

**Decision Notice
for
Lewis & Clark Heritage Greenway Conservation Easement Amendment
Environmental Assessment**

Montana Fish, Wildlife & Parks
Region 4
4600 Giant Springs Road
Great Falls, MT 59405

November 3, 2004

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LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE

Proposed Action

Montana Fish, Wildlife & Parks proposes to accept twenty additional conservation easement acres adjoining the Lewis and Clark Heritage Greenway Conservation Easement in exchange for allowing construction and use of a railroad right of way across approximately three acres of the existing conservation easement by the Great Falls Development Authority (GFDA). The existing conservation easement would be amended in compliance with statutory requirements for diverting open-space land to include the twenty acres and allow the railroad construction. All land referenced would be owned by PPL Montana for the purpose of preserving open space, natural and visual resources where consistent with hydropower production and power transmission activities. The Great Falls Development Authority would construct the railroad spur to provide transportation for supplies and products needed at the processing park being developed northeast of Great Falls.

All excess excavated material (spoils) will be placed outside of the conservation easement. Top soil will be stockpiled, replaced and compacted prior to reseeding with native grasses and woody brush species in areas disturbed by construction. Weed growth will be monitored and managed by GFDA along the railroad spur and by FWP on the additional twenty acres.

Location

The subject tracts are located about three miles northeast of Great Falls, Cascade County in Township 21 North, Range 4 East PMM, Section 27. The approximately 3 acre railroad right of way is in the NE4SE4 of Section 27 lying between the existing Burlington Northern (BN) railroad and the north border of the conservation easement. The twenty acre parcel is located in the E2NE4 of Section 27. Access to the tracts is obtained by traveling north on 15th Street West (Highway 87) in Great Falls, across the Missouri River. Turn east on Wiremill Road and east again on Rainbow Dam Road. Travel about 5 miles along the river to the end of the road and a small parking area with latrine.

A map of the twenty acre parcel can be viewed by contacting the FWP Region 4 office.

Public Process and Comment

The public was notified in the following manners to comment on the draft environmental assessment (EA), the proposed action, and alternatives:

- Two public notices in each of these papers: *Great Falls Tribune*, and *Helena Independent Record*, September 29 & 30, 2004;
- One statewide press release;
- One public explanation of this issue at an open and advertised session of the Great Falls Conservation Council, October 14, 2004;
- Posting of draft EA on the FWP web site: www.fwp.state.mt.us;
- Neighboring landowners and interested parties were alerted to the availability of this environmental assessment for their review and comment;

Thirty days was provided after the second public notice for people to respond to the proposal. This level of public notice and participation is appropriate for a project of this scope, having few impacts, all minor, and many of which can be mitigated.

Three written comments were received and considered when making this decision. Please contact FWP Region 4 office if you would like to view these comments and responses in full. The following issues were raised pertinent to the proposed action.

- The railroad spur can go around the conservation easement. *Response: This was considered by designing engineers, but was not considered feasible due to the extreme length, over 11 miles, required to avoid the linear nature of the nearly 2,400-acre easement. In considering the feasibility were cost, topography, railroad intersection requirements and aesthetic impacts.*
- The EA does not adequately demonstrate how the proposed amendment is allowed by the easement and MCA 76-6-106. *Response: The compliance with these documents is discussed in Part V. Narrative Evaluation and Comment, page 29 of the EA. In the Deed of Conservation Easement, Section XI. General Provisions #8 states the easement may be amended from time to time by mutual consent of the parties. The proposed diversion of open space does not conflict with any part of the noted statute, including: public interest, comprehensive area planning, conditions imposed when creating the conservation easement, or equitable substitution of open-space land.*
- The Department asserts that the twenty acres is worth more, both financially and as habitat, than the three acres substituted. *Response: In an effort to reduce time spent and costs in this process, an appraisal was not requested. The per acre values are considered similar between the three acre tract and twenty acre tract because of their immediate proximity to one another and to the conservation easement, and because of their similar land features. The department is not required to have "gifted" property appraised. Field investigation illustrates that the new twenty acre parcel offers woody vegetation and more topographical relief; thus, can provide richer habitat values than the three acres proposed for railroad construction. The property values are discussed in Part 1, #9 Narrative Summary of the Proposed Action of the EA.*
- Twenty acres, by size alone, is not mitigation enough for three acres of lost open space. *Response: The proposed twenty-acre parcel is considered partial mitigation for the loss of three acres of open space. Other mitigation actions are included throughout the EA and this decision, including: no excess material placed on the*

conservation easement, stockpiling top soil, compacting disturbed soils and reseeded with native grasses and woody vegetation, and managing weeds.

- The rail line will fragment habitat and potentially lower the conservation easement value; there is no evaluation of whether the twenty acres will offset the habitat fragmentation and construction related activity affecting more than three acres.
Response: Consultation with the regional wildlife manager does not identify difficulties in wildlife adapting to the railroad or anticipated additional train traffic. By virtue of similar per acre values and larger total acreage, the twenty acres added to the conservation easement and consummation of the mitigation activities listed above will help maintain, if not add to, the conservation easement value. These issues are discussed throughout the EA.

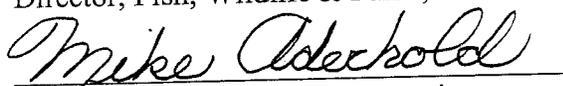
Decision

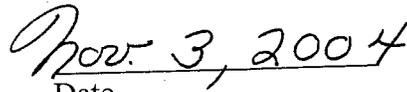
Based on the analysis in the EA and applicable laws, regulations, and policies, I have determined that the proposed action will not have a significant effect on the physical or human environment. In addition, the seriousness and complexity of the issues were analyzed in accordance with ARM 12.2.431; therefore, an environmental impact statement will not be prepared.

It is my decision to implement the proposed action, Preferred Alternative B as described above and in the EA, in accordance to Montana Code Annotated 76-6-107 allowing a diversion of open space in the public interest, and not in conflict with area planning, and as permitted when the easement was created. Based on adjacent land values and acres involved and mitigation measures to be implemented, the 20 acres added to the conservation easement has an equal or greater fair market value and usefulness as open space.

By notification in this decision notice, the draft EA is hereby made the final EA. The EA may be viewed at or obtained from Montana Fish, Wildlife & Parks, Region 4, 4600 Giant Springs Road, Great Falls, MT 59405 or viewed on the FWP web page: www.fwp.state.mt.us under public notices.

In accordance with FWP policy, an appeal may be made by any person who has either commented in writing to the department on the proposed project, or who has registered or commented orally at a public meeting held by the department on the proposed project, or who can provide new evidence that would otherwise change the proposed plan. An appeal must be submitted to the Director of FWP in writing and must be postmarked or received within 30 days of this decision notice. The appeal must describe the basis for the appeal, how the appellant has previously commented to the department or participated in the decision making process, and how the department can provide relief. The appeal should be mailed to: Director, Fish, Wildlife & Parks, PO Box 200701, 1420 East 6th Avenue, Helena, MT 59620


Mike Aderhold, Regional Supervisor
Fish Wildlife & Parks


Date