of the lands involved in the proposed exchange remained unchanged, there would be no effects to floodplains on or adjacent to any of the properties. Without further development changing the uses of the effected lands, there are no risks of new flooding incurred, no impacts on natural and beneficial floodplain values and no likelihood of incompatible floodplain development.

Because MDT's highway projects would continue to be implemented under the No Action Alternative, the indirect effects would be similar to those of the Preferred Alternative.

The cumulative effects of implementing MDT's highway projects under the No Action Alternative would be similar to those described for the Preferred Alternative.

5. AIR QUALITY IMPACTS

Existing Conditions. Air quality within the Flathead Indian Reservation can generally be described as good. The Flathead Indian Reservation is considered to be a Class I Air Shed under 40 CFR 52.1382(c)(3). U.S. Environmental Protection Agency (EPA) and National Ambient Air Quality Standards (NAAQS) apply on the Reservation and are supported by a Tribal Air Quality Program. The federal government maintains enforcement authority for air quality.

Ronan and Polson are designated as nonattainment areas for PM-10 due to violations of the NAAQS for the pollutant. PM-10 refers to particulate matter less than 10 microns in diameter. Memorandums of Agreement specifying measures to control PM-10, such as using chemical deicers and clean sand and street sweeping, have been implemented in both Ronan and Polson.

Other areas of the Reservation are considered to be unclassifiable/attainment areas for air quality under 40 CFR 81.327, as amended.

Impacts of the Preferred Alternative. The Preferred Alternative would not directly cause any effects to air quality within the Flathead Indian Reservation or adjoining region.

Indirect Impacts. Individual highway projects would temporarily reduce air quality within their project areas during construction. Air quality impacts would be minor and localized to the vicinity of construction activities. Dust control measures can be incorporated if necessary to minimize adverse air quality concerns within construction zones.

MDT's proposed projects in the Polson and Ronan areas would be developed with the assurance that no violations of air quality standards for PM-10 in the designated nonattainment areas would occur. MDT must demonstrate that its proposed projects in these areas are either exempted from transportation conformity determination requirements (under EPA's September 15, 1997 Final Rule) or comply with transportation conformity requirements. Transportation conformity, as required by the regulations implementing the Clean Air Act and its amendments (40 CFR 52), ensures that Federally-funded or approved transportation plans, programs, and projects conform to the air quality objectives for the non-attainment areas.

Cumulative Effects. The implementation of MDT's highway projects, together with reasonably foreseeable actions by others, would not cause any notable cumulative air quality impacts within the Flathead Indian Reservation or adjoining areas. The improvement of the U.S. Highway 93 corridor and other routes could ultimately benefit air quality by helping to relieve congestion and associated vehicle emissions in some areas.

Impacts of the No Action Alternative. This alternative would cause no air quality impacts to any of the lands involved in the proposed exchange.

Because MDT's highway projects would continue to be implemented under the No Action Alternative, the indirect and cumulative effects would be similar to those described for the Preferred Alternative.

6. IMPACTS TO VEGETATION

Existing Conditions. The ecological diversity of the Flathead Indian Reservation supports a wide variety of vegetation. State-maintained roads within the Reservation typically occur within the intermountain valley grassland and meadow landscape classification. The distinguishing vegetation types for this classification include: needlegrasses, meadow grasses, sedges and willows. Forested hillsides support stands of Ponderosa pine and other coniferous species and riparian zones support both

coniferous species and deciduous trees and shrubs. Naturally occurring vegetation in some areas adjacent to the road system has been removed to allow for the production of hay and cultivated crops.

The Hoskin's Landing site is characterized by typical wetland vegetation, including reed grasses and cattails.

The Perma properties include forested hillsides with stands of Ponderosa pine and rangelands with native grasses, sedges and forbs. The riparian zone fronts the Flathead River and features coniferous vegetation and rock to the north and deciduous vegetation with willows and cottonwoods to the south.

The area in the immediate vicinity of the Schley Creek and Schley Gravel Pit properties is primarily bare ground and mixed forest.

The Round Butte Road properties are characterized by irrigated pasture and grazing land. Most of the Round Butte properties support crop production and grazing.

The Melita Island Overlook property is forested, with stands of Douglas fir and Ponderosa pine.

Threatened or Endangered Plant Species. In accordance with section 7(c) of the Endangered Species Act (16 U.S.C. 1531-1543), the U.S. Fish and Wildlife Service (USFWS) has determined that the following listed plant species may be present on the Flathead Indian Reservation:

Table 2: Threatened and Endangered Plant Species

COMMON NAME	SCIENTIFIC NAME	STATUS	RANGE – MONTANA
Spalding's Campion (or "catchfly")	<i>Silene spaldingii</i>	Threatened	Upper Flathead River Fisher River drainages; Tobacco Valley – open grasslands with rough fescue or bluebunch wheatgrass
Water Howellia	<i>Howellia aquatilis</i>	Threatened	Wetlands; Swan Valley, Lake and Missoula Counties
Slender (or linearleaf) moonwort	<i>Botrychium lineare</i>	Candidate	Glacier, Lake Counties – meadows in conifer forests

Source: U.S. Fish and Wildlife Services, Ecological Services, Montana Field Office, "THREATENED, ENDANGERED AND CANDIDATE SPECIES for the FLATHEAD INDIAN RESERVATION (6/23/2003)."

The Montana Natural Heritage Program (MNHP) was contacted in July 2003 to determine the presence of threatened or endangered plant species in the areas

proposed for exchange. No occurrences of threatened or endangered plant species were identified near the Perma, Hoskin's Landing, Schley Creek, Schley Gravel Pit, Melita Island Overlook or Round Butte Road properties.

Plants Species of Concern. Data on the countywide distribution of rare and sensitive plant species available from the MNHP were reviewed to obtain a general indication of the prevalence of such species on the Flathead Indian Reservation. The MNHP records showed that 42 species of concern (including USFWS listed species) occur within Lake County and 31 species of concern occur within Sanders County.

No occurrences of plant species of concern were identified on the Hoskin's Landing property or on MDT's excess properties within the Reservation.

Invasive/Noxious Plants. According to the Invaders Database System (August 20, 2003), twenty-two species of noxious weeds have been identified on lands in Sanders and Lake Counties. Hoary cress, diffuse knapweed, spotted knapweed, Russian knapweed, oxeye daisy, Canada thistle, field bindweed, hound's-tongue, leafy spurge, St. Johnswort, dalmatian toadflax, yellow toadflax, sulfur cinquefoil and common tansy are considered to be Category 1 noxious weeds. The Montana Department of Agriculture defines Category 1 noxious weeds as "weeds that are currently established and generally widespread in many counties of the state."

Orange hawkweed, yellow-devil hawkweed, meadow hawkweed, purple loosestrife, tall buttercup and tansy ragwort are identified as Category 2 noxious weeds, meaning these species have been recently introduced and are spreading rapidly. Rush skeletonweed and yellowflag iris are Category 3 noxious weeds that occur only in small scattered and localized infestations.

Infestations of spotted knapweed, Dalmatian toadflax, leafy spurge and sulphur cinquefoil exist on the Hoskin's Landing property and on MDT's excess properties.

Impacts of the Preferred Alternative. The proposed land exchange would not directly result in any impacts to vegetation on lands within the Flathead Reservation or on MDT's excess properties.

Indirect Impacts. Temporary disturbances would occur where vegetation is cleared from the right-of-way, at staging areas for construction equipment and at any necessary borrow sites for individual highway projects implemented by MDT. Virtually all of MDT's future projects would occur in areas immediately adjacent to the existing road currently subjected to other sources of human disturbance, including residential and agricultural (farming and grazing) activities. MDT's projects would also be developed to ensure disturbed areas are promptly revegetated with suitable species. Consequently, the effects on vegetation resulting from MDT's highway projects would be minor.

MDT's highway projects would not be expected to affect any listed threatened or endangered plants or any plant species of special concern due to their limited distributions within the area. However, MDT must review individual project proposals and evaluate their potential effects on threatened or endangered plants and species of special concern.

Many noxious weeds gain a foothold after ground disturbances. Therefore, the potential exists for the spread of noxious weeds with the disturbances associated with highway reconstruction on the Flathead Indian Reservation. Once noxious weeds become established, they are often extremely difficult and very expensive to eradicate or control. Noxious weed movement from highway corridors onto adjacent land can reduce the value of an area for rangeland, wildlife habitat or other uses.

Executive Order No. 13112, signed in February 1999, requires federal agencies (e.g., FHWA) whose actions may affect the status of invasive species to prevent the introduction of invasive species, detect and control populations of such species, monitor invasive species populations, and restore native species and habitats that have been invaded to the extent practical and permitted by law. Implementation of weed control measures prior to and during construction would reduce the potential severity of this impact.

Cumulative Effects. Ground disturbing activities from MDT's highway projects and other ongoing and future developments could result in the loss of minor amounts of vegetation and offer the potential for the spread of noxious weeds. However, the implementation of MDT's highway projects, together with reasonably foreseeable actions by others, would not be expected to cause any notable cumulative impacts to vegetation within the Flathead Indian Reservation or adjoining areas.

Impacts of the No Action Alternative. The No Action alternative would not cause any new impacts to vegetation on Tribal lands or MDT's excess lands within the Reservation.

Because MDT's highway projects would continue to be implemented under the No Action Alternative, the indirect and cumulative effects on vegetation would be similar to those described for the Preferred Alternative.

7. IMPACTS TO WETLANDS

Existing Conditions. Montana National Wetlands Inventory Maps show that numerous palustrine, lacustrine, and riverine wetlands exist on lands within the Flathead Indian Reservation and adjacent to or near the state-maintained road system. Palustrine wetlands include inland marshes and swamps as well as bogs, fens and

floodplains. Lacustrine wetlands may include freshwater marshes, aquatic beds and lakeshores. Riverine wetlands are those areas directly flooded by streamflow.

Common wetland types within the Reservation include emergent wetlands (dominated by herbaceous vegetation); shrub wetlands (characterized by low growing woody species); forested wetlands with woody species greater than 20 feet in height; and open water. Wetland complexes often consist of one or more of the general wetlands types.

According to the National Wetlands Inventory maps, the Hoskin's Landing property is classified as a palustrine aquatic bed with rooted vascular plants. This wetland is semi-permanently flooded. The Perma properties have some riparian wetlands that are classified as Palustrine-emergent with broad-leaved green vegetation and seasonal flooding. The Schley Creek and Schley Gravel Pit properties have Palustrine-emergent wetlands in their vicinity that are seasonally flooded. The Round Butte Road properties have two different types of wetlands in their vicinity, including Palustrine-emergent seasonally flooded and Palustrine-emergent semi-permanently flooded. No wetlands exist on or in the near vicinity of the Melita Island Overlook property; however, the lakeshore land below it is classified as seasonally flooded Palustrine-emergent wetland with broad-leaved green vegetation.

Impacts of the Preferred Alternative. Completion of this proposed land exchange would have no direct impact on wetlands. No construction activities or other proposed actions are included with this proposed exchange. The only result of this proposal would be a transfer of the management of the exchanged lands.

Indirect Impacts. The Hoskin's Landing Wetland Mitigation project was accomplished to offset wetland losses resulting from the Dixon-West and Paradise-East (East Section) highway reconstruction projects. The mitigation project included restoring and creating about 8.1 acres wetlands and enhancing an additional 5.17 acres of wetlands that were severely impacted by past livestock grazing.

Individual highway and bridge projects have the potential for impacting wetlands due to minor road widening, alignment modifications and slope adjustments. Many state-maintained roads are located in portions of the Reservation where large wetlands complexes exist or cross riparian corridors with associated wetlands. The potential also exists for highway projects to encounter areas of shallow groundwater adjacent to existing roads. As necessary, MDT would review individual projects and conduct wetland delineations and function and value assessments so the potential impacts to wetlands can be identified. MDT is obligated to avoid or minimize impacts to wetland areas to the extent possible. If impacts are unavoidable, compensatory mitigation must be provided for wetland losses.

A *Clean Water Act* (33 U.S.C. 1251-1376) – Section 404 permit from the U.S. Army Corps of Engineers (COE) is required for any proposed work that would impact wetlands. The COE would determine if MDT's proposed projects qualify for a

"Nationwide" permit under the provisions of 33 CFR 330. The COE may also require an "Individual" permit pending review of the application for some projects.

Proposed projects on the Reservation that may affect wetlands or other waters would be subject to the CSKT's ALCO permit process prior to any relevant disturbance.

Cumulative Effects. The Evaro-Polson Final EIS indicates that although the total acreage of wetland losses within the Flathead Indian Reservation has not been calculated, the CSKT estimates that at least 30 percent of the pothole wetlands have been drained over time through farming practices, road construction and other developments.

MDT's highway projects and other ongoing and future developments within the Flathead Indian Reservation could result in the loss of wetlands. Present and anticipated future losses of wetlands would be temporary since compensatory mitigation would be provided to satisfy the requirements of the CSKT, the COE, and the EPA. Therefore, due to inherent obligations to avoid, minimize or mitigate wetland impacts, the implementation of MDT's highway projects, together with reasonably foreseeable actions by others, would not be expected to cause any notable cumulative impacts to wetland resources.

Impacts of the No Action Alternative. The No Action alternative would not cause any new impacts to wetlands on Tribal trust or fee lands or on MDT's excess lands within the Flathead Indian Reservation.

MDT's highway projects would continue to be implemented under the No Action Alternative. Therefore, the indirect and cumulative effects on wetlands would be similar to those described for the Preferred Alternative.

8. IMPACTS TO ENDANGERED WILDLIFE AND FISH

Existing Conditions. In accordance with *Section 7(a)* of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), MDT consulted the USFWS and the MNHP for a list of endangered, threatened, proposed, and candidate wildlife and fish species that could occur in the areas considered for exchange. Based on this coordination, the following threatened, endangered, proposed, or candidate species could occur within the Flathead Indian Reservation:

Table 3: Threatened and Endangered Animal Species

COMMON NAME	SCIENTIFIC NAME	STATUS	RANGE – MONTANA
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Threatened	Forested riparian statewide
Bull Trout	<i>Salvelinus confluentus</i>	Threatened, proposed critical habitat	Clark Fork, Flathead, Kootenai, St Mary, and Belly river basins; cold water rivers and lakes.
Gray Wolf	<i>Canis lupus</i>	Threatened	Resident, transient; Forests in western Montana
Grizzly Bear	<i>Ursus arctos horribilis</i>	Threatened	Resident, transient; Alpine/subalpine coniferous
Canada Lynx	<i>Lynx canadensis</i>	Threatened	Resident, western Montana - montane spruce/fir forests

Source: U.S. Fish and Wildlife Services, Ecological Services, Montana Office, "THREATENED, ENDANGERED AND CANDIDATE SPECIES for the FLATHEAD INDIAN RESERVATION (6/23/2003)."

Bald eagles can occur on lands throughout the Reservation and are known to nest at various locations on Flathead Lake, at the Pablo National Wildlife Refuge and near Kicking Horse Reservoir. Bald eagles are also seasonal migrants and winter near open water areas like the Flathead and Jocko Rivers.

Bull trout occur or are believed to have historically occurred at low levels within the Reservation in the Flathead and Jocko Rivers and their tributaries, the Little Bitterroot and its tributaries and the Mission Creek drainage. Flathead Lake also supports bull trout.

In general, suitable habitats for the gray wolf, grizzly bear and Canada lynx do not exist within or immediately adjacent to state maintained roads. However, these species are known to move between suitable habitats on the Reservation and adjoining lands. Gray wolves are known to occur in the Ninemile area southwest of Dixon and evidence suggests crossings of U.S. Highway 93 in the Evaro, Jocko River, Ravalli and Ninepipes areas.

The Evaro area is managed by the CSKT as an important linkage area between the Northern Continental Divide and Bitterroot Grizzly Bear recovery areas. Evidence of grizzly bear crossings on U.S. Highway 93 exists in the Evaro Hill, Ravalli Hill, and Ninepipes areas.

Canada lynx may also use travel corridors in the Evaro, Jocko River, and Ravalli Hill areas.

Within the Flathead Indian Reservation, management of these listed species and their habitat is the joint responsibility of the USFWS and the CSKT Tribal Fish, Wildlife Recreation and Conservation Office.

Impacts of the Preferred Alternative. The proposed land exchange would not directly affect any threatened and endangered species as a result of the proposed land exchange.

Indirect Impacts. The implementation of individual highway projects would not be expected to adversely affect bald eagles or habitat important to the species.

Construction activities associated with highway projects may affect bull trout through temporary diversions or disruptions of stream flow, decreases in water quality due to increases in pollutants, sediments and nutrients entering streams from roadway corridors; and accidental spills of contaminants. The USFWS stated that critical habitat for bull trout would need to be evaluated for construction activities with the potential to impact streams.

The principal ways that highway projects could affect gray wolves, grizzly bears, and the Canada lynx within the Reservation and adjoining areas include the potential for direct mortality and possible impediments to species movements between areas of habitat. Such impacts may result from road widening, loss of vegetation or habitat modification, and increases in traffic volumes and travel speeds on major road corridors.

The impacts of MDT's future highway projects on the Reservation would be individually evaluated and coordinated through informal or formal consultations with the USFWS and CSKT.

Cumulative Effects. No substantial cumulative effects to bald eagles, gray wolves, grizzly bears, bull trout or Canada lynx or their habitats are expected to result from the proposed land exchange or MDT's future highway projects.

The USFWS determined that reconstruction of U.S. Highway 93 would not likely adversely affect bald eagles or jeopardize the continued existence of Canada lynx, gray wolves, grizzly bears or bull trout. MDT's reconstruction efforts on U.S. Highway 93 may result in long-term benefits to such species since the highway design would facilitate wildlife crossings and improve fish passage in key areas. MDT's other foreseeable highway projects do not involve major widening or extensive reconstruction activities like those planned for U.S. Highway 93 between Evaro and Polson.

Highway reconstruction, combined with the continuing subdivision and human development on the Flathead Indian Reservation and adjoining areas, offers the potential to incrementally remove, degrade, and fragment habitat and increase the risk

of mortality to threatened and endangered species. However, since MDT's highway projects would generally occur on or adjacent to existing alignments and typically involve only minimal widening and redesign of the roadway, MDT's actions are not expected to contribute to significant increases in the population or generate new development of the area.

Impacts of the No Action Alternative. The No Action Alternative would not impact any threatened and endangered wildlife or fish species occurring on the Flathead Indian Reservation.

MDT's highway projects would continue to be implemented under the No Action Alternative. Therefore, the indirect and cumulative effects on threatened and endangered wildlife and fish would be similar to those described for the Preferred Alternative.

9. IMPACTS TO OTHER WILDLIFE AND FISHERIES

Existing Conditions. The Flathead Indian Reservation contains diverse habitats for wildlife including aquatic habitats and wetlands, riparian lands, grasslands and foothills, and coniferous forests.

Aquatic habitats on the reservation support a variety of amphibians (salamanders, spotted frogs, western toads); reptiles (garter snakes, bull snakes, rattlesnakes, and painted turtles); and fish (brown, rainbow, brook and westslope cutthroat trout, mountain whitefish, and non-game species like sculpin, longnosed dace, suckers, chub and minnows). Wetlands, particularly those in the Ninepipes area, provide breeding and nesting habitat for a numerous migratory waterfowl and shorebirds. The Evaro-Polson Final EIS indicates more than 190 species of birds have been identified within the Ninepipes-Pablo area. Muskrat, mink, beaver and skunks can also be found in wetland habitats.

Species often found in riparian areas include songbirds, grouse, pheasants, beaver, mink, raccoon, bobcats and white-tailed deer.

Grassland and foothills areas typically provide habitat for white-tailed deer, porcupine, raccoon, striped skunk, badger, long-tailed weasel, coyote, red fox, pheasants, hawks and owls, deer mice, meadow voles and a variety of songbirds.

Species using coniferous forest habitats include mule and white-tailed deer, elk, moose, mountain lion, and black bears. Grizzly bears, wolves, Canada lynx, wolverines, hawks, woodpeckers, owl beaver, muskrat, porcupine, raccoon, marten, striped skunk, badger, long-tailed weasel, coyote, red fox, deer mouse and meadow vole.

Wildlife and Fish Species of Concern. Data on the countywide distribution of rare and sensitive plant species available from the MNHP were reviewed to obtain a general indication of what species may occur on the Flathead Indian Reservation. The following list taken from the Evaro-Polson Final EIS (Table 6.12-2) identified species of special concern that may occur within Lake County including lands on the Flathead Indian Reservation:

<u>Mammals</u>	Pygmy Shrew, California bat, Townsend's big-eared bat, grizzly bear, fisher, wolverine, wolf, lynx, hoary marmot, northern bog lemming.
<u>Amphibians</u>	Coeur d'Alene salamander, tailed frog, wood frog
<u>Fish</u>	Cutthroat trout, bull trout, arctic grayling, Shorthead sculpin
<u>Birds</u>	Common loon, harlequin duck, osprey, bald eagle, Cooper's hawk, Northern goshawk, ferruginous hawk, long-billed curlew, merlin, peregrine falcon, upland sandpiper, northern pygmy owl, barred owl, great gray owl, long-eared owl, Northern saw-whet owl, pileated woodpecker, olive sided flycatcher, Swainson's hawk, western bluebird, clay colored sparrow, Brewers sparrow

The above list was not meant to be all-inclusive, rather to provide a general indication of the types of sensitive wildlife species that could be encountered on the Reservation.

As a result of file searches by the MNHP, no occurrences of wildlife species of concern were identified on the Hoskin's Landing property or on MDT's excess properties within the Reservation.

Impacts of the Preferred Alternative. No direct impacts to fish or wildlife species are likely as a result of this proposed land exchange.

Indirect Effects. Since many of MDT's projects are still several years from implementation and the projects have not yet been designed, the specific impacts to wildlife and fisheries cannot be identified. MDT's project development activities typically include the preparation of a biological resource report to assess potential impacts to wildlife and fisheries resources and identify measures to minimize adverse effects to affected species.

Although the specific impacts of MDT's future highway projects are unknown at this time, it is possible to generally discuss the impacts to wildlife associated with most highway projects. These effects are described below.

The impacts on wildlife associated with highway reconstruction activities and other typical MDT projects could include: the temporary loss of and avoidance of habitats

adjacent to the construction area; direct mortality from vehicles and possibly construction equipment; and minor amounts of permanent habitat degradation or loss. Widening existing roadways or shifting their alignment could impact minor amounts of previously undisturbed ground that currently provides habitat for numerous wildlife species. Many of the proposed improvements would occur in areas that are on or immediately adjacent to existing roads and already subjected to other sources of human disturbance, including residential and agricultural activities.

Some projects could result in increased travel speeds or more traffic, circumstances that may contribute to more wildlife mortalities than at present. A better driving surface, improved sight distance and slightly wider highway facilities may help offset this expected increase in wildlife mortalities by affording drivers increased opportunities to identify and avoid animals.

Individual highway projects could result in impacts to fisheries due to direct disturbances associated with culvert replacement, highway fill placement, and pipe inlet/outlet channel realignment and stabilization. Road obliteration and general clearing and grubbing may also occur adjacent to project area drainages and wetlands.

MDT's highway projects would not likely impact any wildlife or fish species of special concern due to their limited distributions within the Reservation. However, MDT must review individual project proposals and evaluate their potential effects on species of special concern.

Cumulative Effects. No adverse cumulative effects to wildlife or fisheries are anticipated as a result of the proposed land exchange.

MDT's highway projects, and other ongoing and reasonably foreseeable development activities in the general area do have the potential to incrementally remove or degrade habitat for wildlife and fish in the general area, particularly if the developments result in the conversion of previously undisturbed lands.

The U.S. Highway 93 reconstruction projects would result in long-term benefits since the road design is sensitive to the needs of wildlife and fish. The new road and its associated features would facilitate wildlife crossings and fish passage and incorporate habitat preservation and enhancements.

Impacts of the No Action Alternative. This alternative would not impact any wildlife or fish species occurring on the Flathead Indian Reservation.

Since MDT's highway projects would continue to be implemented under this alternative, the indirect and cumulative effects on threatened and endangered wildlife and fish would be similar to those described for the Preferred Alternative.

D. Impacts to the Human Environment

1. LAND USE IMPACTS

Land Ownership. Lands fronting U.S. Highway 93 and other state-maintained roads have mixed ownership among tribal, trust/allotments, private (fee) lands, and various state and federal interests. Blocks of each type of ownership exist adjacent to the state road system.

Existing Land Uses. Residential development is concentrated within various communities on the Reservation and is dispersed on rural lands outside the communities. High numbers of seasonal and recreational housing occur in Polson and around Flathead Lake. Agriculture is a predominant land use on many rural areas of the Reservation with the production of irrigated hay, grains, and some fruits and vegetable crops and livestock grazing being the principal agricultural activities. Commercial development is generally concentrated within communities along highway corridors.

The Hoskin's Landing property is located near the community of Dixon. Most of the property is or has been used for agriculture.

North of the Flathead River, the majority of MDT's properties at Perma are considered rangeland with forested areas. A quarry for decorative rock has also been developed on a portion of the property. DNRC historically granted permits for rock removal but did not have any active permit holders at the time it transferred the property to MDT. MDT did not permit this activity since assuming ownership of the quarry. No potential lessees for commercial rock picking have approached MDT about accessing the Perma quarry in the last year. A local ranch currently has a grazing lease on portions of the property. The lease was originally a contract between DNRC and the ranch and it was extended by MDT when the agency acquired the properties in 2003. The property at Perma south of the river includes vacant land, timbered areas, and residential development within the Perma Townsite.

The Schley Creek properties are predominantly vacant land although a gravel pit has been developed on a portion of the properties.

The land uses in the vicinity of the Round Butte Road properties are almost entirely irrigated agricultural and pasture lands. The Melita Island Overlook property is undeveloped and covered by evergreen and mixed forest.

Applicable Land Use Plans and Controls. The CSKT has developed the Flathead Reservation Comprehensive Resources Management Plan which contains policies to manage land and resources on the Reservation. Missoula County adopted a growth

policy in August, 2002 and Lake County is currently in the process of preparing a similar document to guide land use and development. Sanders County does not have plans to develop a growth policy document at this time. The CSKT, Lake County, Sanders County and incorporated communities within the Reservation have the ability to regulate land use activities.

Impacts of the Preferred Alternative. The land exchange itself would not directly affect the land uses on Tribal lands or MDT's excess properties within the Reservation. The proposed land exchange would not be inconsistent with the planning goals of the CSKT for the Reservation or of adjoining counties.

Indirect Impacts. The underlying assumption for the Preferred Alternative is that the existing land uses on MDT's excess lands would not substantially change after being transferred to the CSKT. Existing easements for public roads and utilities would remain in effect. With the exception of the properties within the Perma Townsite, MDT's excess lands have little, if any development and are located in rural areas.

As indicated earlier, MDT extended an existing grazing lease on portions of the Perma property when the land was acquired from the DNRC in 2003. This grazing lease would likely be terminated by the CSKT if the Tribes assume ownership of the Perma lands as a result of the proposed exchange. The original holder of the grazing lease for the Perma properties (who passed away last year) and his heirs were advised of the potential termination of the lease at the time MDT acquired the properties.

MDT has not permitted decorative rock picking at the Perma properties since assuming ownership. If the CSKT obtained the Perma lands north of the Flathead River, rock removal from the quarry would likely be prohibited due to the proximity to traditional cultural properties.

Acquisition of the Schley Creek land with the gravel pit would require a decision by the CSKT as to whether or not gravel mining would occur on the property.

Cumulative Effects. Although it appears growth will continue in the area, there is no guarantee that there will be further development, or if there is, when such growth might happen. Because of these unknowns, it is impossible to predict what specific types of impacts might occur as a result of MDT's projects and developments by others. Given present circumstances, such development would likely occur independently of the improvements that may be implemented on state-maintained roads on the Reservation and adjoining counties. For this reason, the proposed land exchange, when considered with other reasonably foreseeable developments by MDT and others, would not likely result in notable cumulative effects on land use.

Impacts of the No Action Alternative. This alternative would not change the use of Tribal lands or MDT's excess properties within the Reservation.

MDT's highway projects would continue to be implemented under the No Action Alternative. Therefore, the indirect and cumulative effects on land use would be similar to those described for the Preferred Alternative.

2. TRANSPORTATION/CIRCULATION IMPACTS

Existing Conditions. State-maintained roads within the Flathead Indian Reservation and adjoining counties serve existing communities, rural developments, and agricultural lands. Major highways include U.S. Highway 93, Montana Highway 200, Montana Highway 28 (Elmo-Niarada-Hot Springs-Plains), and Secondary Route 211 (east of Ronan), Secondary Route 212 (Charlo-Moiese-Dixon), Secondary Route 354 (south of Polson), and Secondary Route 382 (north of Perma). The Hoskin's Landing property and MDT's excess lands within the Reservation can be accessed via these major routes.

MDT perpetuated all existing access easements to the Perma townsite lots, including lots seven and eight on the south bank of the Flathead River. In addition, MDT extended existing road easements across the Perma property to Katherine Bochik in April 2003 and Melvin Vulles in June 2003. These properties are located to the west of the rock quarry and pictograph sites on the north side of the Flathead River.

Impacts of the Preferred Alternative. The proposed land exchange would not directly require any changes to the state-maintained or other routes within the Reservation nor would it alter traffic volumes, patterns or safety.

Indirect Impacts. The existing access easements to Perma townsite lots, including lots seven and eight—and access to the Bochik and Vulles properties would need be perpetuated by the CSKT.

In general, MDT's highway projects have been proposed in response to physical deficiencies that contribute to reduced safety for facility users. Reconstruction and improvements to state-maintained roads would provide traffic safety benefits and more efficient facilities for local residents and other road users. This would be accomplished by increasing the width of the roadway, flattening fill slopes adjacent to the road and enhancing sight distance within roadway corridors. Highways would generally be reconstructed or improved to standards that reflect designs appropriate for the type and level of traffic using the highway facilities.

Improvements to U.S. Highway 93 would substantially improve the quality and safety of travel on an important regional transportation route.

Cumulative Effects. The effects of the proposed land exchange, together with other known and reasonably foreseeable actions, would not cause a major increase or redistribution in traffic on the road systems within the Reservation or adjoining counties.

Improving highways may contribute to new growth and developments within the region. However, many of the limited actions proposed for the state-maintained roads alone would not cause more people or businesses to move to the area.

Impacts of the No Action Alternative. The No Action Alternative would have no direct effects on transportation facilities or traffic circulation within the Reservation or adjoining counties.

MDT's highway projects would continue to be implemented with indirect and cumulative effects similar to those described previously for the Preferred Alternative.

3. SOCIAL IMPACTS/ENVIRONMENTAL JUSTICE

Existing Conditions. Census data show that the population of the Flathead Indian Reservation was 26,172 in 2000—an increase of more than 23 percent over the population recorded during the 1990 Census. During the 1990-2000 period, the populations of Lake County and Sanders County increased by 21 and 15 percent, respectively.

Projections of population prepared for the Montana Department of Commerce (MDOC) Census and Economic Information Center by NPA Data Services, Inc. (August 2002), suggest Lake County's total population may increase to more than 31,100 residents by the year 2010 and exceed 36,000 residents by 2020. The population of Sanders County was projected to grow to more than 11,500 by the year 2010 and approach 13,000 by the year 2020. These projections suggest that the population of the Flathead Indian Reservation would also continue to increase over the next two decades.

Detailed population and socio-economic data for the Flathead Indian Reservation and Lake and Sanders Counties were periodically collected and distributed by the U.S. Bureau of the Census and the Montana Census and Economic Information Center of the MDOC. Based on data from the 2000 Census, the following characteristics are evident for residents of the Reservation:

- The population of the Reservation included 17,814 white residents, 6,999 American Indians and 273 residents of other races in 2000.
- About 14.3 percent of the all residents were age 65 or older in 2000 as compared to 14.5% in Lake County and 16.9 percent in Sanders County.

- The 1999 median household income was estimated to be \$27,424 for the Reservation as compared to \$28,740 in Lake County and \$26,852 in Sanders County.
- An estimated 15.8 percent of all families on the Reservation lived below the poverty line in 1999 as compared to 14.0 percent of all families in Lake County and 13.3 percent of all families in Sanders County.
- The average household size was 2.55 persons in 2000 as compared to 2.54 persons per household for Lake County and 2.35 persons per household for Sanders County.

Impacts of the Preferred Alternative. The proposed land exchange would not directly affect any social or ethnic groups and would not have any notable impact on the location, distribution, density or growth rate of populations on the Flathead Indian Reservation or adjoining counties. The land exchange would not alter the level or distribution of employment or community or personal income. No disproportionately high adverse human health or environmental effects on minority and low-income populations are foreseen with the Preferred Alternative.

Indirect Impacts. Some residents living within the Perma townsite may object to the transfer of MDT's excess properties within the townsite to the CSKT. Scoping comments received during the previous MDT-DNRC land exchange indicated that several residents do not view themselves as "living on the Reservation." The transfer of the MDT's excess lands in the Perma townsite would not affect the ownership of any private lands or dedicated easements for roads within the townsite. The legal status of this dedicated townsite within Sanders County would be unchanged.

The implementation of individual highway projects in the future would be unlikely to adversely affect any social or ethnic groups and have little—if any—likelihood of isolating or dividing existing residential areas. Some future highway projects, including U.S. 93 reconstruction, may require residential or commercial relocations. However, future projects would not be expected to cause disproportionately high adverse human health or environmental effects on minority and low-income populations. MDT's development activities would ensure the proposed projects comply with the provisions of *Title VI of the Civil Rights Act* (42 U.S.C. 2000d, as amended) under the FHWA's regulations (23 CFR 200).

Cumulative Effects. The proposed land exchange along with other reasonably foreseeable projects and developments within the Flathead Indian Reservation would not result in any cumulative effects on the overall population growth in the region or to any particular social or ethnic groups.

As Census data indicated previously, the Reservation and adjoining counties experienced population growth for at least the past decade. Improving highway facilities would not, by itself, cause increases in population or encourage new development. New residents have migrated to the area for the natural amenities and lifestyle available within the Reservation and adjoining counties—not because of its transportation facilities. It is unlikely that MDT's foreseeable highway projects, even in conjunction with other projects and developments, would induce large numbers of people to immigrate to this area.

Impacts of the No Action Alternative. If the land exchange is not implemented, there would be no changes to population or social conditions within the Flathead Indian Reservation or adjoining counties.

MDT's highway projects would continue to be implemented and result in indirect and cumulative effects similar to those described previously for the Preferred Alternative.

4. ECONOMIC IMPACTS

Existing Conditions. The economies of Montana's counties have changed significantly over the past 30 years. In 1970, half of Montana's workers were employed in the basic industries of farming and ranching, the federal government, forestry, manufacturing, mining and tourism. These are called basic industries because they bring outside income to the state. By 1997, only one-quarter of Montana's workers were employed in these industries.

According to a 2001 U.S. Census Bureau study, economic activity in Sanders County is now dominated by health care and social assistance, retail trade, accommodations and restaurants and manufacturing. Lake County's primary activities are health care and social services, tourism and recreation, retail trade, manufacturing, information services and education. Agriculture, timber and tourism and recreation activities are common economic activities on the Flathead Indian Reservation and adjoining counties.

These areas are part of larger economies related to the Flathead Indian Reservation and the regional economic centers of Missoula and Kalispell. Local residents go to those cities to purchase and sell goods and services that cannot be found, or have a limited market, locally. Population centers like Thompson Falls, Polson, Ronan, Pablo, St. Ignatius, and Arlee provide local employment and purchasing opportunities. The local population and regional economic centers share an interdependent relationship. The counties and the Reservation have goods and services, such as wood products and recreational opportunities that urban residents enjoy, while the economic centers have shopping and business opportunities that cannot be found locally.

Impacts of the Preferred Alternative. This proposed land exchange would not cause any notable effects to the economies within the Flathead Indian Reservation or adjoining counties.

Indirect Impacts. The proposed land exchange would not result in a need for new or altered governmental services or infrastructure on the Flathead Indian Reservation or adjoining counties. Nor would the land exchange require new facilities or substantial alterations to any utilities or communications systems.

There would be no notable effect upon the local or state tax base and revenues as a result of the land exchange.

The implementation of individual highway projects during the future would create temporary jobs on the Flathead Indian Reservation and adjoining counties. Additionally, the demand for local goods and services (food, lodging, recreation, etc.) would be increased in major communities within the Reservation due to the presence of workers temporarily living in the area during the construction of the project. These beneficial economic impacts would be sustained over period when each highway project is successively implemented.

Cumulative Impacts. No cumulative impacts to the economies of the communities or counties included in this proposed exchange are expected.

The reconstruction and improvement of state-maintained roads on the Reservation would improve the quality of travel on U.S. Highway 93, an important regional transportation corridor, and on other roads that provide essential local transportation routes. Improved safety for all highway users would decrease the potential for serious motor vehicle accidents. The economic costs associated with treating victims of fatal and injury accidents would be decreased accordingly.

Although most MDT projects would not result in measurable effects on population growth or development, it is recognized that improving highways is one of the factors that may contribute to new growth and developments within the region. Such growth could ultimately result in new economic activity on the Reservation and in adjoining counties. However, many of the limited actions proposed for the state-maintained roads alone would not cause more people or businesses to move to the area. Growth has and continues to occur in this region of the state even though few major transportation improvements have been implemented. Montana Highway 200 east and west of Dixon has been reconstructed and U.S. Highway 93 was converted to a four-lane facility from its intersection with I-90 north to Evaro. It is not readily apparent that these facility improvements have yet contributed to significant growth on the Reservation or adjoining counties. Factors other than simply improving roadways have contributed to this growth.

Impacts of the No Action Alternative. This alternative would not change economic conditions or cause any new economic impacts to residents or businesses in the project areas.

The implementation of individual highway projects would create temporary construction jobs in the area and result in minor increases in worker spending within major communities on the Reservation.

5. NOISE IMPACTS

Existing Conditions. Detailed studies of ambient noise levels at locations within the Flathead Indian Reservation adjacent to state-maintained roads do not exist. Noise levels adjacent to roads are influenced by a variety of factors including traffic volumes, travel speeds, the extent of trucks within the vehicle stream, topography and distance between travel lanes and noise receptors.

Impacts of the Preferred Alternative. The proposed land exchange would not result in any noise impacts.

Indirect Impacts. The implementation of individual highway projects has the potential to impact noise sensitive receptors in the project areas. Detailed noise analyses are required for Type I highway projects according to 23 CFR 772. Type I projects would build a highway on a new location, physically alter the existing roadway to significantly change its horizontal or vertical alignment or increase the number of through traffic lanes.

The majority of MDT's future projects on the Reservation would involve reconstruction of existing roadways with only minor changes in alignment without increasing the number of through travel lanes. Such projects would be unlikely to produce significant noise impacts. Individual projects may require noise analyses. If notable increases in noise levels appear likely, MDT would investigate the feasibility and reasonableness of incorporating noise abatement measures.

Temporary increases in noise would be expected during road reconstruction activities. Such impacts would be temporary, localized to work areas and would occur at various times during the construction period.

Cumulative Effects. The proposed land exchange and reasonably foreseeable projects by MDT and others would not result in any notable cumulative noise impacts.

Impacts of the No Action Alternative. This alternative would not create noise impacts for residences, businesses or others in or near the properties.

MDT's highway projects would continue to be implemented and there would be a low potential for noise impacts associated with most actions.

6. HAZARDOUS SUBSTANCES

Existing Conditions. Hazardous materials are products or wastes regulated by the U.S. Environmental Protection Agency (EPA) or the Montana Department of Environmental Quality (MDEQ). These include substances regulated under the *Comprehensive Environmental Response Compensation, and Liability Act* (CERCLA or Superfund), the *Resource Conservation and Recovery Act* (RCRA), and regulations for solid waste management, above-ground storage tanks (ASTs) and underground storage tanks (USTs).

No National Priority List (NPL) or Superfund sites identified by the EPA are located in or near the properties included in this proposed exchange.

The list of contaminated sites identified by the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA or "State Superfund") was reviewed to determine proximity to any "State Superfund" sites. Only the Dixon/Perma Dump (an inactive landfill less than five acres in size) is located in the vicinity of the Perma and Hoskin's Landing properties. No CECRA sites are located near the Schley Creek, Schley Gravel Pit, Round Butte Road or Melita Island Overlook properties.

MDT also reviewed the properties included in the proposed exchange for potential sources of hazardous waste and examined MDEQ's statewide database of all known underground storage tanks (UST) registered with the agency to identify tank locations in the property areas. No UST's are located close enough to the properties included in the proposed exchange to represent an environmental hazard.

The Petroleum Release Section of the MDEQ administers the federal Leaking Underground Storage Tank (LUST) Trust Fund Program that conducts investigation and remediation activities at release sites that threaten human health and the environment. The Petroleum Release Section maintains a statewide database of all storage tank releases that have been reported since 1986. No releases have occurred at or near the properties included in the exchange.

Impacts of the Preferred Alternative. MDT reviewed the potential sources of hazardous waste and examined records for known hazardous waste sites and hazardous materials concerns and determined that the land exchange would not create such impacts.

Indirect Impacts. Areas of potential environmental contamination could be encountered with the implementation of individual highway projects on the Reservation. The

greatest potential for encountering such materials would be in developed areas and communities adjacent to major roads at locations of present or past commercial or industrial uses. MDT conducts hazardous materials site assessments to determine the potential for environmental contamination within the areas of each project. These site assessments would identify the need for followup investigations and remediation.

Cumulative Effects. The proposed land exchange, when considered with other reasonably foreseeable actions by MDT and others within the Flathead Indian Reservation, would not cause any notable hazardous materials impacts.

Impacts of the No Action Alternative. This alternative would have no impacts on hazardous waste sites, generators or substances.

7. IMPACTS TO CULTURAL, ARCHAEOLOGICAL AND HISTORICAL RESOURCES

Existing Conditions. Cultural resources are protected by the *National Historic Preservation Act of 1966*, as amended (16 U.S.C. 470 et seq.). This law and its implementing regulations require the identification and evaluation of significant historical resources that a project may impact. It further requires that resources so identified be avoided, if possible; or when avoidance is not possible, that any adverse effects of the project on the resources be mitigated.

Cultural resources likely to be encountered within the Flathead Indian Reservation include prehistoric sites (lithic scatters), traditional cultural properties (at confidential locations), historic sites and features (such as individual buildings, historic railroad facilities, and historic roads and bridges). These cultural resources may exist on or near existing state-maintained roads within the Reservation.

An archaeological site exists on a portion of the Hoskin's Landing property.

SHPO was contacted in July 2003 to determine the presence of any significant historical resources on MDT's excess properties. Nine sites, including pictographs, a lithic scatter, a surface stone quarry, a historic residence and historic railroad structures were identified on the Perma properties. Cultural resources were not identified on the other properties included in the proposed exchange.

MDT's Historian sent a letter to the CSKT Preservation Program on October 3, 2003 requesting concurrence that the proposed land exchange would have **No Effect** on the Perma Pictograph Site. MDT did not receive a reply from the CSKT. MDT typically assumes concurrence with its determination of effect if it does not receive a reply to its request within fifteen days.

Impacts of the Preferred Alternative. The transfer of ownership of these properties from MDT to the CSKT would not directly impact cultural sites.

Indirect Impacts. Development of the Hoskin's Landing Wetland Mitigation Site was accomplished without adverse impacts to the archaeological site on the property.

Cultural resources important to the CSKT exist on some of the properties at Perma. Transferring ownership of lands containing these resources would allow the Tribes to manage and protect these cultural properties.

The implementation of individual highway projects on the Reservation could potentially affect historic and prehistoric sites located within or near existing road corridors. During the development of future highway projects, MDT would inventory project areas to identify recorded or previously unrecorded cultural sites within the project's area of potential effect. MDT would be obligated to determine the potential significance of identified cultural sites and complete other coordination activities required by Section 106 of the *National Historic Preservation Act*. Early and continued coordination with the Salish & Pend O'Reille Culture Commission would be conducted to help avoid culturally significant areas on the Reservation.

Coordination would also occur with the CSKT Tribal Historic Preservation Officer, the Montana State Historic Preservation Office, and in some cases the Advisory Council on Historic Preservation (ACHP) regarding the effects of individual highway projects on cultural resources. When adverse effects to NRHP-eligible site(s) are unavoidable, MDT would be obligated to provide mitigation for the impacted site(s).

Cumulative Effects. MDT's other planned projects and reasonably foreseeable developments by others on the Flathead Indian Reservation increase the likelihood for encountering known or unknown cultural resources as new lands are disturbed. The environmental review process and coordination with Tribal and State Historic Preservation Offices would ensure that new development considers and protects cultural resources to the extent necessary.

Impacts of the No Action Alternative. The No Action alternative would not cause any new impacts to cultural resources on Tribal lands or MDT's excess properties within the Flathead Indian Reservation.

Under this alternative, MDT would continue to own and manage properties at Perma containing traditional cultural properties important to the CSKT. The cumulative effects of the No Action Alternative on other cultural properties would be similar to those identified for the Preferred Alternative.

8. SECTION 4(f) PROPERTIES

Existing Conditions. Section 4(f) of the *U.S. Department of Transportation Act*, as amended (**49 U.S.C. 303**), applies to Federally-funded transportation actions that affect sites on or eligible for the National Register of Historic Places (NRHP), publicly-owned parks, recreation lands, and wildlife and waterfowl refuges. Some portion of the Flathead Indian Reservation may be publicly owned and could possess the other qualities of a 4(f) property. It is also possible that eligible historic and cultural resources will exist on Reservation property.

The Evaro-Polson Final EIS and its subsequent Re-evaluation identified 18 parks or recreation sites in Arlee, St. Ignatius, Ronan and Polson that may be subject to Section 4(f). The documents also identified the National Bison Range at Moiese, Ninepipes National Wildlife Refuge and Ninepipes Wildlife Management Area, and Kicking Horse and Duck Haven Waterfowl Production areas as Section 4(f) properties.

The Flathead Indian Reservation also contains numerous historical and prehistoric cultural sites that have been recorded and determined eligible for the NRHP. There is a strong likelihood that many other such properties have yet to be identified and evaluated.

Impacts of the Preferred Alternative. Section 4(f) would not apply to the Preferred Alternative because the land exchange would not result in the use of any publicly-owned parks, recreation lands, wildlife and waterfowl refuges, or NRHP-eligible sites.

Indirect Impacts. The implementation of individual highway projects on the Reservation has the potential to affect Section 4(f) properties. During the development of future highway projects, MDT would inventory project areas for possible 4(f) lands and coordinate with resource managers, the Tribal Historic Preservation Office, and the Montana State Historic Preservation Office regarding the significance of identified properties and cultural sites. If highway projects require the use of 4(f) properties, MDT would be obligated to conduct further coordination and implement acceptable mitigation measures for adverse effects.

Cumulative Effects. The No Action alternative would not cause any impacts to Section 4(f) lands within the Flathead Indian Reservation.

The potential for encountering and impacting *Section 4(f)* properties (principally archaeological or historic sites) increases as highway projects disturb new lands along state-maintained routes within the Reservation. *Section 4(f)* requires that planning be accomplished by MDT to identify alternatives that would not require the use of these properties and to minimize harm to the properties should adverse effects be unavoidable.

Such planning would subsequently occur with the development of highway projects and with the completion of environmental reviews for these future projects.

Impacts of the No Action Alternative. This alternative would not cause any new effects to sites on or eligible for the NRHP, publicly owned parks, recreation lands, or wildlife and waterfowl refuges.

The potential for indirect or cumulative effects on Section 4(f) properties would be similar to that described for the Preferred Alternative.

9. SECTION 6(f) LANDS

Existing Conditions. Section 6(f) of the *National Land & Water Conservation Fund Act* (**16 U.S.C. 460**) requires that coordination be done to determine if federal funds were used to acquire or improve any lands in the project area for recreation or water conservation purposes. The conversion of such properties to other uses requires the approval of the Secretary of the U.S. Department of the Interior and the provision of substitute land of equal value and reasonably equivalent usefulness and location to the impacted recreation lands.

The Evaro-Polson Final EIS indicates that three recreational facilities within Polson (Lions Park, the Polson Municipal Golf Course and the Seventh Avenue Softball Fields) were developed with funds from the Land and Water Conservation Fund. These sites are subject to the provisions of Section 6(f) of the *National Land & Water Conservation Fund Act*. Other lands or recreation sites subject to Section 6(f) could exist near state-maintained roads within the Reservation.

There are no Section 6(f) encumbrances on the Hoskin's Landing property or MDT's excess lands within the Reservation.

Impacts of the Preferred Alternative. Completion of this proposed land exchange would not affect any Section 6(f) lands.

Indirect Impacts. The implementation of MDT's highway projects on the Reservation, particularly within the community of Polson, has the potential for affecting Section 6(f) lands.

Coordination would ensure that highway projects recognize the existence of Section 6(f) lands and ensure that planning is done to minimize effects to such properties. During the development of future highway projects, MDT would coordinate with the MDFWP and the managers of recreational properties (if necessary) to determine the potential for affecting Section 6(f) lands. If highway projects require the conversion of such properties, MDT would be obligated to provide replacement land of equivalent value

and usefulness. However, because such properties are relatively rare, the potential for MDT's projects to require the conversions of 6(f) lands is very low.

Impacts of the No Action Alternative. The No Action alternative would not cause any impacts to Section 6(f) lands within the Flathead Indian Reservation.

The potential for any indirect or cumulative effects on Section 6(f) lands is low for the reasons described above under the Preferred Alternative.

10. IMPACTS TO VISUAL RESOURCES

Existing Conditions. Generally, the visual quality of the landscape within the Reservation viewed from the state-maintained roads is high. The highway system traverses a variety of landscapes and offers panoramic views of the Mission and Salish Ranges, the Jocko and Mission Valleys, river corridors, rolling hills and plains areas. Roads, railroads, overhead utility lines and residential and commercial developments are features introduced by man on the visual environment of the Reservation.

Impacts of the Preferred Alternative. Completion of this proposed land exchange would have no direct impact on visual resources since the proposal would change only the ownership and management responsibility for involved lands.

Indirect Impacts. The implementation of MDT's highway projects on the Reservation could indirectly cause minor visual impacts.

MDT's highway projects would not change views of the background landscapes within the Reservation. However, the road widening and alignment modifications associated with some individual projects may cause minor visual changes in the vicinity of the projects. These visual changes would be most apparent to residents living along the road and other frequent highway users because the affected roads have been in place for such a long time. These viewer groups may notice the increased width of the new roadways, changed alignments and recognize that the right-of-way and clear zone areas would be expanded over those of the existing facility.

MDT's projects would cause minor, short-term visual impacts during the construction period. Visual changes during construction would include: surface disturbances and clearing until revegetation occurs; temporary sign installations; the storage of equipment and excavated material; and dust and debris from construction activities.

Cumulative Effects. MDT's highway projects, when considered with other projects and activities on the Flathead Indian Reservation and adjoining region, would not likely result in notable adverse cumulative effects on visual resources. State-maintained roads would be rebuilt or improved in virtually the same location and the road widening associated with most MDT reconstruction projects would be minor. Other activities like subdivisions

and new residential development do have the potential to alter the appearance of the landscape within the Reservation.

Impacts of the No Action Alternative. The No Action alternative would not cause any new impacts to visual resources on Tribal trust or fee lands or on MDT's excess lands within the Flathead Indian Reservation.

MDT's highway projects would continue to be implemented under the No Action Alternative. Therefore, the indirect and cumulative effects on the visual environment would be similar to those described for the Preferred Alternative.

MDT perpetuated access to private property adjoining the Perma properties. Perpetuation of access to these properties will need to be guaranteed by the CSKT.

11. PERMITS REQUIRED

No permits are required to complete the exchange of property between MDT and the CSKT. However, subsequent development of individual highway projects may require any of the following permits:

- Section 404 Permit. A *Clean Water Act* (**33 U.S.C. 1251-1376**) – *Section 404* permit from the COE would be required for placement of fill or excavation in delineated jurisdictional wetlands and “Waters of the U.S.” associated with the installation of new replacement culverts or bridges.
- 124SPA Permit. A 124SPA Permit from MDFWP would be required under the *Montana Stream Protection Act* for stream channel modification.
- Floodplain Development Permit. A floodplain development permit from the relevant County would be required for any work within delineated 100-year floodplains.
- Section 402/Montana Pollutant Discharge Elimination System (MPDES) Permit. For compliance with the *Clean Water Act* (**U.S.C. 1251-1376**) a *Section 402/Montana Pollutant Discharge Elimination System* permit would need to be obtained from the MDEQ.
- Aquatic Lands Conservation Ordinance (ALCO) 87-A Permit would need to be obtained from the CSKT.

12. SIGNIFICANCE CRITERIA AND CONCLUSIONS

MDT considered the following criteria to determine whether or not the proposed land exchange would result in significant impacts to the Physical or Human Environments.

Will the proposed action, considered as a whole, have impacts that are individually limited, but cumulatively important?

The analysis performed for this EA indicates the proposed land exchange would not result in significant cumulative impacts on the environment.

Will the proposed action, considered as a whole, involve potential risks or adverse effects which are uncertain but extremely hazardous if they were to occur?

The proposed land exchange does not have the potential to cause impacts that would be hazardous to human health or the environment.

Will the proposed action, considered as a whole, potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?

The proposed land exchange would not conflict with any local, state, Tribal, or federal laws, regulations, standards or plans.

Will the proposed action, considered as a whole, establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?

Other than highway-related projects, there are no other known future actions with the potential for significant environmental impacts that would be affected by the implementation of the proposed land exchange between MDT and the CSKT.

The proposed exchange of lands would facilitate MDT's proposed reconstruction of U.S. Highway 93 and other future highway projects on the State road system within the Flathead Indian Reservation. MDT, in cooperation with the CSKT and other federal and state agencies, has already conducted detailed analyses of the potential environmental effects of its proposed reconstruction of U.S. Highway 93 North between Evaro and Polson. These effects have been identified and disclosed in a variety of environmental documents completed between 1996 and 2001. Additionally, a Supplemental EIS should be completed for the Ninepipes section of the route during 2004. Multiple reconstruction projects for U.S. Highway 93 are presently being designed and should be implemented in the near future.

The environmental effects associated with other ongoing and planned projects on the State road system within the Reservation must be addressed in separate project-specific environmental documents. MDT will prepare these documents and establish whether or not any of these other highway projects are actions with potentially significant impacts.

Will the proposed action, considered as a whole, generate substantial debate or controversy about the nature of the impacts that would be created?

It is not anticipated that the proposed exchange of lands between MDT and the CSKT will generate substantial debate or controversy. MDT's scoping activities for this EA included contacts with numerous federal, state, and local agencies and a concerted effort to solicit public comments on this proposal. News releases describing the proposed land exchange were sent to major newspapers in western Montana and listed on MDT's internet website. An article concerning the proposed land exchange also appeared in *The Missoulian*.

As a result of these public involvement efforts, only four comments were received from members of the general public. These comments, summarized in Part IV, do not suggest that this proposal is highly controversial or that the nature of the anticipated impacts would be subject to substantial debate.

Extensive scoping and public involvement efforts were undertaken for the MDT/DNRC land exchange EA finalized in 2002. Several comments received for the MDT/DRNC EA concerning the Perma properties are still pertinent including: the need to perpetuate public access through the Perma lands if the CSKT acquire the properties so adjoining private lands can be adequately managed; the loss of public's ability to freely access and use the lands should ownership be transferred to the CSKT; the exchange of Perma lands by the state to the CSKT should only include the portion of the land containing the pictograph site; and concerns by a few residents living in Perma that their private property will become tribal land if MDT transfers ownership of Perma properties to the CSKT. Similarly, comments received on the MDT/DNRC land exchange do not indicate that the impacts of MDT's proposed exchange of land with the CSKT will create substantial debate or controversy.

Based on the significance criteria evaluated in this EA, is an EIS required? If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action.

This EA examines the direct, indirect and cumulative effects of the proposed exchange of property between MDT and CSKT. Based on the information provided and the evaluation completed for this proposed action, it is the preliminary determination of MDT that an environmental assessment provides an adequate review for this proposal.

This determination was made due to the minor direct effects associated with the proposed land exchange.

The more notable secondary and cumulative effects of this proposed land exchange (most of which are associated with the implementation future highway projects within the Flathead Reservation) have also been adequately considered. This conclusion was reached because MDT must prepare the appropriate MEPA or NEPA documents to evaluate the direct, indirect, and cumulative environmental effects of individual highway projects. These documents must also demonstrate that the proposed highway projects conform to applicable federal, state, and tribal statutes and rules.

IV. Coordination with Others

IV. Coordination with Others

This Part summarizes efforts undertaken by MDT to communicate with interested agencies and the public about the proposed exchange of lands with the CSKT. The specific objectives of the activities performed to coordinate this project are to:

- identify and include people, groups, and agencies that may be affected;
- ensure that interested parties understand the project;
- provide opportunities for interested parties to express their views, ideas, and concerns about the project; and
- make it apparent to interested parties that their opinions and ideas have been considered during the development of the project.

A. Agency Coordination

1. AGENCIES CONSULTED

Correspondence was sent to each of the following agencies notifying them of the proposed land exchange and the pending Environmental Assessment:

- U.S. Fish and Wildlife Service
- U.S. Department of Agriculture, NRCS
- U.S. Department of the Army, Corps of Engineers
- U.S. Environmental Protection Agency
- Montana Department of Fish, Wildlife & Parks
- Montana State Historic Preservation Office
- Montana Department of Environmental Quality
- Natural Heritage Program, Montana State Library
- Sanders County Commission
- Lake County Commission
- Missoula County Commission

2. CSKT COORDINATION

The following CSKT officials were consulted in the preparation of this document:

Joe Hovenkotter, Attorney
Marcia Pablo, Preservation Program
Janet Camel, Natural Resources Department

Comments Received

No agencies consulted for this proposed land exchange provided comments after receiving the Notice of Intent.

B. Public Involvement

1. NOTICE OF INTENT

MDT prepared and distributed a notice of intent to transfer excess property it owns on the Flathead Indian Reservation to the CSKT in exchange for a wetlands easement at the Hoskin's Landing Wetland Mitigation Site near Dixon and for right-of-way needed for ongoing and future highway-related projects within the boundaries of the Reservation.

The notice of intent was published on the MDT website, www.mdt.state.mt.us on July 3, 2003 and on the front page of *The Missoulian* daily newspaper on July 14, 2003.

The notice was also distributed to but not published by the following newspapers:

- *Kalispell Daily Interlake*—Kalispell;
- *Char-Koosta News*—Ronan;
- *Lake County Leader*—Polson;
- *Sanders County Ledger*—Thompson Falls; and
- *Valley Press*—Plains

Public Comments

Four public citizens expressed interest in the proposed land exchange upon learning of the Notice of Intent.

Ms. Paula Potts of Missoula sent correspondence on July 14, 2003 that she was conducting "research and development on the widening of Highway 93" and asked to be included on any subsequent updates about the project.

Mr. Leroy Hoversland of Missoula telephoned on July 14, 2003 to express his disapproval of the proposed exchange on the grounds that exchange of fee simple ownership of MDT property to the CSKT for 25-year leases on CSKT property is inequitable.

Ms. Janice Morigeau of Hot Springs telephoned on July 15, 2003 to express her concern about a rumor that Elmo State Park was being transferred to CSKT as part of this proposed land exchange.

Mr. Jim Wheeler, a Missoula-based real estate broker, sent correspondence on July 25, 2003 describing a client's property near Plains that would be a "good candidate for exchange or as a state acquisition property for wetlands."

2. PLANNED PUBLIC INVOLVEMENT ACTIVITIES

A Notice of Availability for the Environmental Assessment and an announcement of a scheduled Public Hearing on the proposed exchange of property between MDT and CSKT will be mailed to all parties on the mailing list and advertised in local newspapers following approval of this document by MDT and CSKT. The public hearing will be held in St. Ignatius in late November or early December, 2003. The EA will be available for public comments for at least 30 days, beginning November 9, 2003. Comments on the EA will be received through December 10, 2003.

Written comments on the Environmental Assessment will be received for at least thirty (30) days following its distribution. Public and agency comments on this document will be evaluated to determine: 1) whether significant impacts will occur from the implementation of the Preferred Alternative; 2) if further consideration of the impacts discussed in the document is needed; and 3) if new issues have arisen that must be addressed in the Environmental Assessment. After the close of the official comment period, revisions will be made to the text of the Environmental Assessment where warranted by the comments received. Unless comments received on the document warrant further investigation, no additional public involvement is planned.

In the event that no significant impacts are identified, MDT will prepare a summary of comments received or a revised Environmental Assessment. A Finding of No Significant Impact (FONSI) document will also be prepared. The FONSI will be signed by MDT and attached to the EA or revised EA. Federal, State, and local government agencies with interests in the projects and others on the mailing list will be notified of the availability of the FONSI and revised EA.

If significant impacts are found, then MDT must determine if an Environmental Impact Statement (EIS) must be prepared to advance the proposed actions.

C. Preparers of this Document

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D. Distribution List for Document

The following agencies, groups, and individuals are being sent a copy of this Environmental Assessment:

FEDERAL, STATE, AND LOCAL AGENCIES WITH INTERESTS IN PROJECT

Federal Government

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Sen. Jim Elliott
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Rep. Holly Raser
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10955 U.S. Highway 93 N
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Rep. Joey Jayne
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St. Ignatius, MT 59865

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Lee Newspapers
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John Stromnes
The Missoulian
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P.O. Box 219
Thompson Falls, MT 59873

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Char-Koosta News
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Appendices

Appendix A: Deferred Exchange Agreement

Deferred Exchange Agreement

This Deferred Exchange Agreement, dated January 10, 2002, is entered into by and between the Confederated Salish and Kootenai Tribes of the Flathead Reservation ("Tribes"), a tribal government organized under Section 16 of the Indian Reorganization Act of 1934 (48 Stat. 984), and the Montana Department of Transportation ("MDT"), an executive state agency established pursuant to Section 2-15-2501 of the Montana Code (2001). The Tribes and MDT are jointly referred to as the "Parties".

Recitals

Whereas, the Parties recognize the need for reconstruction of Montana Highway 200 in the form of two transportation improvement projects titled the Dixon West Project and the Paradise East - East Section Project ("Highway Projects");

Whereas, construction of the Highway Projects will result in either impact to or the loss of 4.69 acres of wetlands for which MDT is obligated to mitigate;

Whereas, the Tribes are beneficial owners of a restorable wetlands property referred to as the Hoskin's Landing Wetlands Mitigation Site ("WM Site") that is suitable for satisfying MDT's wetlands mitigation obligation;

Whereas, MDT owns real property of the Flathead Reservation which is in excess of MDT's present and foreseeable highway needs;

Whereas, the Tribes seek to acquire and retain Flathead Reservation real property when feasible;

Whereas, the Tribes seek to provide use of the WM Site to MDT for the purpose of implementing a wetlands restoration project;

Whereas, MDT seeks to convey its ownership interest in certain of its real properties (the "replacement property") to the Tribes in exchange for the right to use the Tribes' restorable wetlands property for the purpose of implementing a wetlands restoration project;

Now therefore, the Parties agree as follows:

Section One Identification and Valuation of Exchange Property

The Tribes shall provide use of the WM Site to MDT as the exchange property by grant of easement. For the purposes of this Exchange Agreement, the grant of easement over the WM Site is deemed to have a fair market value of \$24,000.00.

Section Two Grant of Easement Over Exchange Property

The Tribes shall by Easement Deed, attached hereto as Appendix 1, grant an easement to MDT: (1) over the WM Site (the "exchange property"), more particularly described by Certificate of Survey No. 2070, records of Clerk and Recorder of Sanders County, Montana, containing 48.23 acres more or less; (2) for the purpose of restoring, protecting, managing, maintaining, and enhancing the functional values of wetlands and other lands; and (3) for a term of twenty-five years from the date of execution of this Exchange Agreement.

Section Three Identification and Valuation of Replacement Property

MDT shall, in the MDT Excess Land Table attached hereto as Appendix 2, identify all real property located on the Flathead Reservation for which it holds title or other equitable interest, which is in excess of MDT's present and foreseeable highway needs, which MDT is willing to convey to the Tribes as replacement property in exchange for use of the WM Site, and which is not subject to a preexisting commitment, dedication, or permit for use as a wetlands mitigation site. MDT shall update the MDT Excess Land Table annually and provide the Tribes with a copy of the updated copy.

The Parties shall, by mutual agreement, determine the fair market value of the replacement property. In the event that the Parties are unable to come to such agreement, then the Parties shall agree to have the fair market value determined by appraisal conducted by a licensed professional appraiser, hired and paid by MDT, that is mutually acceptable to the Parties.

Section Four Conveyance of Replacement Property

MDT hereby agrees to convey all of its right, title, and interest in certain of those properties listed in the MDT Excess Land Table selected by the Tribes pursuant to the terms of this Section Four in consideration for receiving grant of easement from the Tribes pursuant to the terms of Section One of this Exchange Agreement. The cumulative value of the property or properties selected by the Tribes shall be not less than \$24,000.00 and not more than \$257,500.00. The Tribes shall have five years from the date of execution of this Exchange Agreement to select the replacement property or properties. The Tribes shall give notice in writing to MDT of its selection and MDT and the Tribes shall exercise due diligence to close conveyance of the replacement property or properties as soon as possible after delivery of such notice. In the event that the Parties are unable to close conveyance within six years of execution of this Exchange Agreement, then MDT shall pay to the Tribes the amount of \$24,000 plus interest at the annual percentage rate of 6.0% compounded annually, such interest accruing from the date of execution of this Exchange Agreement. In the event that there is a difference between the fair market value of the Tribes' consideration and MDT's consideration, then the difference shall be settled by cash payment at the time of closing by the party in deficit.

MDT agrees to transfer the above described real property by warranty deed, free and clear from all financial liens, taxes, and encumbrances.

All personal property appurtenant to or used in the operation of the replacement property is represented to be owned by MDT and will be either included or excluded from the exchange by mutual agreement of the Parties made at the time of determining valuation of replacement property. MDT agrees to convey any included personal property by the appropriate transaction documents.

The parties agree the Tribes may take possession of the replacement property upon closing.

Section Five Duty to Cooperate

MDT shall cooperate in good faith with the Tribes in identifying and conveying the replacement property. MDT shall exercise due diligence in performing environmental review or other administrative procedures required by applicable law and regulation for making the properties listed in the MDT Excess Land Table available for conveyance to the Tribes as replacement property. In the event that any terms, conditions or other aspects of the exchange imposes obligations on MDT not contemplated by MDT, not consistent with MDT's obligations under Montana law or not a normal or customary part of a real estate purchase transaction, then MDT may refuse to carry out the exchange.

The Tribes shall cooperate in good faith with MDT by providing MDT reasonable legal access to a public road from any property owned by MDT which otherwise would have no legal access from a public road as a result of conveyance of any replacement property from MDT to the Tribes pursuant to this Exchange Agreement.

Section Six Title Insurance

MDT agrees, for the replacement property, to provide the Tribes with a preliminary Title report and a copy of the exclusions insuring marketable title acceptable to the Tribes. In addition, MDT agrees to provide the Tribes, at MDT's expense, a title insurance policy insuring the replacement property for the exchange value price on the ALTA U.S. Policy Form 9/28/91 or current U.S. policy.

Within ten days after receipt of the Title report mentioned above in this Section Six, the Tribes shall report to MDT in writing any valid objections to MDT's title. If no objection is reported within that time, the conveyance of replacement property shall be consummated promptly. If any valid objection is reported in writing by the Tribes to MDT, then MDT shall use all due diligence to remove it after receipt of the Tribes' written objections. If the objection or objections are removed, then conveyance of the replacement property shall be consummated promptly.

Section Seven Surveys

The parties shall provide, prior to closing, for a complete and accurate legal description of the

replacement property.

The parties shall provide, prior to closing conveyance of replacement property, for performance of a Level 1 Contaminant Survey, sufficient to meet Code of Federal Regulations Standards for evaluating transfer of Indian owned property into trust status with the United States.

Section Eight
Water and Mineral Rights

MDT agrees to transfer all water and mineral rights it may have in the replacement property to the Tribes upon closing.

Section Nine
Investigation / Representation / Commissions

The Parties stipulate that they enter into this exchange in sole reliance upon their own judgment and upon their own personal investigation of the property each is to receive, and not in reliance upon any representation by an person whatever regarding the properties, the character, quantity, or value of the properties.

MDT and the Tribes are each self-represented in this exchange and neither party will cause the generation of a commission by any agent.

Section Ten
Escrow / Time for Performance / Costs

Within thirty days of the Tribes giving notice to MDT of its selection of replacement property, and MDT completing all administrative actions required by State law in order to make the parcel available for exchange, each party shall deposit in escrow with a mutually acceptable escrow agent, all money, papers, and documents necessary to consummate this exchange, with instructions to consummate this exchange in accordance with the terms of this Exchange Agreement.

A reasonable time will be allowed each party to produce the title documents and deeds called for in this Exchange Agreement.

The parties agree to pay the closing costs of any conveyance made pursuant to this Exchange Agreement pursuant to a settlement agreement approved by the Parties.

Section Eleven
Disputes: Forum, Costs, and Attorney's Fees

To the extent not superseded by Federal Law:

- (a) In addition to the rights, obligations, and remedies contained in this Exchange Agreement, each party shall have all rights and remedies hereunder which shall be available in law or at equity.
- (b) The parties hereto agree that the proper forum for the resolution of any dispute arising hereunder shall be a court of competent jurisdiction.
- (c) The parties hereto further mutually agree that should any litigation be commenced by either party hereto, all costs of litigation of the prevailing party, including attorney's fees, may be awarded to the prevailing party, in addition to any judgement or award to which the prevailing party may otherwise be entitled.

**Section Twelve
Transferability / Durability**

The rights and obligations of each of the Parties to this Exchange Agreement shall not be transferable without the express written consent of the other party.

All rights and obligations under this Exchange Agreement shall be binding upon and shall inure to the benefit of the heirs, administrators, successors and assigns of each respective party.

**Section Thirteen
Notices**

All notices and other communications between the Parties shall be in writing and shall be deemed to have been duly given when delivered in person, sent by facsimile transmission, or posted by United States first class mail with postage prepaid to the respective representatives at the respective locations designated in this Section Thirteen or to any other representative at locations which either party may respectively designate in writing.

To MDT:

Loran Frazier, Missoula District Administrator
Montana Department of Transportation
2100 West Broadway
P.O. Box 7039
Missoula, MT 59807
Phone: (406)523-5800
Fax: (406)523-5801

To the Tribes:

D. Fred Matt, Chairman
Confederated Salish and Kootenai Tribes
51383 Highway 93
P.O. Box 278
Pablo, MT 59855
Phone: (406)675-2700
Fax: (406)675-2806

**Section Fourteen
Integration**

This Exchange Agreement and its Appendices constitute the complete agreement of the Parties, prior representations, oral or otherwise, notwithstanding.

**Section Fifteen
Modification / Termination**

The terms of this Exchange Agreement may not be modified unless in writing signed by each respective party.

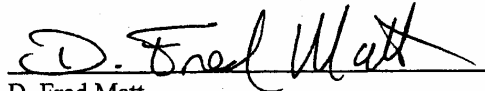
This Exchange Agreement may be terminated by mutual agreement of the parties.

**Section Sixteen
Severance**

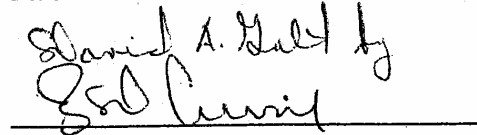
In the event any provision of this Exchange Agreement are deemed invalid by any court of competent jurisdiction, then said provision shall be deemed stricken and this Exchange Agreement shall otherwise remain in full force and effect.

In witness whereof, the undersigned Parties execute this Exchange Agreement on the date first written above:


For the Tribes:

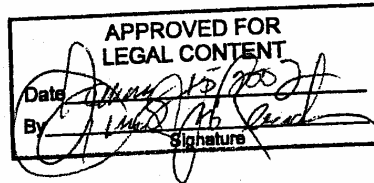

D. Fred Matt
Chairman - Tribal Council

For MDT:


David Galt
Director - Montana Department of
Transportation

Attest:


for Joseph Dupuis
Executive Secretary



Appendix B: Hoskin's Landing Easement

EASEMENT DEED

THIS EASEMENT DEED is made by and between the Confederated Salish and Kootenai Tribes of the Flathead Reservation, a tribal government organized under Section 16 of the Indian Reorganization Act of 1934 (48 Stat. 984) (hereafter referred to as the "TRIBES"), and the Montana Department of Transportation, an executive state agency established pursuant to Section 2-15-250 of the Montana Code Annotated (2001) (hereafter referred to as "MDT"). The TRIBES and MDT are jointly referred to as the "Parties".

WITNESSETH

Purposes and Intent. MDT seeks, and the Tribes seek to provide, an easement for use of Tribally-owned land for the performance of a wetlands mitigation project by MDT. The purpose of this easement is to preserve, create, enhance, restore, and protect the functional values of wetlands and other lands, and for the conservation of natural values including fish and wildlife habitat, water quality improvement, flood water retention, groundwater recharge, open space, aesthetic values and environmental education. It is the intent of MDT to give the TRIBES the opportunity to participate in the implementation, operation and maintenance of the wetlands mitigation project on the easement area.

Authority. This grant of Easement Deed by the TRIBES is authorized by Article VI Section 1(a) and (c) and by Article VIII, Section 1 of the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, as amended. This acquisition of Easement Deed by MDT is authorized by Section 60-4-102 of the Montana Code Annotated.

NOW THEREFORE, for and in consideration of the sum of One Dollar and other valuable consideration, the TRIBES, hereby grant and convey to MDT and its assigns, for 25 years, a right and interest in the lands comprising the easement area described in Part I and appurtenant rights of access to the easement area, but reserving to the TRIBES, those rights, title and interest expressly enumerated in Part II. This easement shall constitute a servitude upon the land so encumbered, shall run with the land for 25 years and shall bind the TRIBES, their heirs, successors, assigns, lessees, and any other person claiming under them.

SUBJECT, however, to all valid rights of record, if any.

PART I. Description of the Easement Area. The lands encumbered by this easement deed,

referred to herein as the easement area, are described in Certificate of Survey No. 2070, records of Clerk and Recorder of Sanders, County, Montana, containing 48.23 acres more or less. Said Certificate of Survey is made a part of this easement deed by reference.

TOGETHER with a right of access for ingress and egress to the easement area across adjacent or other properties of the TRIBES as described in Appendix 1 which is made a part of this Easement Deed.

PART II. Reservations in the Tribes on the Easement Area. Subject to the rights and interest conveyed by this easement deed to MDT the TRIBES reserve:

- A. **Title.** Record title, along with the TRIBES' right to convey, transfer, and otherwise alienate title to these reserved rights.
- B. **Quiet Enjoyment.** The right of quiet enjoyment of the rights reserved on the easement area.
- C. **Control of Access.** The right to prevent trespass and control access by the general public.
- D. **Usufructuary and Spiritual Uses.** The right of Tribal Members to conduct traditional usufructuary and spiritual uses including hunting, fishing, and gathering.

PART III. Obligations of the Landowner. The Tribes shall comply with all terms and conditions of the easement, including the following:

- A. **Prohibitions.** Unless authorized as a comparable use under Part IV, it is expressly understood that the rights to the following activities and uses have been acquired by MDT and are prohibited of the TRIBES on the easement area.
 - 1. Haying, and/or mowing;
 - 2. Altering of grassland, woodland, wildlife habitat or other natural features by burning digging, plowing , discing, cutting or otherwise destroying the vegetative cover;
 - 3. Dumping refuse, wastes, sewage or other debris;
 - 4. Harvesting wood products;
 - 5. Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or related activities, as well as altering or tampering with water control structures or devices;
 - 6. Diverting or causing or permitting the diversion of surface water into, or out of the easement area surface by any means;

7. Building or placing buildings or structures on the easement area;
 8. Planting or harvesting any crop; and
 9. Grazing or allowing livestock on the easement area.
- B. Noxious plants. The TRIBES are responsible for control of noxious weeds.
- C. Fences. Except for establishment cost incurred by MDT and replacement cost not due to the TRIBES' negligence or malfeasance, all other costs involved in maintenance of fences and related improvements to exclude livestock shall be the responsibility of the TRIBES.
- D. Taxes. The TRIBES shall pay any and all real property and other taxes and assessments, if any, which may be levied against the land by an agency with jurisdiction for such tax or assessment.
- E. Reporting. The TRIBES shall report to MDT any conditions or events which may adversely affect the wetland, wildlife, and other natural values of the easement area.

PART IV. Allowance of Compatible Uses by the TRIBES.

- A. General. MDT may authorize, in writing and subject to such terms and conditions at its discretion, the use of the easement area for compatible economic uses, including, but not limited to, managed timber harvest, periodic haying, or grazing.
- B. Limitations. Compatible use authorizations will only be made if such use is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area. MDT shall prescribe the amount, method, timing, intensity, and duration of the compatible use.
- C.

PART V. Rights of MDT. The rights of MDT include:

- A. Management activities. MDT shall have the right to enter unto the easement area to undertake, at its own expense or on a cost share basis with the TRIBES or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland and other natural values of the easement area.
- B. Access. MDT has a right of reasonable ingress and egress to the easement area over the TRIBES' adjacent property, as described in Attachment 1 to this Easement Deed. The authorized representatives of MDT may utilize light vehicles and other reasonable modes of transportation for access purposes.

- C. Easement Management. MDT may delegate all or part of the management, monitoring or enforcement responsibilities under this easement to the TRIBES.
- D. Violations and Remedies - Enforcement. The PARTIES agree that this easement deed may be introduced in any enforcement proceeding as the stipulation of the PARTIES hereto. If there is any failure of the TRIBES to comply with any of the provisions of this easement deed. MDT or other delegated authority shall have any legal or equitable remedy provided by law and the right:
 1. To enter upon the easement area to perform necessary work for prevention of or remediation of damage to wetland or other natural values; and
 2. To assess all expenses incurred by MDT against the TRIBES.

PART VI. General Provisions.

- A. Successors in Interest. The rights granted to MDT shall accrue to any of its agents, successors, or assigns. All obligations of the TRIBES under this easement deed shall also bind the TRIBES' heirs, successors, agents, assigns, lessees, and any other person claiming under them.
- B. Rules of Construction. All rights and interests in the easement area not acquired by MDT shall be deemed reserved by the TRIBES. Any ambiguities in this easement deed shall be construed in favor of MDT to effect the wetland and conservation purposes for which this easement deed is being acquired.

TO HAVE AND TO HOLD, this Easement Deed is granted to MDT and its successors and assigns for 25 years. The TRIBES covenant to comply with the terms and conditions enumerated in this document for the use of the easement area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this easement deed.

Dated this 10th Day of JANUARY, 2002.

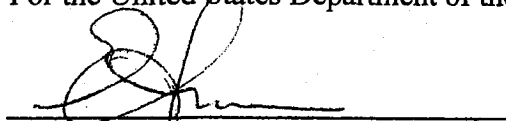
TRIBES) D. Fred White (Seal)
)
)
) Vernon J. Clavon (Seal)

SUBSCRIBED AND SWORN to before me, a Notary Public for the State of Montana, on this 10th day of January, 2001.

James McDonald
Notary Public for the State of Montana
Residing at: Paris, Montana
My Commission Expires: 3-13-02

Approved:

For the United States Department of the Interior:



Ernest T. Moran
Superintendent, Flathead Agency
Bureau of Indian Affairs, DOI

Authority Delegated by Act of February 5, 1948, 62 Stat. 17, 25 USC 323-328

Date:

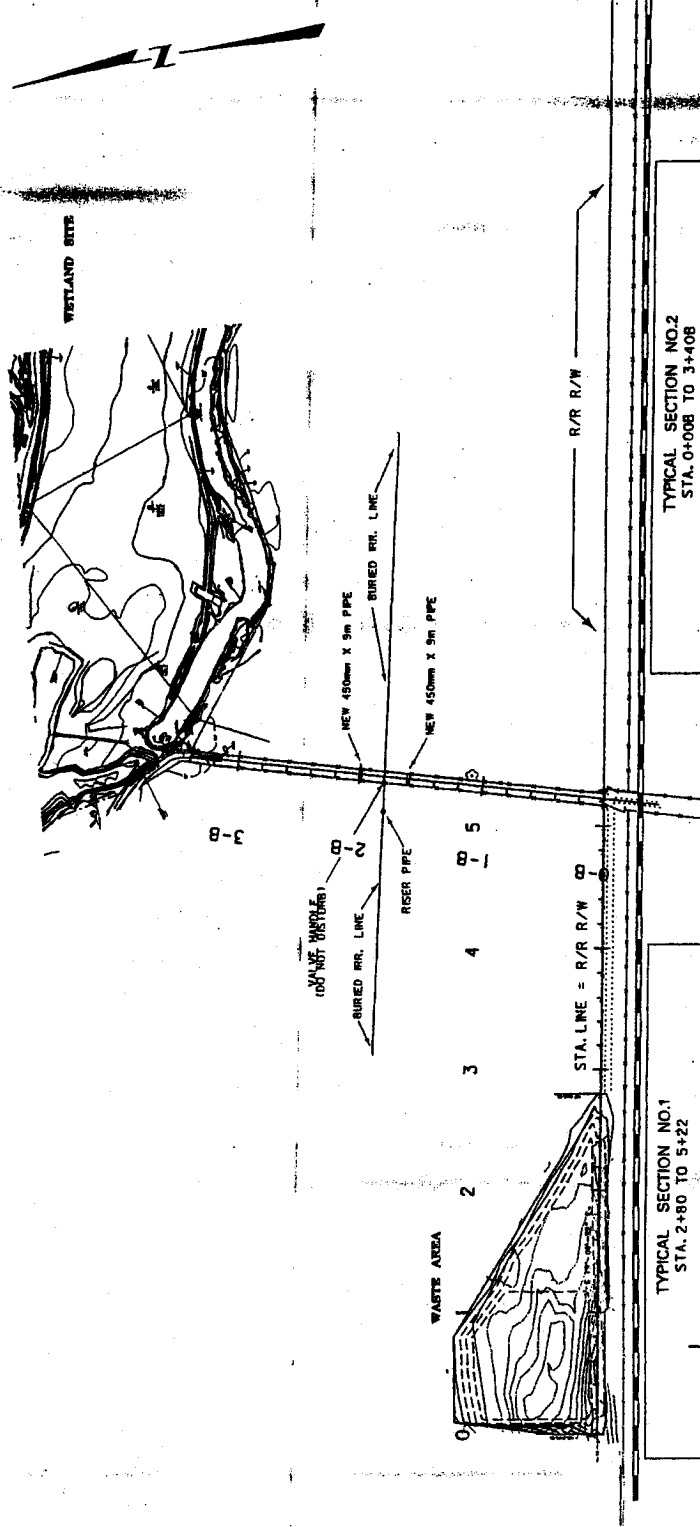
1-11-02

ATTACHMENT # 1

Access Diagram

STATE	PROJECT NUMBER	SHEET NO.
MONTANA	STP 4503B	B A

HAUL ROAD DETAIL



TYPICAL SECTION NO.1
STA. 2+80 TO 5+22

300mm COMP. GRAVEL

1.5m COMP. AGGREGATE

1.5m COMP. AGGREGATE

3.0m COMP. AGGREGATE

1.5m COMP. AGGREGATE

STA. LINE = R/R R/W

HAUL ROAD

QUANTITIES	
UNIT	AGGREGATE
1.5m COMP. AGGREGATE	1.5m
1.5m COMP. AGGREGATE	1.5m
3.0m COMP. AGGREGATE	3.0m
1.5m COMP. AGGREGATE	1.5m

● GRAVEL MATERIAL EXCAVATED FROM WETLAND POND AREA

● EXCAVATE 300mm TOPSIDE, 150mm SIDE AND 150mm BOTTOM OF WETLAND POND AREA

● GRAVEL MATERIAL EXCAVATED FROM WETLAND POND AREA

TYPICAL SECTION NO.2
STA. 0+00B TO 3+40B

300mm COMP. GRAVEL

1.5m COMP. AGGREGATE

1.5m COMP. AGGREGATE

3.0m COMP. AGGREGATE

1.5m COMP. AGGREGATE

FENCE LINE

FENCE LINE

QUANTITIES	
UNIT	AGGREGATE
1.5m COMP. AGGREGATE	1.5m
1.5m COMP. AGGREGATE	1.5m
3.0m COMP. AGGREGATE	3.0m
1.5m COMP. AGGREGATE	1.5m

● GRAVEL MATERIAL EXCAVATED FROM WETLAND POND AREA

**PROJECT SPECIFIC AGREEMENT
BETWEEN**

The Confederated Salish and Kootenai Tribes of the Flathead Nation

and

The Montana Department of Transportation

Project: Wetland Mitigation - Dixon West and Paradise East-East Section
Name: Hoskin's Landing
Number: STPP 45 (d)MDT Control No. 4144
Type: Wetland Mitigation Site Development
Letting Date: Winter 2002

This Project Specific Agreement (PSA) is entered into by the Confederated Salish and Kootenai Tribes of the Flathead Nation (Tribes) and the Montana Department of Transportation (MDT).

The purpose of this PSA is to describe the specific cooperative efforts each of the respective parties will perform as mutually agreed to in conjunction with the Wetland Mitigation - Dixon West and Paradise East Project (WM Project). Further, the parties intend this PSA to be consistent with and subject to all laws, rules, and/or regulations governing the Tribes and MDT. If anything herein is inconsistent with such laws, rules, and/or regulations, then said laws, rules, and/or regulations shall control. In the event that the WM Project is not awarded, this PSA shall be null and void and a new PSA may be negotiated as mutually agreed to by the parties.

The Parties agree as follows:

I. Impact Delineation

MDT and the Tribes jointly anticipate that the Dixon West (STPP 6-1(30)99-CN #C891) and Paradise East-East Section (STPP-F 6-1(36)85-CN #1011) highway reconstruction projects (Highway Projects) will result in either impact to or the loss of approximately 4.69 acres of jurisdictional wetlands.

II. Site Selection and Compensation

A. Site Identification/Legal Description

The Parties agree that the WM Project shall be conducted at the Hoskin's Landing Wetlands Mitigation Site ("WM Site"), a parcel of land approximately 48.23 acres in size including approximately ¼ mile of the south bank of the Flathead River northwest of the town of Dixon, Montana. The parcel is more particularly described on Certificate of Survey No. 2070, on file as

a record of the office of the Clerk and Recorder of Sanders County, Montana (copy is attached hereto in Exhibit #1, Appendix 2.0).

B. Site Ownership / Title Status

Title to the WM Site is held by the Tribes.

C. Tribal Commitment to Use the Site for Wetlands Mitigation

CSKT hereby covenants and declares that the highest and best use of the WM Site is for wetlands mitigation, as implemented through the WM Project, commencing on the date this PSA takes effect and continuing for the shorter of either a period of 25 years or the life of the Highway Projects. This covenant and declaration is further manifest and memorialized by Tribal Resolution adopted and dated January 3, 2002 (copy is attached hereto as Exhibit #3).

D. MDT Compensation to CSKT for Use of the Site for Wetlands Mitigation

At a time selected by the Tribes within five years of execution of this PSA, MDT, in consideration of the covenant and declaration of the Tribes, set forth in section II.C. of this PSA, and in consideration of the commitments made by the Tribes in Article VI of this PSA, and for other consideration conveyed by the Tribes to MDT as agreed to in the Deferred Exchange Agreement, dated January 10, 2002 (copy attached hereto as Exhibit #2) agrees to convey to CSKT in fee simple by general warranty deed, all of its right title and interest in one or more parcels of land owned by MDT, listed in the MDT Excess Land Table (copy attached hereto as Exhibit #2, Appendix 2) and selected by the Tribes with a cumulative appraised value of not less than \$24,000 and not more than \$257,500.

E. Additional Documentation

The parties agree to execute any supplemental documents necessary for compliance with the terms of this PSA, including a joint letter to the U.S. Army Corps of Engineers (CoE) soliciting regulatory approval for the WM Project as mitigation for impacts or losses attributable to the Highway Projects.

III. Mitigation Planning

A. Assessment and Delineation of Baseline Conditions

MDT shall delineate the existing jurisdictional wetlands and conduct a baseline functional assessment of existing wetland conditions on the WM Site.

B. Restoration Design

MDT and the Tribes have jointly developed a Restoration Design plan (copy attached hereto as Exhibit #1) for the WM Project which is incorporated herein by reference. The Restoration Design plan, together with its appendices is intended to be the technical manual governing the WM Project.

C. Contract Award and Execution

MDT shall consult with the Tribes regarding any deviation from the Restoration Design plan through the contract preparation, bid solicitation, contract award, construction, inspection and review phases of the WM Project. MDT shall place a copy of this PSA, together with its exhibits, in the final bid package, and in the contract. MDT shall solicit bid proposals and award and execute a contract for performance of the WM Project pursuant to MDT's Standard Specifications for Road and Bridge Construction (1995).

IV. Wetlands Mitigation Project Implementation

A. Coordination

MDT and the Tribes shall each appoint representatives to function as points-of-contact for their respective agencies with responsibility to consult and coordinate with one another in order to assure effective communications during construction. A representative shall make herself/himself available on site upon reasonable request of her/his counterpart for the purpose of hearing and responding to issues arising during construction. The Tribes point-of-contact shall be the Tribes' Wetlands Coordinator. MDT's point of contact shall be MDT's appointed field Project Manager.

B. Pre-Construction Meeting

MDT's Project Manager, the Contractor, and the Tribes' Wetlands Coordinator shall meet on site within thirty-days of award of the contract in order to discuss each party's respective concerns and expectations regarding performance of the WM Project and in order to establish communications for ongoing coordination of work at the site.

C. Access for Construction

Access to/from the site shall be by ways identified in the Access Plan (copy attached hereto in Exhibit #1, Appendix 5.4). Access road use and reclamation shall be performed pursuant to the conditions established in the Restoration Design plan.

D. Project Schedule

Within ten-days of the Pre-Construction Meeting, MDT shall have the Contractor prepare and submit a proposed work plan and schedule of activities to the Tribal Wetlands Coordinator for her review and comment. All excavation and construction activities undertaken pursuant to the contract will be performed between January 10, 2002 and June 1, 2002.

E. Contractor Oversight

MDT's Project Manager shall oversee all Contractor activities on site consistent with the Project Manager's duties and responsibilities established by MDT's Standard Specifications for Road and Bridge Construction (1995).

F. Construction/Excavation

MDT, through its Contractor, shall perform all excavation, construction, and reclamation duties of the WM Project consistent with the terms and conditions of the final construction plans and this PSA.

G. Fencing / Gate Installation

MDT shall install permanent fencing along the southwestern boundary of the project site and install gates as necessary to restrict access to the site from adjacent lands. MDT shall install standard MDT barbed five-wire fence with wooden posts. Fencing locations are shown on the fencing detail attached hereto as Sheet #7 of Appendix 5.2 to Exhibit #1. MDT shall coordinate the fencing and gate installation activities with revegetation activities to assure timely protection for restored vegetation, however, in any event, fencing and gate installation shall be completed within 30 days of completion of excavation and construction activities.

I. Pump Relocation / Irrigation System Protection

The Tribes shall disconnect electrical service from the existing on-site pump facility used for agricultural irrigation purposes. MDT shall demolish and remove the existing on-site pump facility, leaving the two pumps from the demolished facility at an on-site location to be designated by the Tribes' Wetlands Coordinator. The Tribes shall remove the two pumps from the designated on-site location and dispose of them as soon as possible after notice by MDT of their availability for removal. The Tribes shall reconstruct the pump facility and Flathead River sump intake and reestablish connection to electrical service at an off site location near the west boundary of the WM Site, according to the plans and specifications shown in Appendix 5.7 to Exhibit #2. MDT shall pay to the Tribes, an amount not to exceed \$33,00.00 in reimbursement for costs and expenses incurred by the Tribes in excavating, reconstructing and reconnecting the pump facility and sump intake. The Tribes shall submit an invoice to MDT for the full amount of reimbursement upon completing the excavation, reconstruction and reconnection work and MDT shall pay such billing in full within thirty days of receipt. The Tribes shall stockpile material excavated from the new sump at the sump excavation site in such a manner so as to not impede access to/from the sump work site. MDT shall arrange for hauling and disposal of such stockpiled material. MDT shall leave the underground components of the irrigation water delivery system located on the WM Site in the same, or better, condition as existed prior to commencing construction of the WM Project.

J. Final Acceptance

Upon notice from the Contractor of completion of construction, the Project Manager shall arrange a post-construction meeting with the Project Manager, the Contractor, the Tribes' Wetlands Coordinator, and with a representative of CoE on site in order to perform a final inspection. If inspection discloses unsatisfactory work then MDT, the Tribes, and CoE will consult regarding necessary corrections and the Project Manager shall issue instructions to the Contractor for performing such corrections. When the deficiencies are corrected, the Project Manager will arrange another meeting with the Project Manager, the Contractor, the Tribes' Wetlands Coordinator, and with a representative of CoE on site for inspection of the corrections. Joint approval by the MDT, Tribal, and CoE representatives of the WM Project as constructed,

and, if necessary, corrected, at these on site inspection meetings shall constitute final approval of the WM Project for purposes of this PSA.

V. Revegetation

A. The Tribes, through the Salish and Kootenai College Native Plant Nursery ("SKC Nursery"), have developed, and MDT has reviewed and approved, an Implementation Plan for the Revegetation of: Highway 200 Dixon-West and Paradise East-East Section Wetland Mitigation Site ("Revegetation Plan") (attached hereto as Appendix 5.5 in Exhibit #2). The Tribes, through the SKC Nursery, shall perform the Revegetation Plan. MDT shall pay to the Tribes, the amount of \$57,700.00 in compensation for performance of the Revegetation Plan. The Tribes shall submit an invoice to MDT for the full amount of compensation upon completing performance of the Revegetation Plan and MDT shall pay such billing in full within thirty days of receipt.

VI. Permitting / Monitoring

MDT shall apply for, and exercise due diligence toward obtaining, the Federal and Tribal permits required for performing the WM Project. MDT shall monitor the performance of the WM Site as a wetlands mitigation site as required by jurisdictional regulatory agencies. The Tribes shall provide MDT reasonable access to the WM Site for performing its required permitting and monitoring activities. MDT shall provide copies of all communications it has with jurisdictional regulatory agencies regarding permits and monitoring reports to the Tribal Wetlands Coordinator.

VII. Operations and Maintenance

- A. The Tribes shall occupy, retain title to, control access to, and perform traditional usufructuary and spiritual uses upon the WM Site concurrently while also operating and maintaining the WM Site as a wetlands mitigation site. Except as otherwise provided herein, Tribal operations and maintenance activities shall consist of:
1. controlling noxious weeds;
 2. maintaining perimeter fences and gates and protecting the site against trespass and/or intrusion by users whose uses are incompatible with the highest and best use of the site as a wetlands mitigation site;
 3. paying any and all real property and other taxes and assessments, in any, which may be levied against the land; and
 4. passive occupancy with a managerial intent to allow wetlands ecological functions and values to develop as they have since time immemorial.
- B. Except as jointly authorized by the Tribes and MDT, for a period of 25-years, the Tribes shall not:
1. hay or mow the WM Site;
 2. alter the grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, discing, cutting or otherwise destroying the vegetative cover of the WM Site;

3. dump refuse, wastes, sewage or other debris on the WM Site;
4. harvest wood products from WM Site;
5. drain, dredge, channel, fill, level, pump, dike, or impound surface water at the WM Site or alter or tamper with water control structures or devices;
6. divert or cause or permit the diversion of the surface waters that are appurtenant to the WM Site;
7. construct or place any buildings on the WM Site;
8. plant or harvest any crop from the WM Site;
9. graze or allow livestock on the WM Site; or
10. place the property into surplus, for exchange or use for any purpose inconsistent with its primary purpose for mitigating impacts to wetlands.

VIII. Notice

- A. Tribal Representative: Tribal Wetlands Coordinator is the Tribes' point of contact for all notices and communications regarding this PSA.
- B. MDT Representative: MDT Director of Environmental Services, is MDT's point of contact for all notices and communications regarding this PSA.

IX. Effective Date, Termination, Amendments

This Agreement shall become effective on the date signed by both parties and filed with the Tribal Executive Secretary and shall remain in effect until terminated. The Agreement may be revised or amended by written consent of both parties. This Agreement may be terminated by either party upon giving thirty-days written notice.

D. Fred Matt

D. Fred Matt
Vice-Chairman, Tribal Council

David A. Galt
D. Galt

David Galt
Director - Montana Department of Transportation

1/10/02
Date

1-16-02
Date

cc: Alan Steinle, U.S. Army Corps of Engineers
Janice Weingart Brown, Federal Highway Administration

APPROVED FOR LEGAL CONTENT	
Date	<u>Jan 15, 2002</u>
By	<u>Lyle Manley</u> Signature

**Appendix C: Hoskin's Landing
Certificate of Survey**

CERTIFICATE OF SURVEY

DEPICT THE PERIMETER BOUNDARY AND MONUMENTATION
A WETLAND MITIGATION AREA, LOCATED IN SECTION 18,
RANGE 21 NORTH, SANDERS COUNTY, MONTANA.

RECITATION OF FACTS: This survey was made on the 15th day of May, 1981, at the office of the Surveyor, Sanders County, Montana, and being more particularly described as follows:

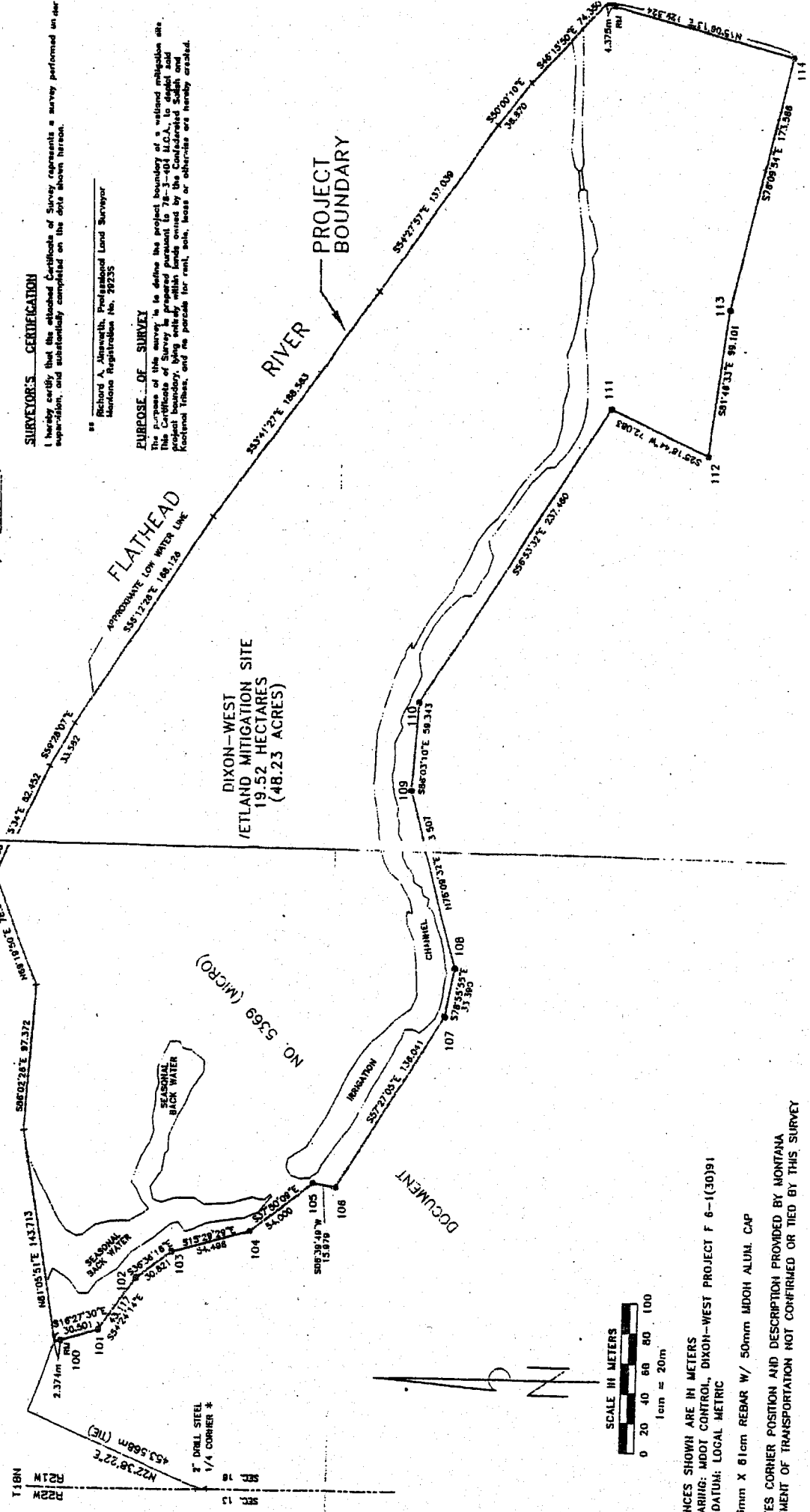
Commencing at the one-quarter corner common to Section 13, T.18N., R.22W., P.M.14 and Section 18, T.18N., R.21W., P.M.14; thence S. 22° 28' 22" E., 453.568 meters to the TRUE POINT OF BEGINNING; thence along the true meridian line on the southwesterly side (left hand) of the Flathead River; thence S. 22° 28' 22" E., 87.372 meters; S. 45° 53' 34" E., 51.451 meters; S. 58° 28' 09" E., 31.262 meters; S. 58° 12' 28" E., 185.126 meters; S. 53° 41' 37" E., 188.543 meters; S. 45° 45' 46" E., 17.358 meters; S. 58° 00' 10" E., 38.870 meters; S. 15° 06' 13" W., 129.321 meters; thence N. 87° 09' 54" W., 173.868 meters; thence N. 81° 48' 33" W., 98.101 meters; thence N. 25° 18' 44" E., 72.003 meters; thence N. 58° 53' 32" W., 237.460 meters; thence N. 88° 03' 10" W., 59.343 meters; thence S. 27° 28' 35" W., 133.007 meters; thence N. 78° 05' 08" W., 33.390 meters; thence N. 37° 50' 03" W., 54.000 meters; thence N. 13° 29' 43" W., 13.489 meters; thence N. 38° 36' 18" W., 30.821 meters; thence N. 33° 24' 14" W., 43.117 meters; thence N. 18° 27' 30" W., 30.501 meters to the TRUE POINT OF BEGINNING.

Containing 19.52 hectares (48.23 acres) more or less, being subject to all easements or rights-of-way as shown, existing, apparent, or of record, and all accuracy in Certificate of Survey No. _____.

SURVEYOR'S CERTIFICATION
I hereby certify that the attached Certificate of Survey represents a survey performed under supervision, and substantially completed on the date shown hereon.

Richard A. Annewarth, Professional Land Surveyor
Montana Registration No. 29235

PURPOSE OF SURVEY
The purpose of this survey is to define the project boundary of a wetland mitigation site. This Certificate of Survey is prepared pursuant to 78-3-401 M.C.A. to establish a project boundary, being entirely within lands owned by the Confederated Salish and Kootenai Tribes, and no parcels for rent, sale, lease or otherwise are hereby created.



SCALE IN METERS
0 20 40 60 80 100
1cm = 20m

DISTANCES SHOWN ARE IN METERS
BEARING: MDD CONTROL, DIXON-WEST PROJECT F 6--(30)91
ITAL DATUM: LOCAL METRIC
ET 16mm X 61cm REBAR W/ 50mm MDDH ALUM. CAP

INDICATES CORNER POSITION AND DESCRIPTION PROVIDED BY MONTANA DEPARTMENT OF TRANSPORTATION NOT CONFIRMED OR TIED BY THIS SURVEY

**Appendix D: Hoskin's Landing
Programmatic Categorical Exclusion**



RECEIVED

MASTER FILE

Montana Department of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

David A. Galt, Director
Judy Martz, Governor

SEP 14 2001
September 11, 2001

ENVIRONMENTAL

Janice W. Brown, Division Administrator
Federal Highway Administration (FHWA)
2880 Skyway Drive
Helena, MT 59602

Subject: STPP 45(29)
Dixon Wetland Mitigation
CN 4144

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SEP 4 2003

ROBERT PECCIA
& ASSOCIATES

This is to request approval of this proposed project as a Categorical Exclusion (CE) under the provisions of 23 CFR 771.117(d), and the Programmatic Agreement as signed by the MONTANA DEPARTMENT OF TRANSPORTATION (MDT) and the FHWA on April 12, 2001. Copies of its Scope of Work Report (Approved on April, 17, 2001) and Project Location Map are attached. This proposed action also qualifies-as a CE under ARM 18.2.261 (Sections 75-1-103 and 75-1-201, MCA).

The following form provides the documentation required to demonstrate that all of the conditions are satisfied to qualify for a Programmatic Categorical Exclusion Approval (PCE) as initially agreed by the (former) MONTANA DEPARTMENT OF HIGHWAYS (MDOH) and the FHWA on December 6, 1989. (Note: An "X" in the "N/A" column is "Not Applicable" to, while one in the "UNK" column is "Unknown" at the present time for this proposed project.)

NOTE: A response in a box will require additional documentation for a Categorical Exclusion request in accordance with 23 CFR 771.117(d).

- | | YES | NO | N/A | UNK |
|--|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| 1. This proposed project would have (a) significant environmental impact(s) as-defined under <u>23 CFR 771.117(a)</u> . | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | |
| 2. This proposed project involves (an) unusual circumstance(s) as described under <u>23 CFR 771.117(b)</u> . | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | |
| 3. This proposed project involves one (or more) of the following situations where: | | | | |
| A. Right-of-Way, easements, and/or construction permits would be required. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | |
| 1. The context or degree of the Right-of-Way action would have (a) substantial social, economic, or environmental effect(s). | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| 2. There is a high rate of residential growth in this proposed project's area. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Environmental Services
Phone: (406) 444-7228
Fax: (406) 444-7245

Web Page: www.mdt.state.mt.us
Road Report: (800) 226-7623
TTY: (800) 335-7592

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
3. There is a high rate of commercial growth in this proposed project's area.	<u> </u>	<u> X </u>	<u> </u>	<u> </u>
4. Work would be on and/or within approximately 1.6 kilometers (1± mile) of an Indian Reservation.	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
5. There are parks, recreational, or other properties acquired/improved under <i>Section 6(f)</i> of the <i>1965 National Land & Water Conservation Fund Act (16 U.S.C. 460L, et seq.)</i> on or adjacent to proposed the project area.	<u> </u>	<u> X </u>	<u> </u>	<u> </u>
The use of such <i>Section 6(f)</i> sites would be documented and compensated with the appropriate agencies. (e.g.: MDFW&P, local entities, etc.).	<u> </u>	<input type="checkbox"/>	<u> X </u>	<u> </u>
6. Are there any sites either on, or eligible for the National Register of Historic Places with concurrence in determination of eligibility or effect under <i>Section 106</i> of the <i>National Historic Preservation Act (16 U.S.C. 470, et seq.)</i> by the State Tribal Historic Preservation Office (STHPO), which would be affected by this proposed project.	<u> </u>	<u> X </u>	<u> </u>	<u> </u>
7. There are parks, recreation sites, schoolgrounds, wild-life refuges, historic sites, historic bridges, or irrigation that might be considered under <i>Section 4(f)</i> of the <i>1966 U.S. DEPARTMENT OF TRANSPORTATION Act (49 U.S.C. 303)</i> on or adjacent to the project area.	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
a. "Nationwide" Programmatic <i>Section 4(f)</i> Evaluation forms for these sites are attached. * See attached letter from The Confederated Salish and Kootenai Tribes.	<u> </u>	<input type="checkbox"/>	<u> X* </u>	<u> </u>
b. This proposed project requires a full (i.e.: DRAFT & FINAL) <i>Section 4(f)</i> Evaluation.	<input type="checkbox"/>	<u> </u>	<u> X </u>	<u> </u>
B. The activity would involve work in a streambed, wetland, and/or other waterbody(ies) considered as "waters of the United States" or similar (e.g.: "state waters").	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
1. Conditions set forth in <i>Section 10</i> of the <i>Rivers and Harbors Act (33 U.S.C. 403)</i> and/or <i>Section 404</i> under <u>33 CFR Parts 320-330</u> of the <i>Clean Water Act (33 U.S.C. 1251-1376)</i> would be met.	<u> X </u>	<input type="checkbox"/>	<u> </u>	<u> </u>

YES NO N/A UNK

2. Impacts in wetlands, including but not limited to those referenced under Executive Order (E.O.) #11990, and their proposed mitigation would be coordinated with the Montana Inter-Agency Wetland Group.

X

3. A 124SPA Stream Protection permit would be obtained from the MDFW&P?

X

4. There is a delineated floodplain in the proposed project area under FEMA's Floodplain Management criteria.

 X

The water surface at the 100-year flood limit elevation would exceed floodplain management criteria due to an encroachment by the proposed project.

 X

5. Tribal Water Permit would be required.

X

6. Work would be required in, across, and/or adjacent to a river which is a component of, or proposed for inclusion in Montana's Wild and/or Scenic Rivers system as published by the U.S. Department of Agriculture, or the U.S. Department of the Interior.

 X

The designated National Wild & Scenic River systems in Montana are:

- a. Middle Fork of the Flathead River (headwaters to South Fork confluence).
- b. North Fork of the Flathead River (Canadian Border to Middle Fork confluence).
- c. South Fork of the Flathead River (headwaters to Hungry Horse Reservoir).
- d. Missouri River (Fort Benton to Charles M. Russell National Wildlife Refuge).

In accordance with *Section 7 of the Wild and Scenic Rivers Act (16 U.S.C. 1271 - 1287)*, this work would be coordinated and documented with either the Flathead National Forest (Flathead River), or U.S. Bureau of Land Management (Missouri River).

 X

C. This is a "Type I" action as defined under 23 CFR 772.5(h), which typically consists of highway construction on a new location or the physical alteration of an existing route which substantially changes its horizontal or vertical alignments or increases the number of through-traffic lanes.

 X

1. If yes, are there potential noise impacts?

 X

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
2. A Noise Analysis would be completed.	___	<input type="checkbox"/>	<u>X</u>	
3. There would be compliance with the provisions of both <u>23 CFR 772</u> for FHWA's Noise Impact analyses and MDT's Noise Policy.	___	<input type="checkbox"/>	<u>X</u>	
D. There would be substantial changes in access control involved with this proposed project.	___	<u>X</u>		
If yes, would they result-in extensive economic and/or social impacts on the affected locations?	<input type="checkbox"/>	___	<u>X</u>	
E. The use of a temporary road, detour, or ramp closure having the following conditions when the action(s) associated with such facilities:				
1. Provisions would be made for access by local traffic, and be posted for-same.	<u>X</u>	<input type="checkbox"/>	___	
2. Adverse effects to through-traffic dependant businesses would be avoided or minimized.	<u>X</u>	<input type="checkbox"/>	___	
3. Interference to local events(e.g.: festivals) would be minimized to all possible extent.	<u>X</u>	<input type="checkbox"/>	___	
4. Substantial controversy associated with this pending action would be avoided.	<u>X</u>	<input type="checkbox"/>	___	
F. Hazardous wastes /substances, as defined by the U.S. Environmental Protection Agency (EPA) and/or the Montana Department of Environmental Quality (MDEQ), and/or (a) listed "Superfund" (under <i>CERCLA</i> or <i>CECRA</i>) site(s) are currently on and/or adjacent to this proposed project.	___	<u>X</u>		
All reasonable measures would be taken to avoid and/or minimize substantial impacts from same.	___	<input type="checkbox"/>	<u>X</u>	
G. The Montana Pollutant Discharge Elimination System's conditions (<u>ARM 16.20.1314</u>), including temporary erosion control features for construction would be met.	<u>X</u>	<input type="checkbox"/>	___	

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
H. Permanent desirable vegetation with an approved seeding mixture would be established on exposed areas.	<u>X</u>	—	—	
I. Documentation of an "invasive species" review to comply with both E.O.#13112 and the <i>County Noxious Weed Control Act (7-22-21, M.C.A.)</i> , including directions as specified by the county(ies) wherein its intended work would be done.	<u>X</u>		—	
J. There are "Prime" or "Prime if Irrigated" Farmlands designated by the Natural Resources Conservation Service on or adjacent to the proposed project area.	<u>X</u>	—		
If the proposed work would affect Important Farmlands, then an AD-1006 Farmland Conversion Impact Rating form would be completed in accordance with the <i>Farmland Protection Policy Act (7 U.S.C. 4201, et seq.)</i> .	<u>X</u>	<input type="checkbox"/>	—	
K. Features for the <i>Americans with Disabilities Act (P.L. 101-336)</i> compliance would be included.	—	<input type="checkbox"/>	<u>X</u>	
L. A written Public Involvement Plan, would be completed in accordance with MDT's Public Involvement Handbook.	<u>X</u>	<input type="checkbox"/>		
4. This proposed project complies with the <i>Clean Air Act's Section 176(c) (42 U.S.C. 7521(a)</i> , as amended) under the provisions of <u>40 CFR 81.327</u> as it's either in a Montana air quality:				
A. "Unclassifiable"/attainment area. This proposed project is <u>not</u> covered under the EPA's September 15, 1997 Final Rule on air quality conformity.	<u>X</u>	—		
and/or				
B. "Nonattainment" area. However, this type of proposed project is either exempted from the conformity determination requirements (under EPA's September 15, 1997 Final Rule), or a conformity determination would be documented in coordination with the responsible agencies: (Metropolitan Planning Organizations, MDEQ's Air Quality Division, etc.).	—	<input type="checkbox"/>	<u>X</u>	
C. Is this proposed project in a "Class I Air Shed" (Indian Reservations) under <u>40 CFR 52.1382(c)(3)</u> ?	<u>X</u>	—		

YES NO N/A UNK

5. Federally listed Threatened or Endangered (T/E) Species:

A. There are recorded occurrences, and/or critical habitat in this proposed project's vicinity.

X ___

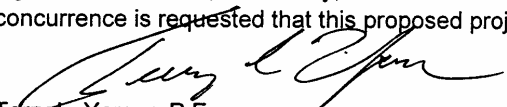
B. Would this proposed project result in a "jeopardy" opinion (under 50 CFR 402) from the Fish & Wildlife Service on any Federally listed T/E Species?


X ___

The proposed project would not induce significant land-use changes, nor promote unplanned growth. There would be no significant effects on access to adjacent property, nor to present traffic patterns.

This proposed project would not create disproportionately high and/or adverse impacts on the health or environment of minority and/or low-income populations (E.O.#12898). It also complies with the provisions of *Title VI* of the *Civil Rights Act* of 1964 (42 U.S.C. 2000d) under the FHWA's regulations (23 CFR 200).

In accordance with the provisions of 23 CFR 771.117(a), this pending action would not cause any significant individual, secondary, or cumulative environmental impacts. Therefore, the FHWA's concurrence is requested that this proposed project is properly classified as a Categorical Exclusion.


Terry L. Yarger, P.E.
Engineering Bureau Chief
MDT Environmental Services

Concur  Date: 9/14/01
Federal Highway Administration

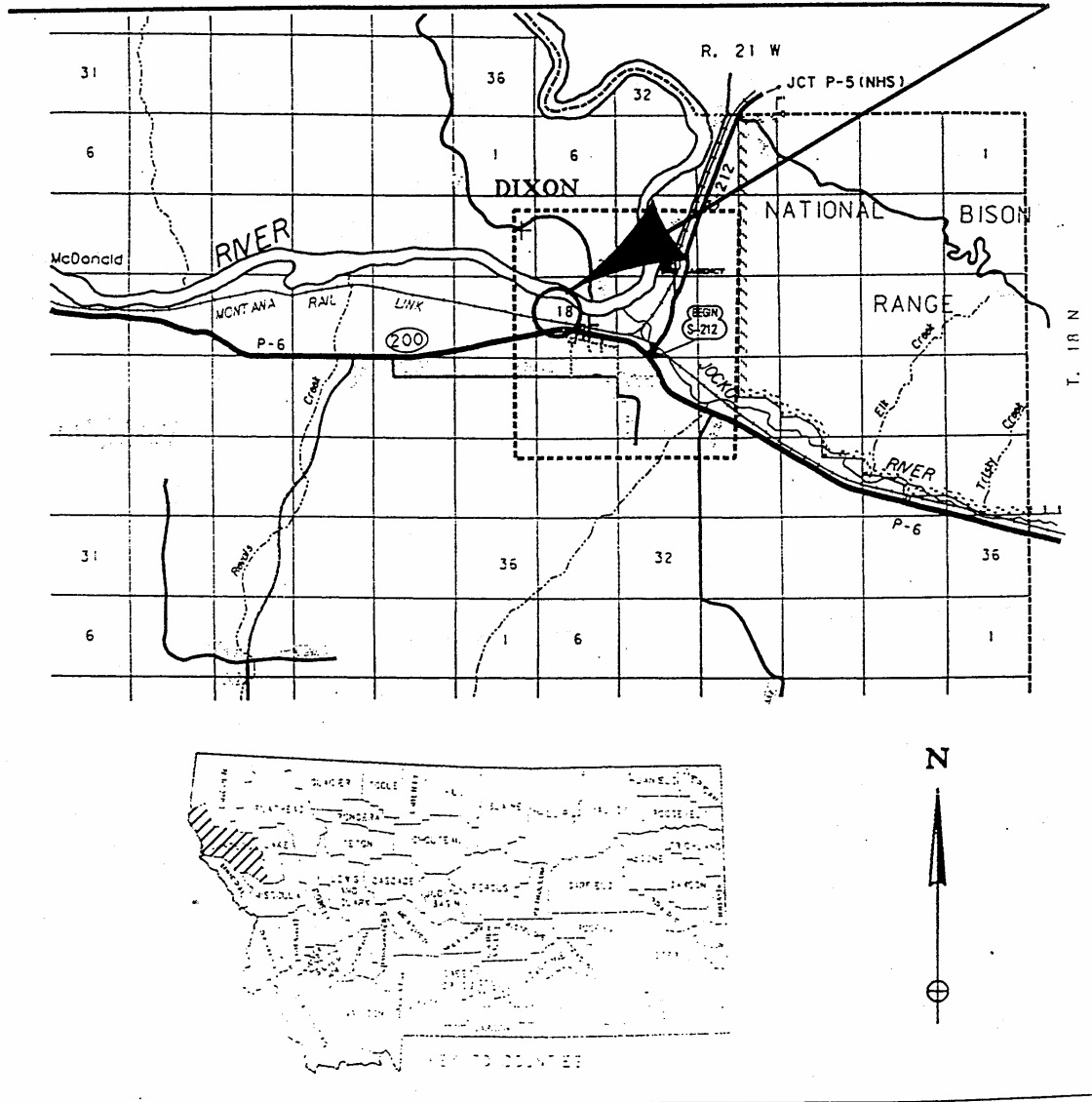
TLY:JAO S:\- MISSOULA\4144\4144.EB.PCE.DOC

Attachments

cc: Lorán Frazier, P.E., District Engineer – Missoula
Carl S. Peil, P.E., Preconstruction Engineer
John H. Horton, Right-of-Way Bureau Chief
Mark A. Wissinger, P.E., Contract Plans Section Supervisor
David W. Jensen, Supervisor, Fiscal Programming Section
Joel M. Marshik, P.E., Environmental Services Manager
File

**"ALTERNATIVE ACCESSIBLE FORMATS OF
THIS DOCUMENT WILL BE PROVIDED ON
REQUEST."**

DIXON WETLAND MITIGATION STPP 45(29) CONTROL #4144 SANDERS COUNTY PROJECT LOCATION MAP





Montana Department of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

David A. Galt, Director
Judy Martz, Governor

September 5, 2001

Marcia Pablo
CSKT Preservation Department
P.O. Box 278
Pablo, MT 59855

**MASTER FILE
COPY**

Subject: **Hoskins Landing Wetland Mitigation Site**

Dear Marcia,

As per the letter sent from Joel Marshik to Fred Matt on 7/30/01, Montana Department of Transportation is working toward the completion of the above project.

In order to complete the NEPA document that MDT is preparing for this project, MDT needs a letter of concurrence from your office.

Access to the property will be gained via existing roads and railroad right of way. Likewise, the area slated for excavation to create shallow water wetland habitat is located several hundred meters west of the known cultural site. It is clear to me that the project will not effect the cultural site located near the east end of the parcel (close to the Hoskins Landing Fishing Access Site). In addition, MDT is aware of the important nature of the existing plum bushes on the property and will see that they are not harmed during the course of the construction.

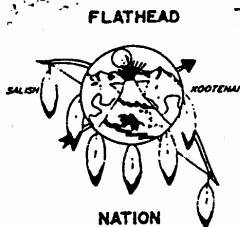
Once the project is let, I think it would be a good idea if we schedule a meeting with Tribal Preservation Office personnel, MDT and the chosen contractor. This way we can go over where the contractor can be and which areas must be left alone so that there are no surprises down the line while the construction is underway. The contractor does not even need to know what he/she is being asked to avoid...

We ask that you concur that the Hoskins Landing Wetland Mitigation Project will have no effect on area cultural resources.

If you have questions about this matter please contact me at 406-444-0455 or splatt@state.mt.us.

Steve Platt, Archaeologist
Environmental Services

Cc: Gordon Stockstad, Chief, Resources Bureau
Loren Frazier, Msla District Administrator
Susan Kilcrease, Msla District



NATION

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Leon Bourdon - Sergeant-at-Arms

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SEP 11 2001

ENVIRONMENTAL

Steve Platt, Archaeologist
Montana, Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, Montana 59620-1001

RE: Hoskins Landing Wetland Mitigation Site

Dear Steve,

We concur with the proposed plans for the Hoskins Landing Wetland Mitigation Site. We are specifically interested in the access route to the site, and the protection of the cultural site and the plums, your proposal addresses both.

I agree with your idea that Tribal Preservation Office personnel and MDT staff meet with the chosen contractor to ensure there are no mishaps during the implementation of this project. We will wait for your call to schedule a meeting, please give us a few weeks advance notice.

Thank you for consulting with us and giving us the opportunity to comment on the proposed action. If you have any further questions or comments please contact me at (406) 675-2700 Ext. 1075.

Sincerely,

Marcia Pablo
Director
Tribal Preservation Officer

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 275-2806
E-mail: csktcouncil@ronan.net



TRIBAL COUNCIL MEMBERS:

D. Fred Matt - Chairman
Jami Hamel - Vice Chair
Carole J. Lankford - Secretary
Lloyd D. Irvine - Treasurer
Darryl A. Dupuis
Margaret Goode
S. Kevin Howlett
Mary Lefthand
Elmer "Sonny" Morigeau
Ron Trahan

FARMLAND CONVERSION IMPACT RATING

PART I (To be completed by Federal Agency)		Date of Land Evaluation Request 9/5/01	
Name of Project Dixon Wetland Mitigation , STPP 45(29), CN 4144		Federal Agency Involved FHWA	
Proposed Land Use Wetland Mitigation		Sanders County, Montana	
PART II (To be completed by SCS)		Date Request Received by SCS	
Does the site contain prime, unique, statewide or local important farmland? Yes No		Acres Irrigated	Average Farm Size
(If no, the FPPA does not apply - do not complete additional parts of this form.)			
Major Crop(s)	Farmable Land in Govt. Jurisdiction Acres: %	Amount of Farmland as Defined in FPPA Acres: %	
Name of Land Evaluation System Used	Name of Local Site Assessment System	Date Land Evaluation Returned by SCS	
PART III (To be completed by Federal Agency)		Alternate Site Rating	
		Site A	Site B
		Site C	Site D
A.	Total Acres to be converted directly	6	
B.	Total Acres to be converted indirectly	0	
C.	Total Acres in Site	6	
PART IV (To be completed by SCS) Land Evaluation Information			
A.	Total Acres Prime and Unique Farmland		
B.	Total Acres Statewide and Local Important Farmland		
C.	Percentage of Farmland in County or Local Govt., unit to be converted		
D.	Percentage of farmland in Govt. Jurisdiction with same or higher relative value.		
PART V (To be completed by SCS) Land Evaluation Criterion Relative Value of Farmland to be converted (Scale of 0 to 100 Points)		100 (Worst Case)	
PART VI (To be completed by Federal Agency) Site Assessment Criteria (These criteria are explained in 7 CFR 658.8(b))		Max. Pts.	
1.	Area Nonurban Use	15	15
2.	Perimeter in Nonurban Use	10	10
3.	Percent of Site Being Farmed	20	0
4.	Protection Provided by State and Local Govt.	20	0
5.	Distance from Urban Builtup Area	N/A	
6.	Distance to Urban Support Services	N/A	
7.	Size of present farm unit compared to average	10	10 *
8.	Creation of nonfarmable farmland	25	0
9.	Availability of farm support services	5	3
10.	On-farm investments	20	20
11.	Effects of conversion on farm support services	25	0
12.	Compatibility with existing agricultural use	10	0
TOTAL SITE ASSESSMENT POINTS		160	58
PART VII (To be completed by Federal Agency)			
Relative value of farmland (From Part V)		100	100
Total Site Assessment (From Part VI above or a local site assessment)		160	58
TOTAL POINTS (Total of above 2 lines)		260	158
Site Selected: Site A	Date of Selection 9/5/2001	Was a Local Site Assessment Used? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	

Reason for Selection: Total Points for Site A below the 160 point threshold.

Note: * Assume Worst Case

Appendix E: Correspondence Pertinent to Project

James Wheeler
Prudential Missoula Properties
148 S. Ave. W.
Missoula, MT 59801

RECEIVED

JUL 25 2003

ROBERT PECCIA
& ASSOCIATES

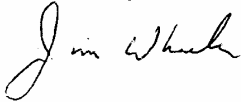
Mr. Mark Lambrecht
Robert Peccia & Associates Inc.
P.O. Box 5653
Helena, MT 59604

Mr. Lambrecht,

I saw the Missoulian article "Land Swap key part of expansion." It mentioned that land would be exchanged for wetlands mitigation on a separate highway project in Sander's County. It just so happens a friend of mine has an island near Plains that might be very well a very good candidate for such an exchange or as a state acquisition property for wetlands. It is an island jointly by another family that might also have some interest. The property my friend owns is approximately 28 acres of relatively untouched treed property. Every year it is a nesting site for a flock of geese. It is a good habitat for wildlife. He also has 2 government lots that are mostly in the flood plane next to this island. It does have a 2 acre homesite currently on that property which is out of the flood plane. All of this land would be a good acquisition for the state.

I would be happy to send you a plat if it were a project that might be considered. I am available at 1-800-728-8220 and would be happy to discuss mutual interests.

Sincerely,



James Wheeler
Prudential Missoula Properties

Jim Wheeler, GRI, CRS
Broker Owner



Prudential

Missoula Properties

148 South Avenue West, Missoula, MT 59801
Bus 406 728-8270 Home 406 273-6136
Cell 406 239-1206 Fax 406 728-2315
jwheeler@prudentialmissoulaproperties.com

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Appendix F: Public Involvement

Notice of Intent

Proposed MDT/CSKT Land Exchange

Agency

Montana Department of Transportation (MDT)

Summary

The Montana Department of Transportation (MDT) proposes to transfer excess property it owns on the Flathead Indian Reservation to the Confederated Salish and Kootenai Tribes (CSKT) in exchange for a wetlands easement at the Hoskin's Landing Wetland Mitigation Site near Dixon, Montana and for right-of-way needed for ongoing and future highway-related projects within the boundaries of the Reservation.

It is MDT's position that an environmental assessment (EA) document will be sufficient to examine the potential environmental, social and cultural impacts of these proposed property transfers. Approval of the EA will allow MDT to further discuss and implement, either in whole or in part, exchanges of lands with the CSKT for known and future MDT highway projects on the Flathead Indian Reservation. MDT's most apparent and pressing right-of-way needs are associated with eight U.S. Highway 93 projects underway between Evaro and Polson. Those projects will require preparation of separate environmental documents.

This communication is an invitation to submit comments about this proposal. MDT will use the comments received to help identify the issues to be examined and addressed in the EA.

Background

On January 10, 2002, MDT and CSKT entered into a Deferred Exchange Agreement wherein MDT agreed to transfer replacement property to CSKT in exchange for CSKT conveying a wetland mitigation easement on the Hoskin's Landing property to MDT. The Hoskin's Landing property is located in Section 18, Township 18 North, Range 21 West, M.P.M., in Sanders County. The wetland agreement granted MDT a 25-year easement on 48.23 acres of land for the purposes of restoring, protecting, managing, maintaining and enhancing wetlands as mitigation for the loss of wetlands associated with MDT's Dixon-West and Paradise-East & West highway projects. MDT received the executed wetland easement at the time the agreement was reached.

The exchange agreement granted the CSKT the opportunity to select from the excess MDT properties shown on the following list to replace the easement property conveyed to MDT:

Rank	Parcel Name	Route/Mile	Location	Acres	Comment
1	Perma Pictographs	MT 200/95	Government Lot 3, S36, T19N, R24W	43.89	Includes accessible pictographs, 0.25 mile of Flathead River frontage on north bank
2	Perma Quarry	MT 200/95	NE1/4NW1/4, S36, T19N, R24W	40.00	Includes rock quarry, abuts Tribal land
3	Perma Lands/North	MT 200/95	Government Lots 1,2,4 & NW1/4, S36, T19N, R24W	129.46	Includes 0.75+ mile of Flathead River frontage on north bank, abuts Tribal land
4	Perma Lands/South	MT 200/95	Government Lots 9,10,11,12 & S1/2SE1/4; Perma Townsite Lots 1,2,6 Block 1, Lots 3-6 Block 2, Lots 6-8, 15-17 Block 5, Lots 1-8 Block 6; S36, T19N, R24W	154.27	Includes 0.5+mile of Flathead River frontage on south bank; includes MT Highway 200 frontage; includes railroad frontage; abuts Tribal land
5	*Schley Creek	US 93/11	SE1/4, NE1/4, S6, T15N, R19W	1.75	Includes US 93 frontage and Schley Creek riparian area
6	Schley Gravel Pit	US 93/11	SE1/4, NE1/4, S6, T15N, R19W	1.05	Includes US 93 frontage
7	Melita Is. Overlook	US 93/71	S26, T24N, R21W	3.44	Includes US 93 frontage, abuts Tribal land
8	Round Butte Rd.#1	S211/7	S35, T21N, R21W	0.44	Includes Round Butte Road frontage
9	Round Butte Rd.#2	S211/6.8	S2, T20N, R21W	0.90	Includes Round Butte Road frontage and lease for hay storage

*MDT is currently considering an exchange with the landowner of the property adjacent to this property.

At the time the above list was prepared, MDT was still in the process of acquiring the first four “Perma” tracts through an exchange with the Montana Department of Natural Resources and Conservation (DNRC). MDT completed this acquisition on March 6, 2003. CSKT then informed MDT that acquiring the Perma tracts was its first priority for replacing the Hoskins’s Landing property—thus completing the deferred exchange. However, since the value of the Perma tracts is significantly larger than the value of the Hoskin’s Landing easement, MDT would be owed the difference.

CSKT and MDT would prefer to settle this debt with land-for-land exchanges rather than through a cash payment from CSKT to MDT since MDT intends to acquire right-of-way from CSKT for reconstruction of US Highway 93 from Evaro to Polson. This proposed land exchange would complete the January 10, 2002 Deferred Exchange Agreement and provide for MDT’s future acquisition of needed right-of-way. The new exchange would convey the four Perma tracts and other excess MDT tracts, if required, to CSKT in exchange for the Hoskin’s Landing easement and other easements across CSKT “tribal trust” or “tribal fee” lands that MDT needs for highway right-of-way and wetland mitigation on the Flathead Indian Reservation. The easements to be acquired by MDT from CSKT have yet to be specifically identified. MDT will

identify its right-of-way and wetland mitigation requirements as the US 93 projects develop. Any and all exchanges will be completed on a dollar-for-dollar basis.

Please send written comments on this proposed land exchange to:

Robert Peccia & Associates, Inc.
Attn: Mark Lambrecht
PO Box 5653
Helena, MT 59604
(406) 447-5031
markl@rpa-hln.com

Scoping comments will be accepted through **July 30, 2003**. A public hearing and a formal public comment period on the environmental assessment will occur in late September, 2003.



MDT And Tribes To Exchange Lands

For further information, contact:

Loran Frazier (MDT), (406) 523-5800 or
Susan Kilcrease (MDT), (406) 523-5800
Shane Mintz (MDT), (406) 444-6200
Joe Hovenkotter (CSKT), (406) 675-2700
Mark Lambrecht (RPA), (406) 447-5000

The Montana Department of Transportation (MDT) proposes to transfer excess property it owns on the Flathead Indian Reservation to the Confederated Salish and Kootenai Tribes (CSKT) in exchange for a wetlands easement at the Hoskin's Landing Wetland Mitigation Site near Dixon, Montana and for right-of-way needed for ongoing and future highway-related projects within the boundaries of the Reservation.

Please see [20030703-111453.pdf](#) for more information.

[Back to Public Meetings/News Page](#)



Monday, July 14, 2003

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Land swaps key to Highway 93 expansion By JOHN STROMNES of the Missoulian

POLSON - The state Department of Transportation and the Confederated Salish and Kootenai T land exchanges to allow the state to obtain easements over tribal land for reconstruction of U.S 93 between Evaro and Missoula.

Land also will be exchanged for wetlands mitigation on a separate highway project in Sanders (

"Nine state properties within the exterior boundaries of the Flathead Reservation are involved," Lambrecht of the Helena consulting firm Robert Peccia & Associates said last week. "The tribes opportunities to select from among these properties."

The most significant state-owned parcel is near Perma, along the Flathead River west of Dixon. It contains cultural and archaeological sites important to the tribes. Other state-owned land abuts tribal land and some is river frontage.

Some of the land to be used in the exchanges was obtained from the state Department of Natural Resources and Conservation, which turned over title to the Department of Transportation for the exchange. Other property was acquired by the Transportation Department in the course of other highway projects.

State and tribal officials said the transactions will smooth the way for timely construction of the long-delayed and complex project between Evaro and Polson on the Flathead Reservation.

Most of the highway design is completed, and construction may begin in a small way as early as 2004.

But a lot of work remains to be done on the design in the Ninepipe segment, a 10-mile stretch between the 44 Bar, north of St. Ignatius, to Ronan. This was reserved until last because of its environmental complexity and importance to tribal culture.

The stretch is the longest in which agreement has not been reached on design, including alignn lane configuration.

"It's a straight stretch of road, but there's a host of environmental issues. (Montana) Fish, Wild Parks and the U.S. Fish and Wildlife Service have a stake, there is tribal property and there are

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wetlands and grizzly bears in the area. It's just a very environmentally sensitive area," said Lori division supervisor for the Department of Transportation in Missoula.

The land exchanges will be used to obtain easements along the length of the entire project, not just the Ninepipe area, however.

"It's a significant conveyance," said Joe Hovenkotter, a tribal attorney and spokesman on highway matters, said of the land exchanges. "I don't see that it has a direct connection for the decision on the Ninepipe segment. It will be generally applied, and it will assist us for whatever design we go with."

A lengthy supplemental environmental impact statement evaluating some 15 alternatives for that segment has been in preparation for many months. A proposal to reroute the highway west to what was reviewed exhaustively and rejected as impractical last year, so it will not be included in the statement.

The draft statement will have a preferred alternative.

Elements of the preferred alternative have emerged in recent discussions between tribal, state agencies, according to Gerry Smith, senior project manager for Skillings Conally, the Washington responsible for overseeing the entire Highway 93 project on the Flathead Reservation.

Four lanes will emerge south from Ronan, then shift down to two lanes, with one outbound passing lane available between the Charlo turnoff and Ninepipe Reservoir inlet. A northbound passing lane built on Post Creek Hill. Extensive bridging has been proposed over the environmentally sensitive area at Ninepipe. The highway at Ninepipe Lodge, a resort abutting the inlet to Ninepipe Reservoir, is about the same level as the lodge, making access to the lodge practical, Smith said.

The draft will be ready for public comment sometime this fall, with a final plan and a record of decision from the federal government approving the Ninepipe construction design due by the spring of 2004.

Another section of highway where the design is still not formally approved by all parties is through Ronan. Early on, the city council rejected the idea of having the highway bypass Ronan entirely, but how the highway will usher all the traffic through the city remains undecided.

According to Skillings Conally's Smith, in discussions over the last year the city council seems to be leaning toward a "couplet" proposal, with two lanes of northbound traffic on the existing alignment and two lanes of southbound traffic on a street one block west of the existing highway. On-street parking will be provided on both ways.

The alternative of a four- or five-lane highway straight through Ronan on the existing alignment is considered undesirable for numerous reasons, including pedestrian safety and the impact on existing businesses.

The city has not yet announced the couplet as its official choice, however.

Mayor Kim Aipperspach said that the council initially favored the existing alignment, but directed the city staff months ago to investigate the couplet more thoroughly.

He said a decision should be made sometime this summer.

Elsewhere on the highway project, the design and field work have mostly been completed. Some work is still on the highway, laying out rights of way. But most of the activity is behind the scenes, involving private landowners whose property is needed for the highway project.



"Right-of-way appraisal negotiations are hot and heavy right now," Smith said.


The land exchanges between the tribes and the state include a wetlands mitigation parcel known as Hoskin's Landing in Sanders County near Dixon. In January 2002, the state agency and the tribes reached an agreement wherein the Department of Transportation agreed to transfer replacement property to the tribes in exchange for the tribes conveying a wetland mitigation easement on the Hoskins Land to the state for 25 years.

The agreement granted an easement on 48 acres of land to be preserved to replace wetlands lost in the state agency's Dixon-West and Paradise East and West projects on Montana Highway 200, which were completed several years ago.

The state will prepare environmental assessments for the proposed property transfers, and put will be solicited through July 30. A public hearing will occur sometime late in September.

For more information on the land exchange proposals or to comment on them, contact Mark La Robert Peccia & Associates Inc., P.O. Box 5653, Helena MT 59604, or call (406) 447-5000.

 • [E-MAIL STORY](#)  • [PRINT STORY](#)

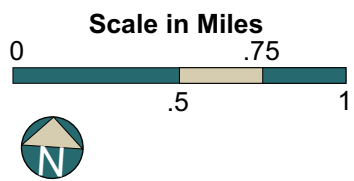
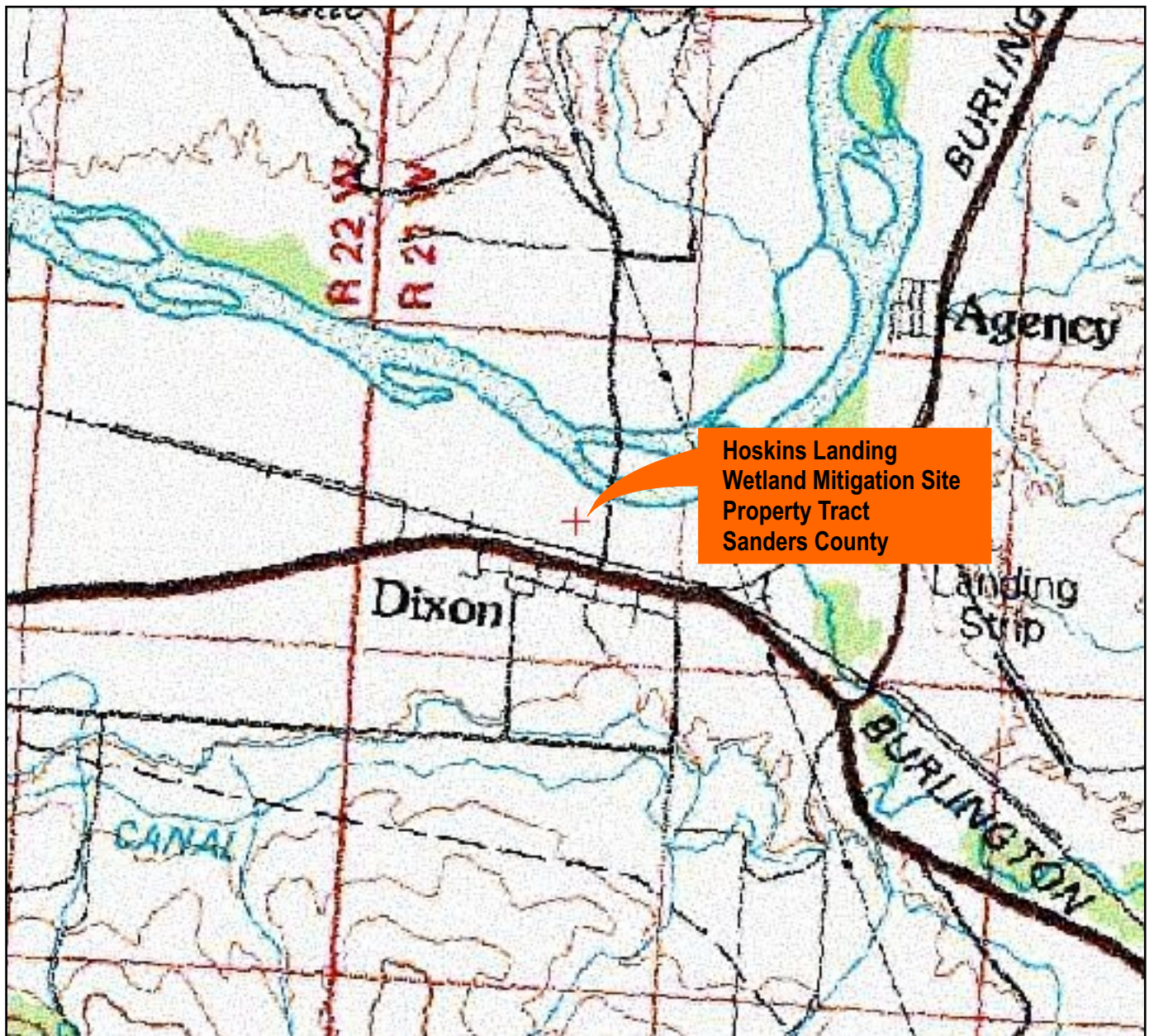
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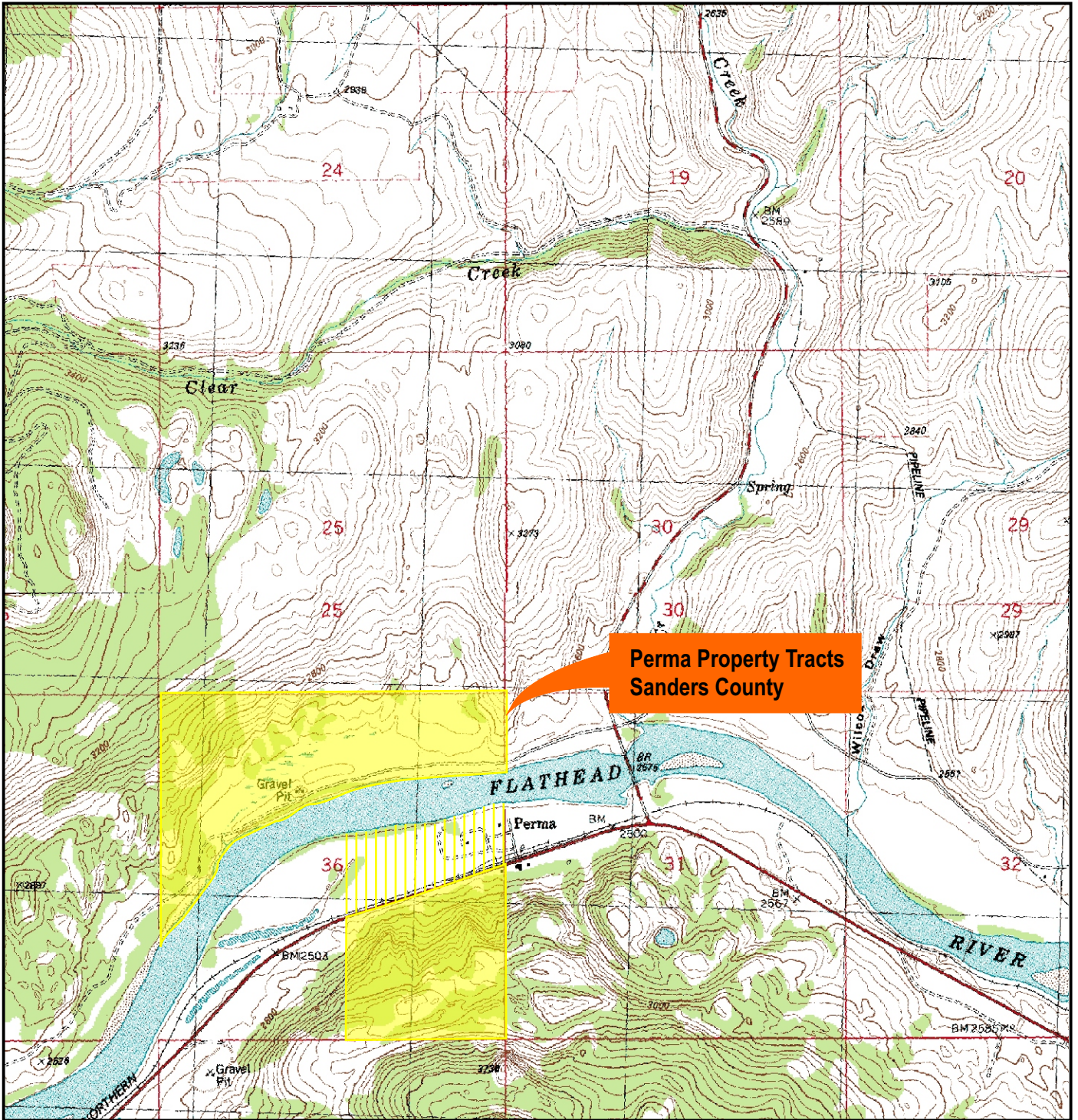


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Go to top of page

Appendix G: USGS Topographic Maps of Land Exchange Properties

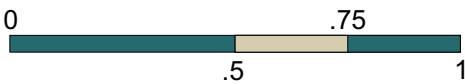


**Hoskins Landing
Wetland Mitigation Site
(USGS Topographic Map)**



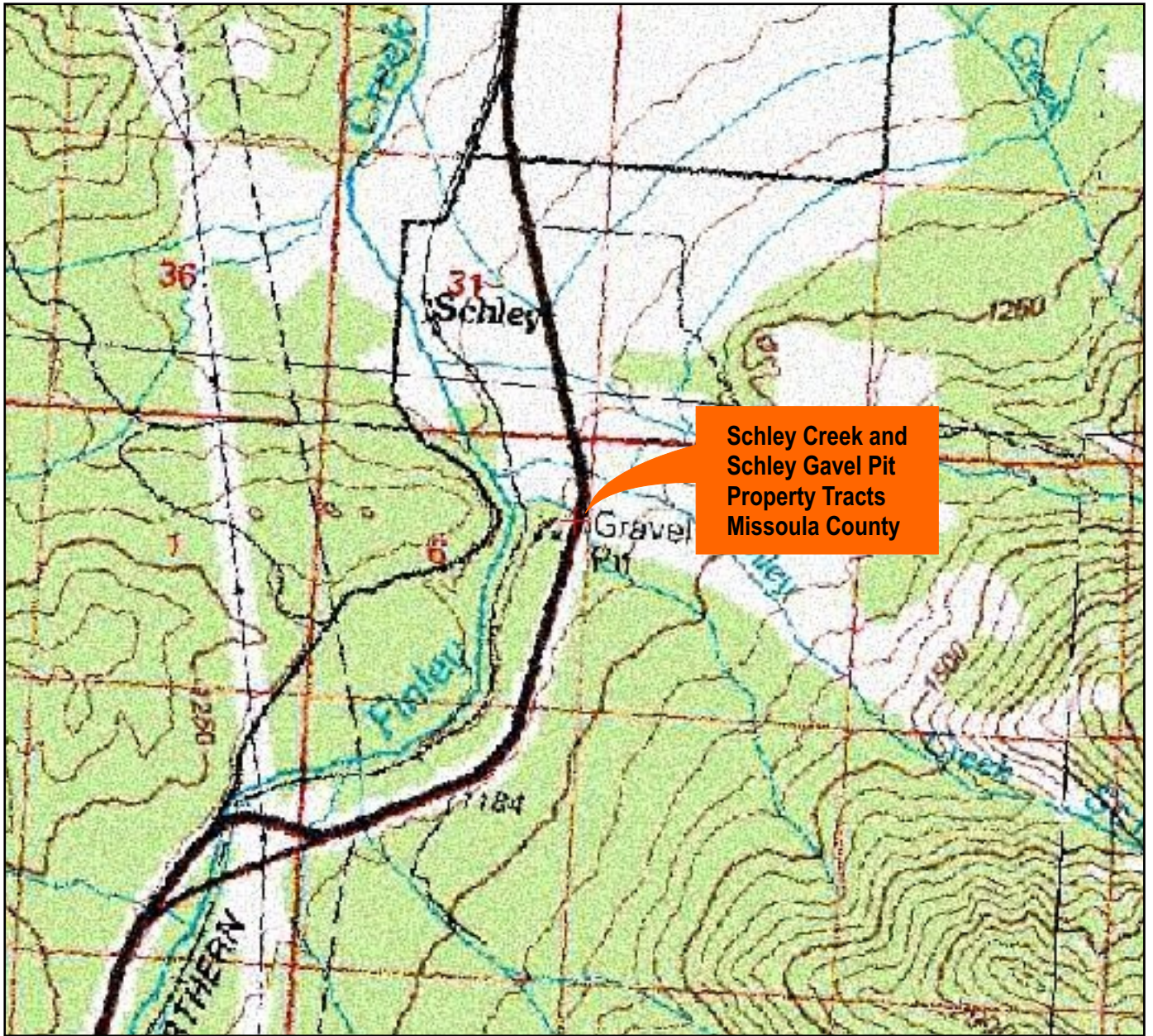
**Perma Property Tracts
Sanders County**

Scale in Miles

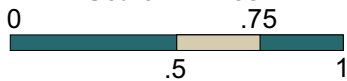


Some Tracts Within This Area
Are Privately Owned

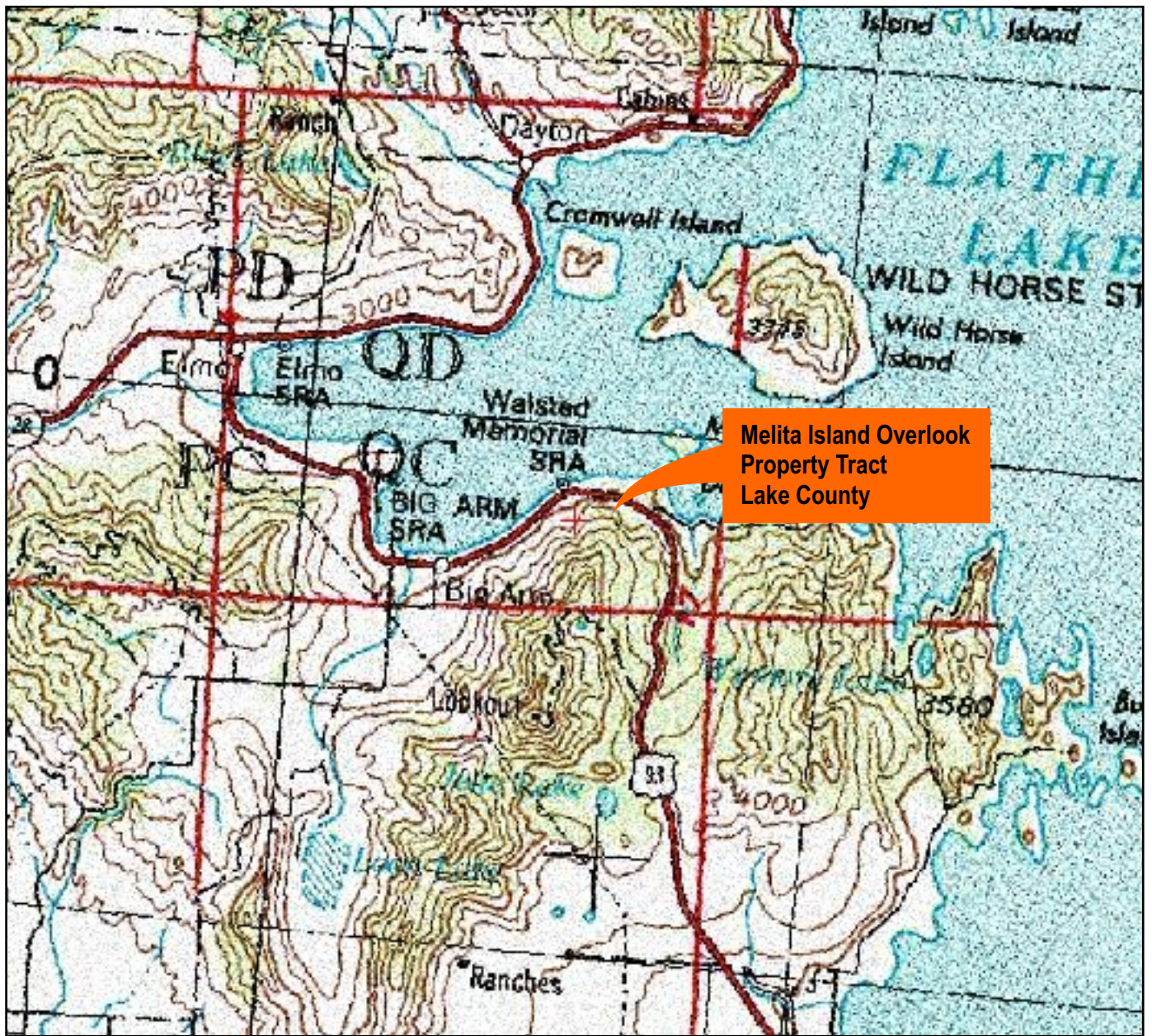
Perma Properties
(USGS Topographic Map)



Scale in Miles

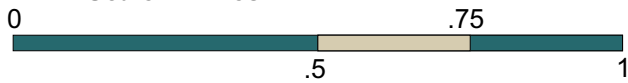


Schley Creek and Schley Gravel Pit
(USGS Topographic Map)

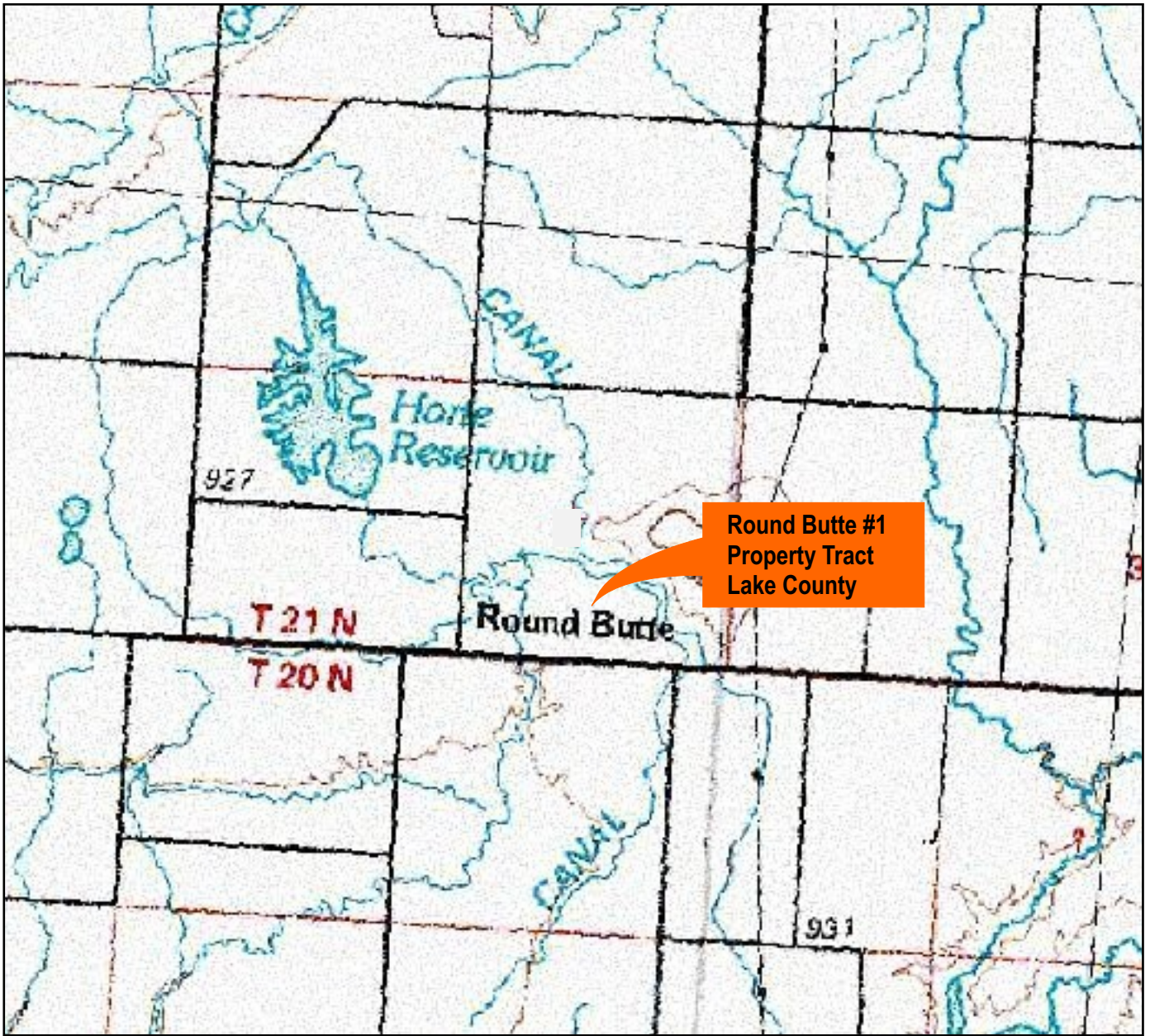


Melita Island Overlook
Property Tract
Lake County

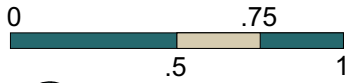
Scale in Miles



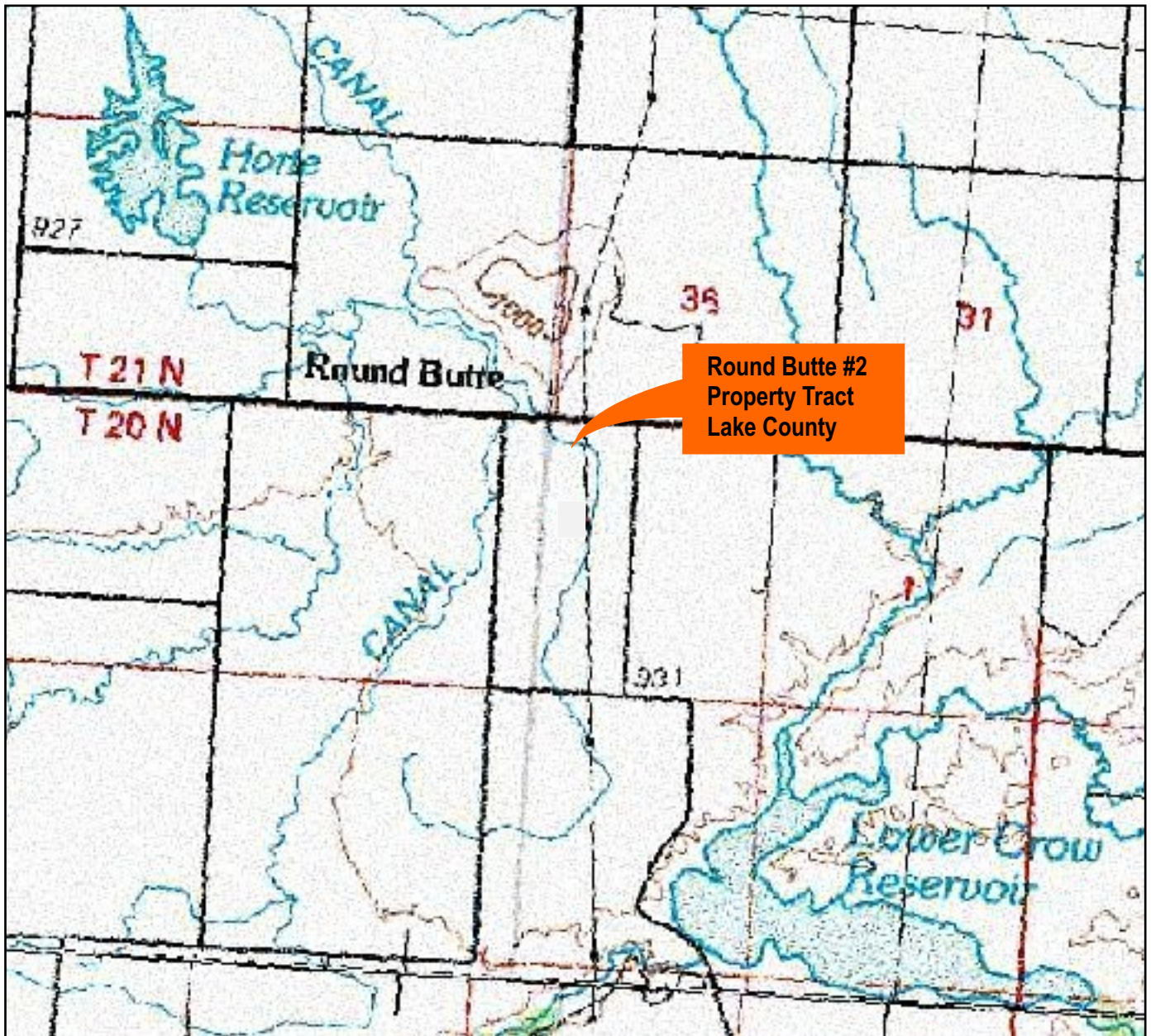
Melita Island Overlook
(USGS Topographic Map)



Scale in Miles



Round Butte #1
(USGS Topographic Map)



Round Butte #2
Property Tract
Lake County

Scale in Miles



Round Butte #2
(USGS Topographic Map)

Appendix H: Bochik Easement



April 17, 2003

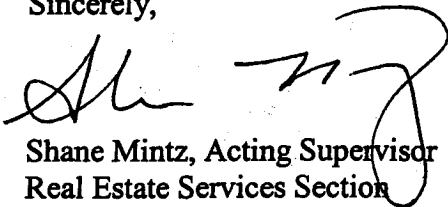
Claude Burlingame, Attorney
PO Box 9
Thompson Falls, MT 59873

Subject: Bochik Easement (across MDT Perma Property)

As mentioned on the phone, I am attaching the recorded easement from MDT to your client, Katherine Bochik. As you reviewed the final easement language, this should satisfy your client's access concerns as they relate to MDT's Perma property. If you have anymore questions or concerns, please don't hesitate to call me @ 444-6071.

Thanks again for your time and patience on this matter.

Sincerely,



Shane Mintz, Acting Supervisor
Real Estate Services Section
Right-of-Way Bureau

Attachments

Copies: Loran Frazier, Missoula District Administrator
Jean Riley, Environmental Services Bureau
Dan Norderud, Environmental-Robert Peccia & Associates

RECEIVED

APR 21 2003

ROBERT PECCIA
& ASSOCIATES

40758

Q:\RW-STD\RWD:16i

Revised 9/5/2001

**State of Montana
Department of Transportation**

Right-of-Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Reference Project ID: NH 0002(418) Ref. Parcel No.: N/A County: Sanders
Reference Designation: US 93 Corridor Preservation (Perma Exchange)
Reference Project No.: 1744-418

This Easement made this 2nd day of April, 2003, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration now paid, the receipt of which is acknowledged, witnesses that,

Montana Department of Transportation (hereinafter referred to as "Grantor")
2701 Prospect Ave
Helena MT 59620

does hereby grant, bargain, sell and convey unto the

Katherine Bochik (hereinafter referred to as "Grantee")
18475 May Court
Mantua, Ohio 44255

a perpetual non-exclusive access easement covering and embracing the following described property:

A 40-foot strip through Government Lots 1,2,3 & 4, Section 36, Township 19 North, Range 24 West, Principal Meridian Montana, Sanders County, Montana, more particularly described as follows: A tract or strip of land 40 feet wide, 20 feet on each side of the centerline described as follows:

Commencing at the Northeast corner of said Section 36; thence S00°15'43"E, 1,045.26 feet along the East line of said Section 36 and to the Point of Beginning; thence leaving said section line S88°36'43"W, 79.28 feet along the centerline of a 40-foot wide right of way easement; thence continue along said centerline S88°36'43"W, 478.50 feet; thence N85°44'35"W, 217.21 feet; thence S85°02'23"W, 217.58 feet; thence S84°35'05"W, 284.52 feet; thence S88°36'15"W, 48.04 feet; thence S88°36'15"W, 311.22 feet; thence S73°42'31"W, 1,054.88 feet; thence S73°42'31"W, 296.41 feet; thence S60°55'11"W, 200.95 feet; thence S72°01'00"W, 248.34 feet; thence S63°10'49"W, 305.91 feet; thence S59°00'12"W, 430.88 feet; thence S59°00'12"W, 185.86 feet; thence S85°51'13"W, 279.50 feet; thence S43°22'06"W, 203.25 feet; thence S36°06'48"W, 96.87 feet; thence S14°14'52"W, 279.60 feet; thence S01°47'24"W, 131.48 feet; thence S51°45'16"W, 256.86 feet; thence S45°21'36"W, 107.36 feet; thence S62°16'21"W, 262.38 feet; thence S57°31'53"W, 121.02 feet to the West line of said Section 36 and there ending.

The above described right of way easement contains a total area of 5.60 acres, more or less.

The Easement Grant is subject to the following terms and conditions:

Purpose. The Easement Grant described herein is for ingress, egress and utilities together with the right to clear and keep cleared all trees and other obstructions as may be necessary for the Grantee's use and enjoyment of the easement area.

Said Easement is appurtenant to and for the benefit of the property of Grantee identified as Government Lots 5 and 11 of Section 2, and Lots 5, 6 and 7 of Section 3, Township 18 North, Range 24 West, Sanders County, Montana.

The Grantee shall indemnify Grantor for all damage caused to Grantor as a result of Grantee's negligent exercise of the rights and privileges herein granted.

The Grantee agrees and understands that this easement is inferior to any and all easements granted prior to this easement.

The Grantor reserves the right to occupy, use, cultivate and lease said easement for all purposes not inconsistent with the rights herein granted.

The rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

TO HAVE AND TO HOLD the above-described easement, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed his name on behalf of the Montana Department of Transportation this 2nd day of April, 2003.

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

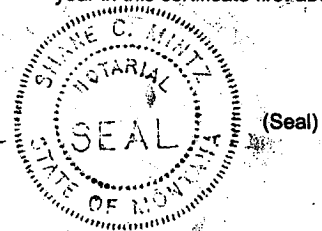
By [Signature]
John H. Horton, Chief
Right-of-Way Bureau

State of Montana)
County of Lewis & Clark)

On this 2nd day of April, 2003, before me Shane C. Mintz, a Notary Public in and for the State of Montana, personally appeared JOHN H. HORTON, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

[Signature]
Notary Signature Line
Shane C. Mintz
Notary Printed Name
Notary Public for State of Montana
Residing at: Helena, Montana
My Commission Expires: January 23, 2006



Approved as to Form:
[Signature]
Attorney

INDEXED
38

250190

STATE OF MONTANA, COUNTY OF SANDERS
Recorded the 4th Day of April 2003 at 11:30
O'clock A. M. Microfilm # 40758
Page 2 of 2
Pat Ingraham
Fee 12.00 By [Signature] Deputy
County Recorder

Appendix I: Vulles Easement

41620

Q:RW-STD:RWD:18i

Revised 9/5/2001

State of Montana
Department of Transportation
Right-of-Way Bureau
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

Reference Project ID: NH 0002(418) Ref. Parcel No.: N/A County: Sanders
Reference Designation: US 93 Corridor Preservation (Perma Exchange)
Reference Project No.: 1744-418
Additional Ref. Project No.: F 6-1(43)91; 0891043000; Perma E & W

This Easement made this 12th day of June, 2003, in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration now paid, the receipt of which is acknowledged, witnesses that,

Montana Department of Transportation (hereinafter referred to as "Grantor")
2701 Prospect Ave
Helena MT 59620

does hereby grant, bargain, sell and convey unto the

Melvin Vulles
1044 Pablo West Rd
Ronan, MT 59864

a perpetual non-exclusive access easement covering and embracing the following described property:

A 40-foot strip of land through Government Lots 9, 10 and 11, Section 36, Township 19 North, Range 24 West, Principal Meridian Montana, Sanders County, Montana, as shown by the shaded area on the plat, consisting of 1 sheet attached hereto and made a part hereof, containing an area of 1.92 acres, more or less.

The Easement Grant is subject to the following terms and conditions:

Purpose. The Easement Grant described herein is for ingress, egress and utilities together with the right to clear and keep cleared all trees and other obstructions as may be necessary for the Grantee's use and enjoyment of the easement area.

Said Easement is appurtenant to and for the benefit of the property of Grantee identified as Government Lots 7 and 8 of Section 36, Township 19 North, Range 24 West, Sanders County, Montana.

The Grantee shall indemnify Grantor for all damage caused to Grantor as a result of Grantee's negligent exercise of the rights and privileges herein granted.

The Grantee agrees and understands that this easement is inferior to any and all easements granted prior to this easement.

Easement

Reference Project ID. NH 0002(418)

Reference Parcel No.: N/A

Reference Designation: US 93 Corridor Preservation (Perma Exchange)

Additional Reference: F 6-1(43)91; 0891043000; Perma E & W

The Grantor reserves the right to occupy, use, cultivate and lease said easement for all purposes not inconsistent with the rights herein granted.

The rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

TO HAVE AND TO HOLD the above-described easement, with all the reversions, remainders, tenements, hereditaments and appurtenances thereto, unto the Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed his name on behalf of the Montana Department of Transportation this 12th day of June, 2003.

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

By [Signature]
John A. Horton, Chief
Right-of-Way Bureau

State of Montana)
County of Lewis & Clark)

On this 12th day of June, 2003, before me Shane C. Mintz, a Notary Public in and for the State of Montana, personally appeared JOHN H. HORTON, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

SEI (Seal)

[Signature]
Notary Signature Line
Shane C. Mintz

Notary Printed Name
Notary Public for State of Montana
Residing at: Helena, Montana
My Commission Expires: January 23, 2006

Approved as to Form:
[Signature]
Attorney

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STATE OF MONTANA, COUNTY OF SANDERS
Recorded the 16th Day of June 2003 at 12:00
O'clock P. M. Microfilm # 41620
Pat Ingraham County Recorder
Fee 2400 By [Signature] Deputy