



**Montana Fish,  
Wildlife & Parks**

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JS106-05  
November 15, 2005

**RECEIVED**

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LEGISLATIVE ENVIRONMENTAL  
POLICY OFFICE

Ladies and Gentlemen:

On October 5, 2005, Montana Fish, Wildlife & Parks (FWP) released to the public the draft environmental assessment (EA) for the North Swan Valley Conservation Project, located approximately 20 miles south of Bigfork in Lake County. The EA was open to public comment through November 5, 2005, and was the subject of an October 20 public hearing in Swan Lake. The project entails the acquisition of a conservation easement on approximately 7,200 acres and fee-title purchase of up to another 3,680 acres of Plum Creek Timberlands (PCT) in the North Swan Valley. The purposes of the project are to conserve important fish and wildlife habitat, maintain public recreational access, provide for continued forest management, and contribute to the local communities' forest conservation and management goals.

After reviewing the document and public comments, my decision is to recommend that the FWP Commission approve the preferred alternative as proposed in the draft EA and this decision notice. The draft EA should become the final EA because the draft EA appropriately and adequately described the proposed action and its effects on the natural and human environment. I have attached FWP's response to public comments as part of this decision notice.

The preferred alternative authorizes FWP to purchase a conservation easement on approximately 7,200 acres and fee-title to up to 3,680 acres from Plum Creek Timberland (PCT) as shown in Fig. 2 (attached). The purchase would be funded through grants from several federal conservation programs, such as the Forest Legacy Program, Habitat Conservation Plan Land Acquisition Program, and/or Bonneville Power Administration, along with funding from private sources. The purchase would proceed in phases, as funds become available, with the acquisition of the first phase of the conservation easement on approximately 6,083 acres planned for early 2006.

FWP will monitor the conservation easement and provide interim management of the fee-acquired lands using funds from its Wildlife Mitigation Program. FWP does not intend to retain long-term ownership of the purchased parcels and plans to sell or exchange or transfer these lands to another agency or organization. The eventual exchange or transfer of these lands and the tools FWP would use to insure they would be managed for the purposes for which they were purchased would be the subject of a future environmental assessment, including public participation.

Final action by the Fish, Wildlife & Parks Commission on the North Swan Valley Conservation Project is scheduled for December 8 in Helena (see FWP web site for Commission agenda time and place at <http://fwp.state.mt.us/insidefwp/department/commission/default.html>).

Please direct any questions on this decision notice to Gael Bissell, Habitat Conservation Biologist, Montana Fish, Wildlife & Parks, 490 N. Meridian Road, Kalispell, MT 59901, or e-mail to [gbissell@state.mt.us](mailto:gbissell@state.mt.us).

Sincerely,

James R. Satterfield, Jr., Ph.D.  
Regional Supervisor

/ni  
Enclosure

North Swan Valley Conservation Project

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Dan Roberson, DNRC, Swan River State Forest, Swan Lake, 59911  
Montana Fish, Wildlife & Parks - Director's Office: Reg Peterson; Fisheries: Karen Zackheim; Wildlife: Don Childress, Steve Knapp; Lands: Hugh Zackheim; P-R, D-J: Adam Brooks; & Legal Unit: Brandi Fisher  
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Joe Gutkoski, President, Montana River Action Network, 304 N 18<sup>th</sup> Ave., Bozeman, 59715  
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Rep. Joey Jayne, 299 Lumpry Road, Arlee, 59821-9747  
Sen. Bob Keenan, Box 697, Bigfork, 59911-0697  
Sen. Glenn Roush, PO Box 185, Cut Bank, 59427-0185  
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Flathead County Library, 247 First Avenue E, Kalispell, 59901  
Flathead County Library, P O Box 472, Bigfork, 59911  
Polson City Library, PO Box 820, Polson, 59860  
Swan Lake Library, PO Box 5147, Swan Lake, 59911  
Seeley Lake Public Library, PO Box 416, Seeley Lake, 59868  
Swan Ecosystem Center, 6887 Hwy 83, Condon, 59826  
Interested Parties

# DECISION NOTICE AND FINAL ENVIRONMENTAL ASSESSMENT

## *NORTH SWAN VALLEY CONSERVATION PROJECT* *Prepared by Montana Fish, Wildlife & Parks, Region One* *November 15, 2005*

### PROPOSED ACTION

Montana Fish, Wildlife & Parks (FWP) proposes to the Commission that FWP complete the preferred alternative in the North Swan Valley Conservation draft EA. In this alternative, FWP would purchase a conservation easement on approximately 7,200 acres and the entire fee-simple interest to another 3,680 acres of land owned by Plum Creek Timberlands, L. P., a limited partnership, successor by merger to Plum Creek Timber Company (PCT). The project is located approximately 20 miles south of Bigfork at the north end of the Swan Valley in Lake County. The PCT parcels are intermixed with Montana Department of Natural Resources and Conservation (DNRC) Swan River State Forest (Fig. 2).

FWP proposes to acquire the first phase of the conservation easement over approximately 6,083 acres in early 2006 with fiscal year 2004 and 2005 Forest Legacy Program and private funds that are currently available. FWP would acquire the remaining portion of the conservation easement (approximately 1,121 acres) and the 3,680 acres in fee as funding from both the federal programs and private sectors becomes available. We anticipate that initial funding for subsequent phases would be available by fall 2006. During implementation, the value for the unencumbered lands would be adjusted for changes in market values.

**Table 1. Revised Phases of the North Swan Valley Conservation Project by Conservation Tool and Program Funding Source.**

<b>Project Type</b>	<b>Total Acres</b>	<b>Total Estimated Cost</b>	<b>Federal Source (no more than 75% of costs)</b>
<b>Phase 1 (CE)<sup>1</sup></b>	6,083	\$7,907,484	Forest Legacy
<b>Phase 2 (CE completion)</b>	1,121	\$1,457,258	Forest Legacy
<b>Phase 3-4 (Fee-title)<sup>3</sup></b>	1,650	To be appraised	Forest Legacy
<b>Phase 5 (Fee-title)</b>	1,280	To be appraised	HCP and/or BPA
<b>Total Project Costs</b>	<b>10,880</b>		

<sup>1</sup> Phase 1 consists of both the 2004 and 2005 applications to the FLP.

<sup>2</sup> Phase 2 consists of the 2005 FLP application.

<sup>3</sup> Phase 3 consists of the 2006 & 2007 FLP applications.

FWP does not intend to retain long-term ownership of these fee-title parcels, but would likely retain a conservation easement or other interest in the land to ensure long-term conservation of the fish and wildlife habitat. Any FWP sale, exchange, or transfer of the parcels would be conducted consistent with established state law and regulations governing land disposal and also consistent with the provisions of the Forest Legacy Program that protect land from conversion to nonforest uses. Further, any such proposed land disposition by FWP would be the subject of a future environmental analysis including public participation. In the interim, FWP would own and manage the fee-title lands, maintaining public access as it exists under current PCT ownership and as outlined in the draft Interim Management Plan in the draft EA.

## **PURCHASE PRICE AND APPRAISALS**

The cost of the entire project is estimated to be between \$27 and \$30 million depending on updated market values with approximately 75% of the cost coming from federal cost share programs and 25% from private funding sources. FWP proposes to manage the conservation easement using funds from the Wildlife Mitigation Trust Fund, the fund established in 1989 to help mitigate the wildlife habitat losses associated with the construction of Hungry Horse and Libby dams. FWP proposes to provide interim management of the fee-title lands using this same fund until long-term disposition is determined.

Illi Real Estate Appraisal in Kalispell completed the conservation easement appraisal. Steve Hall of Hall-Widdoss & Company in Missoula is conducting the federal review of this appraisal and should have the review completed by the December 2005 Commission meeting. Appraisals have not yet been completed for subsequent phases of the fee title purchases.

## **CONSERVATION EASEMENT TERMS**

**Under the terms of the conservation easement, the landowner would retain the right to:**

- ◆ Manage, harvest, and sell timber, timber products, and other renewable forest products in accordance with the Multi-Resource Management Plan contained in the draft EA, Appendix A.
- ◆ Construct, remove, maintain, replace, and repair roads and fences, and use motor vehicles and forestry equipment for land management.
- ◆ Extract sand, rock, or gravel, provided the disturbed area is not greater than 5 acres, there are not more than two active sites open at any one time, the sites are not within the 100-year floodplain or Goat and Squeezer Riparian Influence Zone, and reclamation is accomplished according to listed reclamation standards.
- ◆ Remove individual pieces of unburied rock outside the Riparian Influence Zone.
- ◆ Develop hydrocarbons under the land if they acquire these rights in the future. The easement would restrict potential future development in a manner that is protective of the conservation values of the land.

**The easement would restrict or limit the landowner's right to:**

- ◆ Divide, sell, convey, or exchange the land into more than 2 parcels.
- ◆ Sever mineral or timber rights on conservation easement lands in any manner.
- ◆ Construct or place any residential or permanent structure on all conservation easement lands.
- ◆ Cultivate, farm, or graze lands (the land has not been used for grazing or agriculture).
- ◆ Rent, lease, or sell access to or across the land for recreational purposes.
- ◆ Use the land for any alternative livestock operation, shooting preserve, fur farm, zoo/ menagerie, or feedlot.
- ◆ Dispose of toxic or hazardous wastes on land.
- ◆ Lease more than 2 telecommunications sites affecting more than 4 cumulative acres.
- ◆ Explore for, develop, produce, or extract any nonhydrocarbon minerals.

**The easement would give FWP the right to:**

- ◆ Establish a Riparian Influence Zone, which consists of the channel migration zone plus 80 feet along Goat and Squeezer Creeks (approximately 208 acres).
- ◆ Enter land to monitor landowner's compliance and enforce specific restrictions.
- ◆ Prevent inconsistent activities as defined in the conservation easement.
- ◆ Provide for public access and recreation consistent with Plum Creek's Open Lands Policy, a policy that is already in place and included as part of the Multi-Resource Management Plan.

## PROJECT HISTORY AND ENVIRONMENTAL REVIEW

FWP has been working with PCT, the Trust For Public Land (TPL) and the local community for several years to develop the North Swan Valley Conservation Project. TPL has submitted through FWP five separate Forest Legacy applications for federal funding for fiscal years 2003-2007. Through federal fiscal year 2007, the North Valley Swan Conservation Project has been awarded a total of \$10 million in federal grants. TPL submitted an application for an additional \$6.2 million for 2007 Forest Legacy funding in August 2005.

**FWP Commission:** FWP received approval from the FWP Commission to pursue the conservation easement purchase in April 2004; FWP updated the Commission and received approval to proceed on the fee-title portion of the project in September 2005.

**Scoping:** FWP held a scoping meeting at the Community Center in Condon on September 15, 2005. Twelve people attended the meeting. Several issues were identified. We also received one letter during the scoping period that outlined four issues concerning future management for wildlife habitat relative to this project. FWP incorporated all issues into the draft EA.

**Draft EA:** FWP staff completed the draft environmental assessment (EA) for the project October 5, 2005, and released it for a 30-day public comment period ending November 5, 2005. The draft EA included an analysis of four alternatives (proposed action, conservation easement only, fee-title purchase only, and no-action), Socio-Economic report, the Multi-Resource Management Plan for the conservation easement lands, and the Interim Management Plan for the lands to be purchased by FWP.

FWP provided a copy of the draft EA to the Lake County Planning Office, various offices of DNRC including the Swan River State Forest, the Confederated Salish and Kootenai Tribes, PCT, TPL, Flathead National Forest, Swan Ecosystem Center, 11 members of the Wildlife Mitigation Advisory Council, and local libraries in Kalispell, Polson, Swan Lake, Seeley Lake, and Missoula. FWP placed legal ads that described the proposed project, the availability of the draft EA, and the public hearing information in two daily newspapers: the Missoulian and Daily Interlake; and in three weekly newspapers: Bigfork Eagle, Seeley Swan Pathfinder, and Lake County Leader. FWP issued two press releases that focused on the availability of the draft EA and the time, date, and location of the public hearing. In addition, FWP sent postcards explaining the project and how to get a copy of the draft EA to 31 local conservation or sporting organizations, 14 local outfitter and guides or other businesses, four local legislators who represent the Swan Valley, and 38 adjoining private landowners and other individuals. Subsequently, FWP received five requests for the draft EA.

The Daily Inter Lake carried an article, entitled "State eyes land protection in Swan Valley," in the Valley section of the newspaper published on October 6, 2005. The Bigfork Eagle published an article, "Conservationists cheer Swan plan," on October 13, 2005.

FWP held an open house and formal public hearing on the proposed action and draft EA in the town of Swan Lake on October 20, 2005. Details of all public comments both written and oral and our responses are summarized below.

In addition, 500 copies of the executive summary, project area map, and a comment sheet were handed out at the Swan Highway game check station located about five miles south of Bigfork during the first eight days of the general hunting season (October 23 – 30). Hunters that discussed the project with FWP staff overwhelmingly supported the project. FWP put up a display of the proposed project with the executive

summary and additional comments sheets in the Region One lobby the last two weeks of the comment period. FWP received 20 written comments from these handouts.

## **SUMMARY OF PUBLIC COMMENTS**

**Public Hearings:** Fourteen individuals attended the open house and formal public hearing, with eight people testifying. Of the eight, five individuals clearly supported the project, two mentioned concerns but neither supported nor opposed the project, and one individual had concerns that seemed to have been addressed during the open house. The concerns raised at the meeting have been incorporated into the issue and response to public comments section below.

**Written Comments:** FWP received a total of 27 comments. Twenty of these came from individuals and seven from organizations or businesses. Of the 20 individual comments, 18 fully supported the proposed land conservation project and two opposed based primarily on their concern that the fee-title lands would end up in ownership by a national conservation organization or by the federal government and that these lands would not be managed for timber or public access. One local private timber company raised several concerns about the costs associated with management of the fee-acquisition portion of the project. DNRC raised several issues also associated with the fee acquisition portion of the project and suggestions for the short- and long-term management of these lands. One conservation organization raised concerns about eventual disposition and future management of the fee purchased lands and questioned how PCT would be addressing water quality issues on the conservation easement parcels in the project area.

Supporters most frequently mentioned the high value of this area as fish and wildlife habitat and the importance of maintaining public access and recreational opportunities on these lands. They also mentioned their support for maintaining timber management for the economy, for wildlife, and for the community. They felt the project would allow for continued game management or allow for the opportunity to improve game or forest management in the future. Other reasons included their concerns about the effects of development on these values if this project were not implemented.

One supporter was concerned about the amount of decorative rock that was being taken off the land. One supporter thought that it would be OK if FWP resold the purchased lands on the private market with a conservation easement on the property. One supporter would not support the project if it required an increase in our fishing and hunting licenses. Another supporter believed that there needed to be better road access (fewer gates).

The questions or concerns raised by all commenters along with FWP's responses are listed below.

## **RESPONSE TO PUBLIC COMMENTS**

1. Concern with the six purchased land sections going to the environmental groups or the federal government where management of timber and access would be controlled by these organizations and would be more for protection of wildlife than for public access or timber.

**Response:** FWP intends to transfer or exchange fee-title ownership of the acquired PCT lands to an entity that will continue to manage the lands for the purposes defined by the Forest Legacy Program. These purposes include managing the forest and providing commercial timber products over time while also conserving the key fish and wildlife habitats and providing public access. DNRC has expressed a strong interest in acquiring and managing these lands. The U.S. Forest Service has identified lands in the Swan that they wish to acquire from PCT, but they have identified no parcels within the Swan River State Forest. Also, Forest Legacy rules do not allow the use of Forest Legacy funds for federal acquisition of lands

within the boundaries of any national forest. Once FWP acquires land from PCT, FWP will need to evaluate various alternatives for how we would want to dispose of the lands (ensuring compliance with the Forest Legacy Program). At that time, FWP will bring these alternatives to the public through another draft EA and public review process.

2. There is no point in submitting public comment as the decisions have already been made.

**Response:** FWP has developed a preferred alternative following extensive negotiations with PCT. This draft EA process describes the outcome of those negotiations along with other alternatives that could meet some of the project objectives. However, the FWP Commission makes the final decision. Public comment is a critical part of the Commission's decision-making process. The Montana State Land Board must also approve any purchase options before FWP can proceed with any acquisition of land or conservation easements.

3. Roads on these lands are already closed and already there is no fishing allowed so what is the benefit to sportsmen?

**Response:** Motorized access to most of the project lands is currently restricted, but the public is allowed to recreate on PCT lands under their Open Lands Policy. Both the conservation easement and fee-title purchases would allow a continuation of such managed recreational access into the future. PCT is a partner in the Swan Valley Grizzly Bear Conservation Agreement, and through that agreement and in conjunction with adjoining landowners they have reduced the number of roads open for motorized use to meet the standards of that agreement. The project area has several main roads and cost-share roads open to motorized use that intersect miles of closed roads on both DNRC and PCT land that the public can access. This project intends to retain public access and recreational use of all of PCT lands in the project area.

Squeezer and Goat Creeks, along with only two other tributaries in the Swan, are closed to fishing because they provide important spawning and rearing habitat for bull trout, a species listed as threatened by the U.S. Fish and Wildlife Service. All other streams, rivers, and lakes in the Swan Valley are open to fishing subject to various seasonal and other fishing regulations.

4. FWP has not always exhibited the best record of forest stewardship or recreation management on the lands they've been entrusted with. There will be substantial costs associated with weed control, public recreation management, road maintenance, and forest health. FWP's estimates for maintenance are severely underestimated.

**Response:** As mentioned in the Interim Management Plan for the acquired parcels (Appendix B in the draft EA), FWP intends to only own these lands until we can negotiate a transfer or exchange to DNRC or other interested forestland manager. FWP plans to maintain the status quo with respect to roads, weeds, and forest health. Most of the gates, berms, new weed infestations, and forest health issues have already been addressed by PCT. FWP recognizes that there will be a need for maintenance of road closure structures and for possible site-specific issues related to new weed infestations, blow down, or other forest management activities. Discussions with DNRC staff who manage the adjoining forestlands have indicated to us that there would not be a need for significant on-site management in the next few years. DNRC has expressed a strong interest in assisting FWP in any short-term management needs and in acquiring the lands as a part of the Swan River State Forest.

5. FWP will see an increase in public use for hunting, fishing, and other recreation, and this will increase FWP's need for road and weed maintenance as well as law enforcement. FWP needs a long-range management strategy and budget for this.

**Response:** These lands in the project area are already very popular for hunting and other recreation; we do not think the conservation easement or interim fee acquisition will dramatically increase public use, as FWP is not planning to make this area a Wildlife Management Area or to provide any additional public services or advertisements for using this area. Hunting pressure in the Thompson River has decreased slightly since that conservation easement was purchased from PCT so we see no evidence to suggest that this project will increase public use above normal fluctuations. Fishing is closed along Goat and Squeezer Creeks, but is popular on the Swan River main stem. We have no intent to increase public access along the Swan River. Any increase in public use over the next few years would likely be due to increasing numbers of residents in the various nearby communities. FWP already addresses law enforcement issues on all open lands in the Swan Valley on a year-round basis. As we do not intend to be the long-term managers of these lands, we do not believe we need a long-term management plan at this time. FWP must consider a no-action alternative in the future draft EA that we prepare where we would keep these lands rather than sell or exchange them to another entity. In that alternative, we would need to describe the long-term management activities, associated costs, and impacts to the human environment.

6. Draft Management Plan lacks specific details necessary for managing and maintaining forest areas. Very real possibility that FWP would have a difficult time finding a buyer for the 3,680 acres of fee lands with no development potential because of prior management by PCT and the 40-60 years that might be necessary before timber revenue could be again generated.

**Response:** As mentioned above, DNRC has expressed a strong interest in acquiring these lands. We do not believe it would be difficult to work with DNRC, a local timber company, or other organization on a sale or exchange for the acquisition of these highly productive timberlands. The expected residual value of these lands would likely be substantially reduced over the current market by the removal of the development rights and by other habitat-related land management considerations, so the land would likely be made available at a cost well below the original market value.

7. Given the number of mills that have closed or are challenged by diminishing raw log supply for federal forestlands, there is a real possibility that this part of Montana won't have a viable forest products industry in the near future. Has FWP assessed the risks of this investment, as FWP may own this land much longer than they think?

**Response:** FWP is very concerned about the future of the timber industry in Montana; we recognize that forestry is an important component of Montana history, culture, economics, and community values, and that working forestlands provide important wildlife habitat and public recreational opportunities. Many of Montana's forests are threatened by conversion to other land uses, and the basic economy of the region may be at risk.

The purpose of the Forest Legacy Program is to maintain working forests across the nation that are threatened by conversion to other land uses. As the implementing agency of the Forest Legacy Program for Montana, FWP has helped conserved over 142,000 acres of timberland in western Montana since 1999. FWP has assessed the risks associated with owning working forestlands and feels confident that the benefits far outweigh the risks.

8. Future alternatives for the transfer of ownership of the fee-title lands should include: 1) a direct transfer of ownership without an exchange of lands between DNRC and FWP, and 2) an alternative that involves a like-value exchange of fee-title lands from FWP for fishing access site easements or other potential conservation easements on trust lands.

**Response:** FWP appreciates DNRC's interest in acquiring the parcels FWP would purchase from PCT if this project is fully implemented, and FWP will include an alternative in the subsequent draft EA for the direct transfer as requested. However, FWP has the responsibility for meeting the objectives of the Forest Legacy Program as well as the stated project objectives as described in the grant requests and draft EA. Therefore, either the direct transfer or exchange of underlying timber or land value must be consistent with those commitments. The acquired parcels cannot be exchanged for fishing access sites elsewhere as this is not a purpose of the Forest Legacy Program or other federal programs likely to help fund these acquisitions.

FWP will consider all alternatives that insure the long-term management of these acquired PCT lands consistent with the intent of the Forest Legacy Program, the purposes stated in the draft EA, and the commitments to funding partners. This project ranked high nationally because of the multiple values of these lands for fish, wildlife, public recreation, forest production, and community values. We will consider any alternative that can guarantee the lands will be managed for the purposes for which they were acquired. We will also look at alternatives that might provide additional conservation benefits in exchange for the future timber values of the lands.

9. For Section 1.4, Relevant Plans, EIS's, Regulations, and other documents, DNRC noted that FWP did not include a description of DNRC's effort to complete a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service for grizzly bears, Canada lynx, bull trout, and two native trout species. DNRC also noted that FWP failed to mention its existing State Forest Land Management Plan (1996) and its associated EIS, and DNRC's participation in the Swan Valley Grizzly Bear Agreement.

**Response:** FWP is aware of these important planning efforts and should have more fully described these conservation commitments in the draft EA. On page 14 of the draft EA, FWP only mentioned that PCT and the other public land managers in the Swan Valley have signed the Swan Valley Grizzly Bear Agreement with the U.S. Fish and Wildlife Service and that it covers all lands within the Swan River State Forest. All the conservation efforts of various organizations operating in the Swan Valley help to make a more compelling case for FWP's proposed action.

10. Section 2.4 Table 5. Overall Advantages and Disadvantages of Alternatives. DNRC is concerned the statement in the draft EA that the proposed project "benefits management of School Trust Lands" cannot be stated with certainty given the uncertainty of the fate of fee-title lands and the final language in the Conservation Easement documents. Another commenter also felt this statement needed to be clarified, particularly in light of DNRC's potential future management of the fee acquisition lands which might allow DNRC to increase timber volume from other state lands.

**Response:** FWP agrees that we should not have stated this benefit with absolute certainty. We propose the language in Table 5 say that there is a "potential benefit to management of school trust lands" for the preferred alternative. In other parts of Table 5 under Other Alternatives, the text should read that there is "no potential benefit... to management of DNRC's parcels". The potential benefit to DNRC is that under the proposed alternative, a significant portion of PCT lands adjoining DNRC would remain as commercial forestlands subject to a conservation easement. If some or all of the PCT project lands were sold and subdivided or developed for residential or commercial real estate, this could make managing DNRC's land for timber more difficult due to conflict from neighbors over noise, dust, traffic, safety, and other issues related to commercial forestry. The concern about the effect of DNRC acquiring these parcels on their future management of the Swan River State Forest is an issue that FWP would need to address for that alternative in the future draft EA.

11. Appendix B. Interim North Swan Valley Land Management Plan. DNRC feels this plan and the costs associated with it (approximately \$5,000 per year) would not be necessary if FWP directly transferred these lands to DNRC. If the lands are not directly transferred, then FWP may want to consider having DNRC manage these lands under our existing Swan Forest Land Management Plan and associated rules, Forest Legacy Program, and the four project objectives.

**Response:** FWP will consider this offer or approach during FWP's interim ownership of PCT parcels as long as that management is consistent with the interim management plan provided in the draft EA.

12. With respect to the existing Reciprocal Access Agreement for all Lawful Purposes between PCT and DNRC, DNRC expressed concern that there may be unforeseen needs in the future on conservation easement lands with respect to road development. In the draft EA, the conservation easement terms state: "The landowner (PCT) may grant access rights for any lawful purpose across the land, provided that any new road must have prior approval of the Department (FWP)." DNRC is concerned that they may not be able to adjust or move a road to utilize their "all lawful purposes" and may be getting less than the originally granted, unrestricted All Lawful Purposes Access Agreement and that the conservation easement, as written, is not in the Trust Land Management Program's best interest. DNRC requests that FWP incorporate or tier to the Trust Land Management Division's East of 83 MEPA document in our draft EA and Deed of Conservation Easement documents. In doing so, DNRC believes that FWP's decisions will take into account all prior rights, obligations, and commitments of all parties. This will insure that FWP is aware of these rights, obligations, and commitments that you are or may become party to as a result of the East of 83 Reciprocal Access Agreement.

**Response:** FWP is aware of the negotiated Reciprocal Access Agreement between DNRC and PCT East of Highway 83 on existing roads and has drafted the proposed conservation easement to insure that it does not interfere with negotiated rights between the two parties. FWP legal staff has had discussions with DNRC staff about this issue and, as a result, has incorporated language in the conservation easement document that addresses these concerns. FWP and/or PCT will provide a copy of the final draft conservation easement to both DNRC field staff and legal staff.

Under Section I. K in Recitals, the conservation easement states: "It is not the intent of this Easement to restrict or interfere with access for all lawful purposes by the State of Montana to state trust lands lying adjacent to or that require access over the Land."

In section II, B, 4. (Under Landowner's Rights, Roads and Road Easements), the conservation easement clarifies that "The Landowner may, in its sole discretion, grant to third parties permanent or temporary access rights to cross the Land on existing roads for any lawful purposes. The Landowner may grant permanent or temporary access rights for any lawful purpose across the Land on new roads to be constructed, provided that the location and construction plans for any new road must have the prior approval of the Department. Nothing in this Easement may interfere with a third party exercising any right of legal access across the Land that was in effect at the time of the grant of this Easement."

PCT and FWP believe this provides adequate protection of rights already secured by DNRC. It does give FWP the right to approve the location and construction plans of new roads constructed for third party purposes.

13. Concern that the fee-title parcels would be taken off the tax roles.

**Response:** As described in the draft EA Socio-Economic Report (Appendix C), during FWP's interim ownership of the fee parcels, FWP would make payments to Lake County in lieu of taxes equivalent to the taxes paid previously by the landowner. This annual payment is approximately \$1 per acre. Tax implications for the future depend on the ultimate landowner. Private landowners would continue to pay property taxes; if the lands were owned and managed by DNRC, then they would be responsible for equalization payments based on MCA 77-1-501.

14. Concern that FWP or another entity would repurchase underlying fee of the conservation easement lands, and this would allow the conservation easement to be removed and then FWP or another entity would resell lands to a conservation organization or federal government.

**Response:** Under the Forest Legacy Program, ownership of conservation easements or land purchased with Forest Legacy funding must be held by a state or local government agency. Forest Legacy rules also preclude transfer of this land to the Forest Service since the land lies within the boundaries of the Flathead National Forest. If ownership of the conservation easement and fee portions were ever combined at the state or local government level, the land is still encumbered by the requirements of the Forest Legacy Program to provide working forests and public resource values for which these lands were acquired. If FWP were to violate the purposes of the Forest Legacy program, FWP would be liable to repay the full market value of the lands that were diverted from the purposes of the Forest Legacy Program.

14. FWP should set up a schedule with PCT to address fixing problem areas where forest roads are delivering sediment to streams in the project area (provided data from Appendix F in the Water Quality Protection Plan, by Montana Department of Environmental Quality).

**Response:** The Native Fish HCP specifically addresses PCT's need to fix problem areas where forest roads are delivering sediments to important fish-bearing streams. PCT is aware of the problem areas and is currently establishing priorities for corrective action to fix these problems. As part of the monitoring of both the conservation easement terms, FWP needs to insure that the tenets of the Native Fish HCP are followed. FWP will periodically monitor the standards of the HCP as part of its monitoring of the conservation easement terms and Multi-Resource Management Plan. Reports of these activities will be provided to the Liaison Team each year.

15. The snag retention rate described in the Multi-Resource Management Plan is not adequate (two snags >10" in diameter where available or retain at least one of the largest live trees per acre for future snag recruitment).

**Response:** The snag retention criteria were the result of negotiations between FWP and PCT. FWP acknowledges that higher snag densities would benefit associated wildlife species. However, these snag retention criteria are above PCT's current snag retention policy developed as part of the Sustainable Forestry Initiative Standards, and would likely be higher in the short term than would occur if the lands were logged and ultimately subdivided and developed. This is also a minimum snag density allowed on the conservation easement lands. PCT assured FWP that under current practices PCT would be exceeding these standards on their lands in the project area. FWP will periodically monitor the landowner's compliance with these snag criteria as part of the agency's conservation easement and management plan monitoring activities over time.

### **NEED FOR EIS and FINAL EA**

After issuing the draft EA and completing public review, FWP has determined that this proposed action would not significantly impact the social or physical environment; therefore this project does not need an

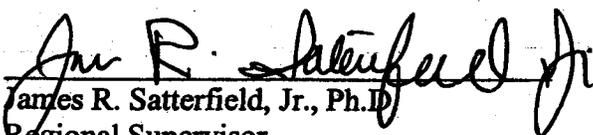
environmental impact statement. FWP adopts the draft EA as the final EA and includes the response to public comments with this decision notice.

### **THE DECISION**

Based on the exceptional benefits of the preferred alternative for fish and wildlife habitat conservation, forest stewardship, public recreational opportunities, and community benefits, and further, based on the substantial threats to this important habitat from probable residential development in the event of inaction, FWP recommends that the FWP Commission approve the North Swan Valley Conservation Project as proposed. This action would authorize FWP to complete the land transactions as presented in the draft EA and decision notice subject to funding availability.

FWP proposes to acquire the first phase of the conservation easement over approximately 6,083 acres in early 2006 with fiscal year 2004 and 2005 Forest Legacy Program and private funds that are currently available. FWP would acquire the remaining portion of the conservation easement (approximately 1,121 acres) and the 3,680 acres in fee as funding from both the federal programs and private sectors becomes available. We anticipate that initial funding for subsequent phases would be available by fall 2006. During implementation, the value for the unencumbered lands would be adjusted for changes in market values. FWP would use a combination of federal funds from the Forest Legacy Program, Habitat Conservation Program Land Acquisition Program, Bonneville Power Administration fisheries mitigation program, and private funding to complete the project. FWP would use the Wildlife Mitigation Trust Fund for monitoring the conservation easement and for interim management of the fee-title lands.

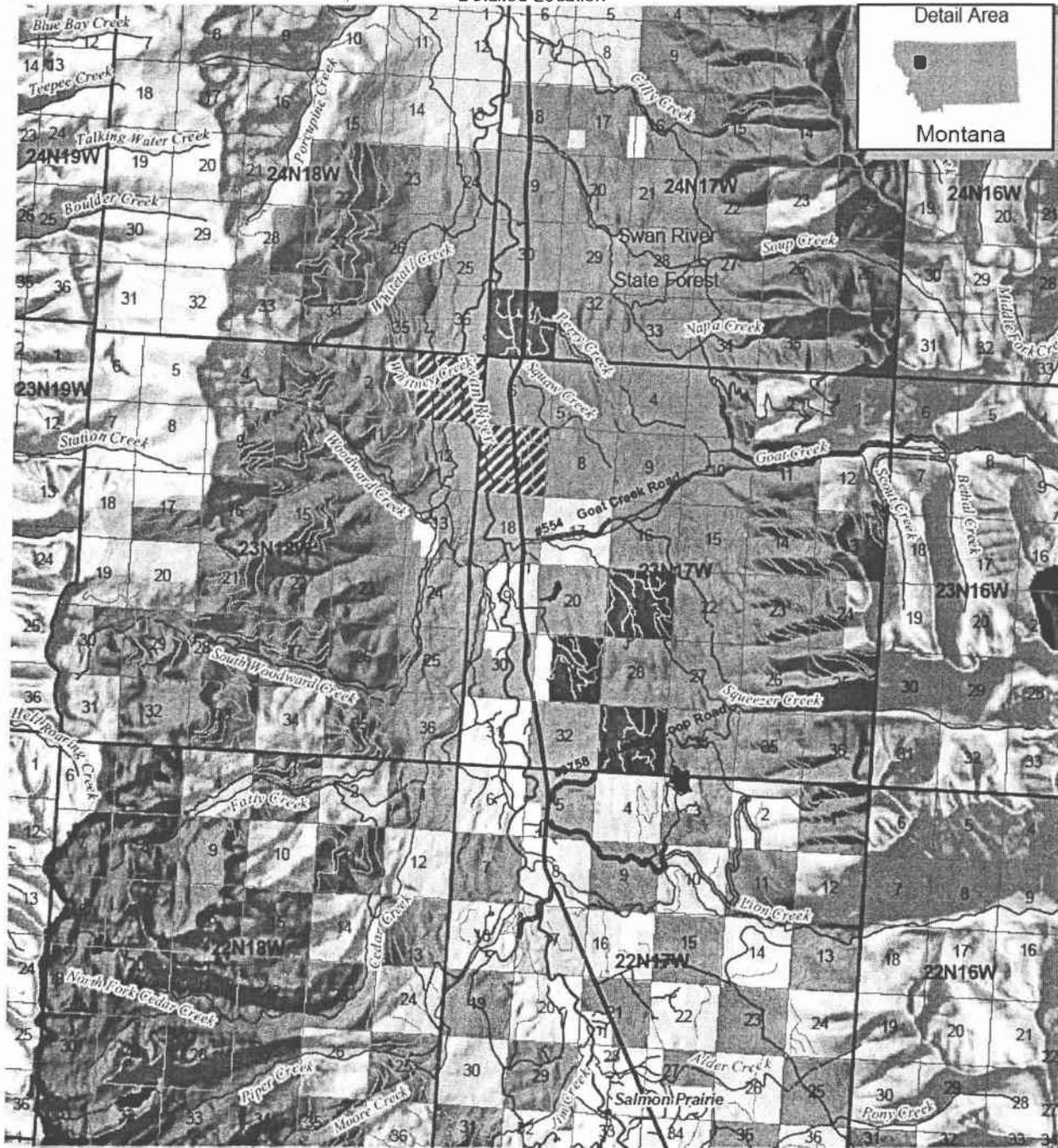
FWP will monitor the conservation easement and provide interim management of the fee-acquired lands using funds from its Wildlife Mitigation Program. FWP does not intend to retain long-term ownership of the purchased parcels and plans to sell or exchange or transfer these lands to another agency or organization. The eventual exchange or transfer of these lands and the tools FWP would use to insure they would be managed for the purposes for which they were purchased would be the subject of a future environmental assessment, including public participation.

  
James R. Satterfield, Jr., Ph.D.  
Regional Supervisor

11/15/05  
Date

Figure 2: Proposed North Swan Valley Land Conservation Project

Detailed Location



**Legend**

**Roadways**

- Montana Route
- Cost Share Roads
- Open Roads
- Other Roads

- Plum Creek Timber
- State of Montana

- US Forest Service
- USFS Wilderness

**Montana Fish, Wildlife & Parks**

- Proposed Conservation Easement
- Proposed Fee Acquisition FLP
- HCP and/or BPA funding

**Flathead National Forest**

- Fee Acquisition
- Potential Fee Acquisition

Other Conservation Easements



MFWP Information Management Unit  
 Map Produced: Sept 2005 Messer  
 File: IS\_Request05:1363\_SwanValleyConservation  
 IS1363\_Detail Loc



**Montana Fish,  
 Wildlife & Parks**

Proposed North Swan Valley Conservation Project, Lake County, Montana.