

Environmental Analysis

For the

Forrey Creek Easement Exchange

Prepared By

Kalispell Unit, Northwestern Land Office

Montana Department of Natural Resources and Conservation

August 2010

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CHECKLIST ENVIRONMENTAL ASSESSMENT

Project Name:	Forrey Creek Easement Exchange
Proposed Implementation Date:	Fall 2010
Proponent:	Kalispell; Northwestern Land Office: Montana DNRC
Location:	Rollins, Montana
County:	Lake

I. TYPE AND PURPOSE OF ACTION

The Department of Natural Resources and Conservation (DNRC) is considering a road and utility easement request to cross State Trust Land approximately 6 air miles south of Lakeside, MT in Section 8, Township 25 North, Range 20 West. The specific request is for an easement exchange whereby the state would grant an easement 60 feet wide, for all lawful purposes including buried utilities. In exchange the proponent, New Mountain Heights II, would grant DNRC 60 foot wide all lawful purposes, including buried utilities, with rights for the public across Sections 5 and 6 in Township 25 North, Range 20 West. Approximately 9,600 feet of road would be constructed with about 3000 feet following an existing road. The proposed road would be constructed to meet Lake County Road standards. A net revenue of approximately \$20,000 would be paid to the State of Montana if the easement exchange is implemented. Future maintenance costs will be allocated on the basis of respective uses.

II. PROJECT DEVELOPMENT

1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

Provide a brief chronology of the scoping and ongoing involvement for this project.

Scoping notices were sent to adjacent landowners and interested parties in December 2009 for an initial 30-day comment period. Legal ads were published in the Daily Interlake in December of 2009; the scoping notice was also posted on the DNRC website. A public hearing was held on February 22, 2010 in Lakeside Montana. A second public hearing was held on July 7, 2010 in Rollins Montana. Legal ads were placed in the Daily Interlake and Polson Leader and notices were sent to adjacent landowners soliciting comments on the 30 day draft EAC comment period which ended July 21, 2010.

2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:

None

3. ALTERNATIVES CONSIDERED:

Action Alternative – to acquire and exchange easements

Non- Action – to not acquire and not to exchange easements

III. IMPACTS ON THE PHYSICAL ENVIRONMENT

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" if no impacts are identified or the resource is not present.*

4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:

Consider the presence of fragile, compactable or unstable soils. Identify unusual geologic features. Specify any special reclamation considerations. Identify any cumulative impacts to soils.

Soils in the project area were mapped in the *Soil Survey of Lake County Area, Montana* and were reviewed using the Natural Resources Conservation Service's Web Soil Survey (<http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>).

Soils are listed as gravelly silt loams on slopes up to 30% although small areas of steeper slopes are present in the project area. The erosion hazard for the soils that would be affected as part of the Action Alternative is considered low to moderate. Currently, approximately five acres of ground has been removed from timber production for native surface road access within the approximate 460 acre parcel. No unique or fragile soils were identified during office or field review.

Direct, Indirect and Cumulative Effects of the No Action Alternative

No additional direct, indirect or cumulative effects would result from this alternative beyond the existing condition and natural changes.

Direct, Indirect and Cumulative Effects of the Action Alternative

Under the action alternative a road easement covering approximately 19 acres would be conveyed to the proponent of the project. In the easement area, approximately 9,600 linear feet of road would be constructed although approximately 3,000 linear feet would be sited on the existing road. An estimated 17 acres of land would be removed from production due to this project—the cumulative amount of land removed from production within the 460-acre parcel would be approximately 22 acres.

The proposed road would be paved with asphalt at the time of construction/reconstruction, which would reduce the potential erosion from the road surface, although the infiltration of precipitation would be greatly reduced. Runoff and road drainage would be ditched and dispersed using corrugated metal pipes (CMPs). All applicable Best Management Practices would be required to minimize the erosion in ditches and at CMP outlets.

5. WATER QUALITY, QUANTITY AND DISTRIBUTION:

Identify important surface or groundwater resources. Consider the potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality. Identify cumulative effects to water resources.

No surface water resources are present near the proposed road. Because of the lack of surface water in the project area, the risk of affecting water quality would be very low and immeasurable.

6. AIR QUALITY:

What pollutants or particulate would be produced? Identify air quality regulations or zones (e.g. Class I air shed) the project would influence. Identify cumulative effects to air quality.

No impact to Class 1 Airshed would occur as a result of implementing the Action Alternative.

7. VEGETATION COVER, QUANTITY AND QUALITY:

What changes would the action cause to vegetative communities? Consider rare plants or cover types that would be affected. Identify cumulative effects to vegetation.

Direct, Indirect, and Cumulative Effects of the No-Action Alternative

No appreciable changes in vegetative cover, quantity, and quality would occur in the project area.

Direct, Indirect, and Cumulative Effects of the Action Alternative

The proposed road goes through 4 stands as identified in DNRC's stand level inventory (SLI). These 4 stands contain western larch/Douglas-fir (WL/DF) cover types. Approximately 19 acres is contained in the right-of-way for the proposed road. About 3000 feet of the proposed road location follows an existing single lane, native surface road. Direct effects of the proposed road would take an additional 17 acres out of timber production and reduce the Kalispell Unit's acreage in WL/DF cover types. This acreage would also reduce the Kalispell Unit's timber base but due to the relatively small acreage in comparison to our total forested acreage, the proposed easement exchange would have minimal effects on the Kalispell Unit's ability to meet mandated timber targets. Minimal direct, indirect, or cumulative effects to vegetation would be anticipated due to implementation of the action alternative.

If the action alternative is selected, motorized public use would be allowed through State ownership in sec. 8. This could increase the likelihood of noxious weed infestations. The area currently has noxious weed infestations along existing roads. The proposed new road would only follow 3000 feet of existing road. The presence of 6600 feet of new road construction could increase the direct, indirect and cumulative effects of noxious weed infestations in the project area. Control of noxious weeds will be included as part of the maintenance obligations if the action alternative is selected. All parties to the easement will share in road maintenance costs including control and eradication of noxious weed infestations.

8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:

Consider substantial habitat values and use of the area by wildlife, birds or fish. Identify cumulative effects to fish and wildlife.

Direct, Indirect, and Cumulative Effects of the No-Action Alternative

No appreciable changes in existing habitats would occur in the project area.

Direct, Indirect, and Cumulative Effects of the Action Alternative

The proposed clearing and road construction would reduce habitats across approximately 17 acres of reasonably open stands. Habitats for species that rely on forested conditions would see a negligible reduction in available habitats. Additionally, with the increased access, reductions in snags and coarse woody debris are possible, reducing habitats for those species that rely on those resources. This additional access could increase general disturbance to the species using the project area. Overall, negligible direct, indirect, or cumulative effects would be anticipated to general wildlife species.

The project area includes white-tailed deer and mule deer winter range, but does not include elk or moose winter range. Winter range attributes on approximately 17 acres would be removed and the effectiveness of much of these winter ranges on the state parcel would be reduced with the increased access and disturbance. Use of the area by big game during the non-winter period is likely. Proposed road construction and associated access could alter non-winter habitats on approximately 17 acres, while increasing human disturbance levels on the 460-acre project area and an additional 800 acres of DNRC ownership that would be accessible using non-motorized methods by the general public following the proposed road construction. Reductions in big game security habitats would be anticipated with the increased human access, both using the open road and the subsequent non-motorized human access. Overall negligible direct, indirect, and cumulative effects would be anticipated to big game species.

Due to the lack of surface water in the project area, no aquatic habitat would be affected.

9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:

Consider any federally listed threatened or endangered species or habitat identified in the project area. Determine effects to wetlands. Consider Sensitive Species or Species of special concern. Identify cumulative effects to these species and their habitat.

Direct, Indirect, and Cumulative Effects of the No-Action Alternative

No appreciable changes in existing habitats would occur in the project area.

Direct, Indirect, and Cumulative Effects of the Action Alternative

The project area is approximately 9 miles outside of the North Continental Divide Ecosystem and separated from the recovery zone by Flathead Lake. Recently, a grizzly bear has been documented approximately 10 miles west of the project area. Little or no use of the project area by grizzly bears would be expected. Thus no direct, indirect, or cumulative effect to grizzly bears would be anticipated. The project area occurs between 3,040-3,640 feet, which is largely outside of the elevation range where lynx are commonly found in Montana. Limited lynx habitats were identified in the project area, including approximately 46 acres of mature foraging and another 16 acres of forested travel/other habitats, but these habitats are in portions of the state parcel not being altered with the proposed road construction. Given the existing conditions and the habitats present, lynx use of the project area is rather unlikely. Negligible effects to Canada lynx would be anticipated with the proposed activities. Overall, negligible direct, indirect, or cumulative effects would be anticipated to the threatened or endangered species.

Proposed activities would reduce potential flammulated owl, fisher, and pileated woodpecker habitats in a small portion of the state parcel. The reduction of approximately 17 acres of potential flammulated owl and pileated woodpecker nesting and foraging habitats would not appreciably alter the ability of the state parcel to support these species. Reductions of similar acreages of upland fisher habitats would also not alter the use of the project area by fisher. In general, a slight reduction in snags, and coarse woody debris would be possible with legal and illegal firewood gathering, which could reduce available habitats for fisher and pileated woodpeckers. Forested stands in the state section outside of the proposed activities, as well as those in some of the surrounding landscape could still provide pileated woodpecker, flammulated owl, and fisher habitats. Overall negligible direct, indirect, or cumulative effects would be anticipated to pileated woodpeckers, flammulated owls, and fisher. Habitats for other sensitive species are either not present and or would not be affected with the proposed activities.

10. HISTORICAL AND ARCHAEOLOGICAL SITES:

Identify and determine effects to historical, archaeological or paleontological resources.

No historic or archaeological sites have been located or identified in this area.

11. AESTHETICS:

Determine if the project is located on a prominent topographic feature, or may be visible from populated or scenic areas. What level of noise, light or visual change would be produced? Identify cumulative effects to aesthetics.

Direct, Indirect, and Cumulative Effects of the No-Action Alternative

No appreciable changes in visuals would occur in the project area.

Direct, Indirect, and Cumulative Effects of the Action Alternative

A portion of the proposed road location would be visible from State Highway 93. The proposed location also passes near (within 100 feet) of several private residencies. During the initial scoping and public hearing, some adjacent landowners expressed concern that the road would diminish their privacy, solitude, and enjoyment of their property. While aesthetics are difficult to quantify, the direct affects to aesthetics would include approximately 9600 feet of road construction/re-construction that would be open to the public for motorized use. Some adjacent landowners would be able to see portions of the proposed road and experience an increase in noise due to traffic on the road. Indirect effects could include an increase of trash and disturbance to road side vegetation along the proposed road. This could further diminish the aesthetic appeal of the area from its current condition. Implementation of the action alternative would have some direct effects on aesthetics. There is also a potential the action alternative would have some indirect and cumulative effects on aesthetics, especially to adjacent landowners.

12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:

Determine the amount of limited resources the project would require. Identify other activities nearby that the project would affect. Identify cumulative effects to environmental resources.

No changes to demands on limited environmental resources would occur as a result of implementing the No-Action or Action Alternatives.

13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:

List other studies, plans or projects on this tract. Determine cumulative impacts likely to occur as a result of current private, state or federal actions in the analysis area, and from future proposed state actions in the analysis area that are under MEPA review (scoped) or permitting review by any state agency.

No other environmental documents are pertinent to the area.

IV. IMPACTS ON THE HUMAN POPULATION
<ul style="list-style-type: none">• RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.• Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.• Enter "NONE" if no impacts are identified or the resource is not present.

14. HUMAN HEALTH AND SAFETY:

Identify any health and safety risks posed by the project.

Direct, Indirect, and Cumulative Effects of the No-Action Alternative

No changes in human health and safety.

Direct, Indirect, and Cumulative Effects of the Action Alternative

Concerns were expressed during the initial scoping that the proposed action could increase trespass onto private property as well as increase the potential for criminal activity and vandalism to adjacent homes and property. The proposed action would allow for motorized public access through State ownership in section 8. The direct effects would be an increase in public traffic adjacent to some nearby residences. There is a potential that cumulative effects could increase if the action alternative is implemented. No indirect or cumulative effects are anticipated.

15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:

Identify how the project would add to or alter these activities.

No change to the existing conditions is expected if the Action Alternative is selected.

16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:

Estimate the number of jobs the project would create, move or eliminate. Identify cumulative effects to the employment market.

No change to existing conditions is expected if the Action Alternative is selected.

17. LOCAL AND STATE TAX BASE AND TAX REVENUES:

Estimate tax revenue the project would create or eliminate. Identify cumulative effects to taxes and revenue.

No change to existing conditions is expected if the Action Alternative is selected.

18. DEMAND FOR GOVERNMENT SERVICES:

Estimate increases in traffic and changes to traffic patterns. What changes would be needed to fire protection, police, schools, etc.? Identify cumulative effects of this and other projects on government services

No increases in demand for government services would result from implementation of the Action Alternative.

19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:

List State, County, City, USFS, BLM, Tribal, and other zoning or management plans, and identify how they would affect this project.

On June 17, 1996, the Land Board approved the SFLMP. The SFLMP provides the philosophy adopted by DNRC through programmatic review (DNRC, 1996). The DNRC will manage the lands in this project according to this philosophy, which states:

Our premise is that the best way to produce long-term income for the trust is to manage intensively for healthy and biological diverse forests. Our understanding is that a diverse forest is a stable forest that will produce the most reliable and highest long-term revenue stream...In the foreseeable future, timber management will continue to be our primary source of revenue and our primary tool for achieving biodiversity objectives.

On March 13, 2003, the DNRC adopted Rules (Administrative Rules of Montana [ARM] 36.11.401 through 450). These Rules provide DNRC personnel with consistent policy, direction, and guidance for the management of forested trust lands. Together, the SFLMP and Rules define the programmatic framework for this project.

20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:

Identify any wilderness or recreational areas nearby or access routes through this tract. Determine the effects of the project on recreational potential within the tract. Identify cumulative effects to recreational and wilderness activities.

Implementation of the Action Alternative could lead to increased/improved recreational access on state land.

21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:

Estimate population changes and additional housing the project would require. Identify cumulative effects to population and housing.

No change to existing conditions would occur as a result of implementing the Action Alternative.

22. SOCIAL STRUCTURES AND MORES:

Identify potential disruption of native or traditional lifestyles or communities.

No change to existing conditions would occur as a result of implementing the Action Alternative.

23. CULTURAL UNIQUENESS AND DIVERSITY:

How would the action affect any unique quality of the area?

No change to existing conditions would occur as a result of implementing the Action Alternative.

24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:

Estimate the return to the trust. Include appropriate economic analysis. Identify potential future uses for the analysis area other than existing management. Identify cumulative economic and social effects likely to occur as a result of the proposed action.

EA Checklist Prepared By:	Name: Pete Seigmund	Date: 08/09/2010
	Title: Forest Mangement Supervisor, Kalspell Unit	

V. FINDING

25. ALTERNATIVE SELECTED:

The Kalispell Unit Forest Management Supervisor and his interdisciplinary team have completed the checklist Environmental Assessment (EA) for the Forrey Creek Easement Exchange. In the development of this EA checklist two alternatives were considered: Action, and No Action. These alternatives were evaluated on their ability to meet the Department's mandate of managing school trust lands to generate revenue for the trust beneficiary; protect the future income-generating capacity of the land; and consider effects to the human environment and environmental factors specific to the site.

After a thorough review of the EA checklist, project file, Department policies, standards, guidelines, I have selected the action alternative for implementation on this project.

I have selected the action alternative for implementation with the understanding that project design and mitigation measures identified in the EA will be applied to meet the intended resource protection.

The Action Alternative has been selected for the following reasons:

- 1) The Action Alternative improves DNRC's access to manage its lands in sections 8, 18, and 36 in the Forrey Creek drainage, and improves the public's access to these same lands.
- 2) DNRC is required to administer these lands to produce the largest measure of reasonable and legitimate long-term return for beneficiaries (*Montana Codes Annotated 77-1-202*). DNRC meets this obligation by improving the future income-generating capacity of the land by securing improved access.
- 3) The selected alternative includes adjustments, mitigations, and activities to address to the extent possible, concerns expressed by the adjacent landowners and public at large. These include, but are not limited to:

- a) Affects to adjacent property owners from the new road construction:

Principal among these is the effect to the several homeowners who live near where the proposed new road will be located. At issue are increased noise, reduced privacy, and a potential impact to property values, and the aesthetics these nearby landowners now enjoy.

Central to this proposal is the County Standard road the proponent would build for the purpose of accessing a residential development located on the other side of the State section. The County Road standard necessitated the location as shown in Appendix 1 of the EA. The current location uses an 8% grade which puts the road 220 feet from the property line of the nearest neighbor. If designed to the upper limits of the allowable grade (10%), the road would push 80 feet further up the hill away from the property line. This increased grade would come at a cost to traffic safety and road maintenance and the relatively short distance it would move from the property line would not appreciably eliminate, in and of itself, the issues identified by the landowners. For this reason I support the location of the road using the 8% grade.

- b) Improved public access rights and its affect to adjacent property owners.

One of the benefits to the State of this easement exchange is the improvement of existing rights from resource management only to all lawful purpose with rights in the name of the public. While the acquisition of public access is in accordance with Department policy and a benefit to the general public, it creates some concerns with some of the neighboring landowners. The concerns identified to us revolve generally around safety due to trespass; vandalism; potential shooting toward their property; fire risk from abandoned camp fires, or party fires; potential dumping and increased trash.

The Department, as a matter of course exercises its discretion in how it applies the rights in favor of the public so as to mitigate a wide variety of impacts to State lands and adjacent properties. It is routine that DNRC consider items such as road maintenance, weeds, affects to wildlife as well as those items listed above in how we administer public rights. In this particular case we intend to use a combination of measures such as gates, signage, and enforcement to manage the application of the public rights in such a way as to both mitigate the potential impacts and still offer the public improved access to state lands along this road system.

26. SIGNIFICANCE OF POTENTIAL IMPACTS:

I find that none of the project impacts are regarded as severe, enduring, geographically widespread, or frequent. Further, I find that the quantity and quality of the natural resources, including any that may be considered unique or fragile, will not be adversely affected to a significant degree. I find no precedent for future actions that would cause significant impacts, and I find no conflict with local, State, or Federal laws. In summary, I find that adverse impacts will be avoided, controlled, or mitigated by the design of the project to an extent that they are not significant.

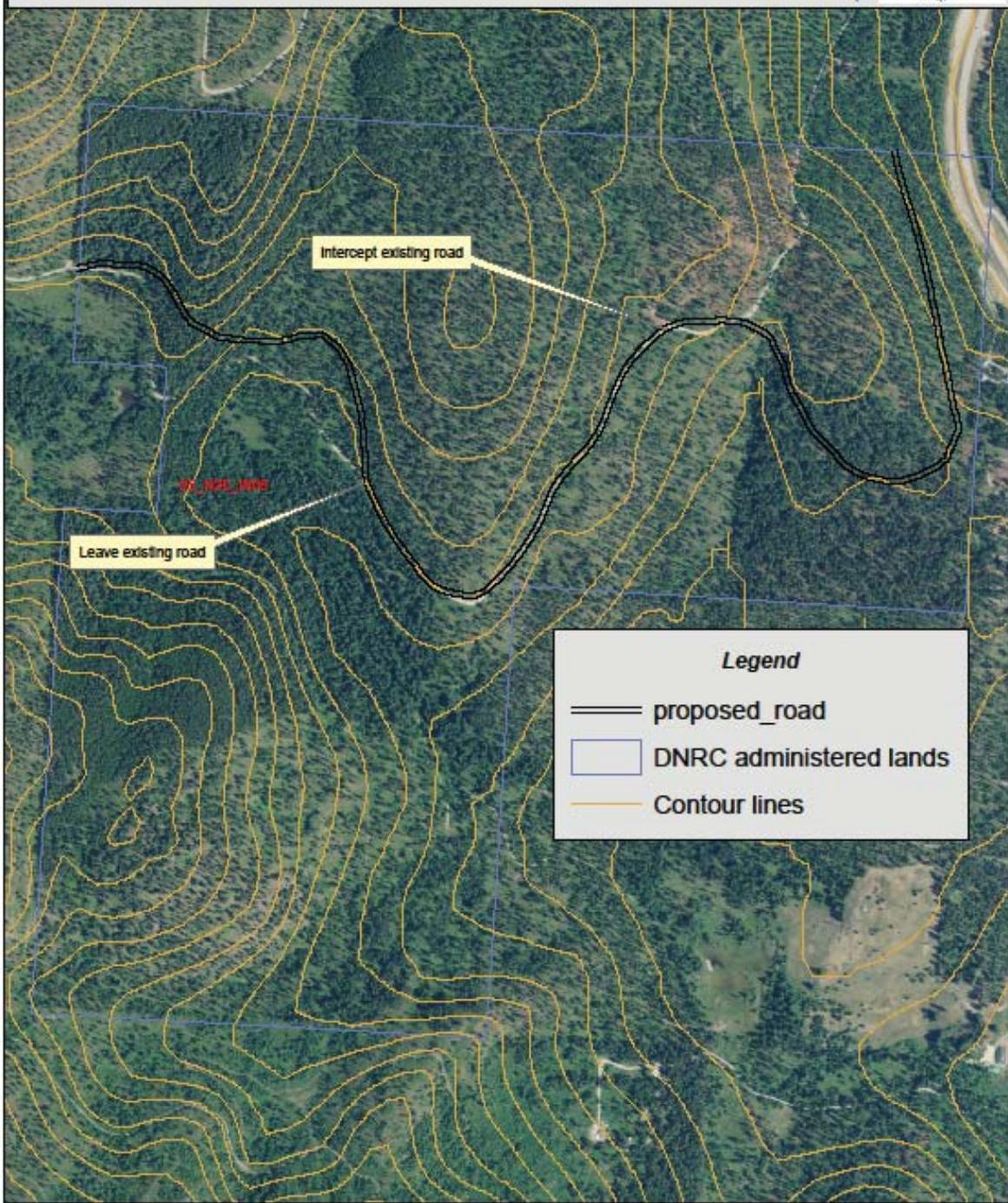
27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:

EIS More Detailed EA No Further Analysis

EA Checklist Approved By:	Name: Greg Poncin
	Title: Kalispell Unit Manager
Signature: /s/ <i>Greg Poncin</i>	Date: 8/11/10

**Forrey Creek Easement Exchange
Project Map
s. 8, T25N, R20W**

Attachment A



Attachment II – Public Comments on Initial Proposal

#1

February 10, 2010

Mr. Greg Poncin
Department of Natural Resources and Conservation
655 Timberwolf Parkway, Suite 2
Kalispell, MT 59901
Subject: Proposed Forrey Creek Easement - Comments

Ref: Your Letter Dated January 4, 2010 (as amended)

Dear Mr. Poncin:

Thank you for the opportunity to comment on the Proposed Forrey Creek Easement Exchange. Our property adjoins the Southern boundary of the DNRC land parcel in which the proposed easement is to be located. I am writing on behalf of the five owners of the property: Julie Fischer, Dan Fischer, Bonnie Schaefer, Valerie Fischer, and myself, William Fischer. We do not want to stand in the way of the Project that is connected to this easement. At the same time we do not want to see an open public road. Having owned our property when there was a previous open road, we experienced numerous trespass violations and property damage, including bullet holes into buildings and vehicles and bullets flying over the house, and a horse stolen and shot. We would kindly request that all other avenues of access be looked into before proceeding with this option. To the best of my recollection state does not require public access to state lands, rather the requirement is that any use of state lands provides income to the State for the school system. Unless every other option for access through private lands is denied we would oppose this proposal. If this option is approved, we would request a route that stays as far to the north and west as is possible.

Sincerely,
William Fischer

#2 (was unable to open attached letter sent via e-mail, see letter below)

Dear Mr. Poncin,

Attached is a letter we have sent to you about the Forrey Creek proposed easement. We were told that comments needed to be to you by February 10th so we are also sending the letter attached to this email to make sure you receive our comments in time.

Please let us know if you need anything else. Thank you for your attention and consideration.

Nancy and Mike Anderson

#3

Dear Mr. Poncin -

We have already submitted our comments on the proposed Forrey Creek Easement Exchange in a letter to your office dated January 29th.

In the letter we suggested an alternate route for the easement be considered. We have since been informed that Mr. Ed Hanson, the road engineer acting on behalf of the developer, and presumably the DNRC as well, has flagged two possible alternate routes.

We request that your office give serious consideration to these potential alternatives.

We are looking forward to attending the Public Hearing February 22nd and to meeting you at that time.

Sincerely
William and Lone Savage

#4

Robert S. Rosso, PE

January 15, 2010

Mr. Greg Poncin
DNRC
655 Timberwolf Parkway, Suite 2
Kalispell, MT 59901

Dear Greg:

Public access and egress using the road that intersects with US 93 across from the West Shore State Park has a history that ranges from friendly and neighborly to, you better duck and run when you go through the gate at the State Lands property line. If the proposed easement exchange will result in consistent, friendly public access without costing the State an unfair portion of the construction and maintenance expenses I can support it.

From the map, one can see the portion of the road through the State Land is 8 to 10 times as long as the short connection road to US 93 through the New Mountain Heights property. It is also important to note that New Mountain Heights has much to gain through this exchange because it will allow them to profit from sizeable real estate development. For these reasons I think it is very important the exchange agreement is biased in favor of the State and include the following:

1. All immediate road construction including, but not limited to, livestock control, passing or parking areas, and erosion control must be approved by the DNRC and paid for by New Mountain Heights and other current private property owners that will use the road.

2. Because road use from the very first will be mostly the result of that required for private property development and private property access for future owners, all maintenance costs, including that required for year-around emergency access, must be paid for by New Mountain Heights or other private property owners that will use the road.

3. Future road improvements including any required by Lake County as a condition of subdivision development by New Mountain Heights or required by Lake County or Montana State Department of Environmental Quality to control dust, erosion, storm water runoff, or other issues that affect air or water quality must be approved by DNRC and paid for by New Mountain Heights or other private property owners that will use the road.

Finally, financial consideration paid by New Mountain Heights to the State of Montana to balance the unequal level of benefit to both parties in the exchange must be significant. If the benefit to the State and the citizens is not significant I can live with the status quo.

I am looking forward to learning the details of the proposed easement exchange agreement and having a chance to comment on it further at that time in this public process. I hope it will benefit the citizens of Montana by providing consistent, friendly access to our State Lands and revenue to support our public schools. I also hope it will benefit New Mountain Heights and future private property owners by providing predictable, save access and by promoting controlled, healthy development and growth in the local community.

Respectfully,

Robert S. (Steve) Rosso, PE

#5

February 6, 2010

Mr. Greg Poncin
Department of Natural Resources and Conservation
655 Timberwolf Parkway, Suite 2

Via e-mail

Subject: Proposed Forrey Creek Easement - Comments

Ref: Your Letter Dated January 4, 2010 (as amended)

Dear Mr. Poncin:

Thank you for the opportunity to comment on the Proposed Forrey Creek Easement Exchange. Our property adjoins the eastern boundary of the DNRC land parcel in which the proposed easement is to be located. The legal description of our property is:
Those portions Of Lots 23 and 24 of SUBDIVISION LINDERMAN ESTATE ADDITION TWO lying west of New U.S. Highway No. 93, located in Government Lot 1 of Section 9, Township 25 North, Range 20 West, P.M.M., Lake County, Montana, further described as follows:
Commencing at the southwest corner of Lot 24 of said SUBDIVISION LINDERMAN ESTATE ADDITION TWO, said corner being the true point of beginning of the tract of land herein described; thence N. 00°02'00" E. along the west boundaries of said Lots 24 and 23 a distance of 662.99 feet to a point on the southwesterly right-of-way of New U.S. Highway No. 93; thence S. 23°14'32" E. along said southwesterly right-of-way 710.10 feet; thence continuing along said southwesterly right-of-way S. 30°27'26" E. 14.54 feet to the northeast corner of Tract A-I as shown and described on Certificate of Survey No. 4293, records of Lake County; thence N. 89°35'58" W. along the north boundary of said Tract A-I a distance of 287.98 feet to the point of beginning.
Further identified as being Parcel "A" on Certificate of Survey No. 4629, on file in the office of the Clerk and Recorder of Lake County, Montana.

The proposed easement parallels the boundaries of our property and is approximately 100' or so from our garage. Any road constructed on the currently proposed easement route would be directly visible from our house and property as well, and our home would be visible from a road following the proposed route. When we purchased our property, the privacy and solitude it offered was of great importance to us, and that remains the case today. If a public access road were to be constructed on the easement as presently proposed, the solitude and privacy we currently enjoy would be significantly diminished and certainly would greatly lower our property values and affect our way of life here. In addition to the obvious disruption that would be caused by a road that's almost in our backyard, we have a concern for the dust and noise that will occur. Our well is directly down slope from the proposed easement and our water supply could be affected by traffic. Since the proposed public road is so close to our home and the visibility into our windows would be possible, we would have to seclude ourselves and thus be deprived of both light and view from that entire side of our home. We are also greatly concerned about possible trespass and especially the risk of increased criminal activity. The currently proposed easement location is apparently designed without any consideration for the residents and blindly follows a contour line on a map.

We object to the easement route as presently proposed. It is our understanding that an alternative route has been deemed feasible by Edward Hanson, the applicants road consultant, which would entirely eliminate the problems previously stated and would essentially allow the objectives of the applicant and DNRC without such serious affects to our property and us.

While we recognize that the State Trust Land is not ours and the roadway could be placed wherever the DNRC decides, we would hope that the needs of the residents would be the primary goal of any decision. We clearly understand the current policy of the State of Montana is to improve public access to state lands where possible, and certainly have no objection to that policy. However the location of that roadway

could be done to accomplish the goals and policy considerations but still not ruin the enjoyment of our property and the disruption to our lives.

The applicant has told us that they also do not wish to create any disruption to us and we realize the enormous benefit they will derive from your granting this easement in order to allow them to develop their private property. We also recognize that there will be substantial burdens to the DNRC for firefighting and other issues once this development occurs. We would hope that the objectives of providing this public access are worth the burdens that will be borne by both the DNRC and all the neighbors. Historically, when public access to this Trust section was available, there was a disproportionate use by hunters and other recreationists due to the extensive wildlife and the proximity to Kalispell. We believe that a mere reference that this easement exchange meets the states goals would be seriously understating both the benefits to the applicant and the effect on the DNRC; the state treasury and most of all, the adjoining property owners. We hope your office will give serious consideration to our concerns and suggestions, and a solution can be arrived at which will be acceptable to all parties concerned.

Sincerely,

Martin Miller and Juanita Landau

#6

Dear Mr. Poncin,

Re: Proposed Easement Exchange, Forrey Creek (Section 8, T25N, R20W).

Mr. Dan Schipper is the longtime owner of Tract #1 in Section 5 (Timberlake Ranches). Timberlake Ranches has been a rural residential development governed by established covenants since 1977.

The current road passes right by his home, and other interests currently have access rights over that road. The new proposed road would pass on the other side of his home, so that he will be surrounded by public traffic.

Since he is very dramatically and directly impacted by this proposal, he should have been the first party consulted and then presented with a comprehensive plan, not just pieces of what is necessary.

I intend to provide a separate response, but I do fully support his concerns. So do most of my neighbors.

Bob Lavin

Tract 7A Timberlake Ranches

#7

January 6, 2010

Greg Poncin

DNRC Kalispell Unit

655 Timberwolf Parkway, Suite 2

Kalispell, MT 59901

Mr. Poncin,

Please accept the following comments in favor of the proposed Forrey Creek Easement Exchange project.

We feel it is responsible land management policy to look for cooperative opportunities involving multiple partners that allow for well designed, coordinated, multiple use access plans. It appears that the proposal outline will resolve long standing access issues for private lands, School Trust lands and as a bonus will provide access to the general public.

We encourage you to proceed with the analysis of the project and hope to be kept informed of your progress.

Sincerely,

Paul R. McKenzie C.F.

Lands & Resource Manager



F. H. STOLTZE LAND & LUMBER COMPANY

Lumber Manufacturers

Box 1429 • Columbia Falls, Montana 59912
Phone (406) 892-7000 • FAX (406) 892-1612
E mail info@stoltzelumber.com
www.stoltzelumber.com

Established in 1912
Affiliations:

February 22, 2010

Greg Poncin
Department of Natural Resources
655 Timberwolf Parkway, Suite 2
Kalispell, MT. 59901



RE: Comments on Forrey Creek Easement Exchange

Greg:

Stoltze is in favor of this exchange. We just want to say that though the investment group is the applicant for the exchange, we are still the owner of record of Section 6 and we would need to review, approve, and sign all documents. All documents should state clearly that when the land transfers ownership then the easements would transfer with the property to the new owners.

Flathead Valley



Please call us if you have any questions and thank you for the opportunity to comment.

Sincerely,

Chris Damrow
Chris Damrow
Forester



TO SUBMIT WRITTEN COMMENTS
Forrey Creek Easement Exchange
Flathead County, Montana
February 22, 2010

As a convenience to the public, DNRC will accept written comments during this hearing. Comments can be written on this sheet, if desired. Please print your name and address below, and hand it to the Hearings Officer. Comments must be turned in by the end of the public hearing session on February 22, 2010.

Name: Mike Wilson

Address: PO Box 645 Lakeside MT 59922

E-mail: mike@timberlakelandworks.com

Comments: Property owner in Timberlake Ranches Subdivision just to the north of the existing Timberlake Ranches entrance. I support the easement exchange because it will help to reduce traffic (potential) through the existing timberlake subdivision - It will also improve public access to public land in the area. Currently public access is very limited and there is a great deal of land that could be used by the public for recreation within the appropriate guidelines/regulations (ie non-motorized etc)



*Montana Fish,
Wildlife & Parks*

490 North Meridian Road
Kalispell, MT 59901
(406) 752-5501
Fax: (406) 257-0349
Ref: JV02-10
January 13, 2010

Greg Poncin
Department of Natural Resources and Conservation
655 Timberwolf Parkway, Suite 2
Kalispell, MT 59901

Re: Proposed Easement Exchange, Forrey Creek

Dear Greg,

I have received your scoping letter concerning the proposed easement exchange in Forrey Creek and offer the following comments. The purpose of the exchange is to provide access to proposed housing developments on properties above the DNRC land. It would trade approximately two miles of access easement across public land for approximately 1/2 mile of access easement in two separate small lengths across private land.

It states in the scoping document that as part of the exchange the DNRC will get "...improved legal access to state land in the SW 1/4 of Section 18, ... and Section 36". After our telephone conversation of today I am uncertain of the legal status of the DNRC's access across Plum Creek land in Sections 1, 12, 7, and 18. Does the DNRC hold a legal access that is recorded on the plat across these sections? If not, then once they are sold for development the DNRC will not have that access. If the DNRC already has some type of legal access, is "improved" legal access necessary?

It should be made clear to the public that "legal" access is not "public" access. Legal access grants the DNRC access for resource management, but it does not provide public access. Also, there is no discussion in your scoping letter of any public benefit, monetary, access, or otherwise, of the proposed exchange. Indeed, the benefits of the exchange are to developers who propose to subdivide properties above the DNRC land. In the long run these subdivisions will most likely deny public access onto or across their property.

Moreover, such housing development will have permanent negative impacts on wildlife. Deer, elk, moose, bear, mountain lion, wolf, and a host of other game and nongame species use all of the area being discussed here - Sections 1, 6, 7, 8, 12, 18, and 36. Most of it is also big game winter range.

Please feel free to contact me if you have any questions.

Sincerely,


John Vore
Wildlife Biologist

February 5, 2010

To: Mr. Greg Poncin
Department of Natural Resources and Conservation
655 Timberwolf Parkway, Suite 2
Kalispell, MT 59901
Subject: Proposed Forrey Creek Easement - Comments
Ref: Your Letter Dated January 4, 2010

Dear Mr. Poncin:

We appreciate the opportunity to comment on the Proposed Forrey Creek Easement Exchange. Our property adjoins the eastern boundary of the DNRC land where the proposed easement is to be located. We are located next to William and Lone Savage. The property is currently occupied by tenants who enjoy and value the peaceful, natural surroundings. We will eventually occupy the property ourselves. The northwestern corner of our property is near the currently proposed path of the easement as it swings towards the west, after first coming from the north and its junction with Highway 93. Our property value, as well as the peaceful enjoyment of and views from the property, will be greatly lessened if the easement and road are located where currently proposed. Therefore, we object to the easement route as presently proposed, and request that an alternate route be established. Specifically, we request that the application be modified in accordance with the objections raised in our letter.

Any road constructed on the currently proposed easement route would be quite visible from our house and property, and our home and the homes of our immediate neighbors would be visible from a road following the proposed route. When we purchased our property, the most important aspect of our purchase was the serenity, privacy, and solitude it offered -- particularly by having all nature views. We especially looked for a property where the views would be all nature views out the windows since these views offer such a peaceful respite. If a public access road were to be constructed on the easement as presently proposed, we

believe that the solitude and privacy and nature currently enjoyed would be significantly lessened and therefore that our property value would also be significantly reduced as these factors are the main selling points of the property.

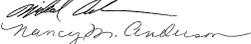
We are also very concerned about the proximity of hunters should the proposed route be implemented, not only for our loss of peace and privacy, but also for the well being of our three horses who will be located on the property. Other concerns include the extra dust and pollution that would be created by road activity near to homes, and potential criminal activity and trespass.

It is our understanding that two different workable switchback routes have been proposed and provided to the DNRC that would allow the road to go in but would route it away from our homes.

We urge you to please modify the proposed route in one of the two ways that have been presented to the DNRC so we can preserve our property values, peaceful surroundings, and privacy.

Thank you for your attention and consideration.

Very truly yours,



Michael and Nancy Anderson
home.nancy@gmail.com

Greg Porcin
Department of Natural Resources & Conservation
655 Timberwolf Parkway, Suite 2
Haltersville, Mt. 57901

1-18-10
2225 Dillen Road
Columbia Falls, Mt.
57912

Dear Mr. Porcin:

Please consider the following comments concerning the proposed Easement Exchange, Forey Creek.

- ① This easement will give much better access to State lands than the existing easement in two ways.
 - (a) The existing easement has several steep grades and the road is narrow in several places. The new location will be a much safer road and will not have as much erosion to the surface of the road.
 - (b) The existing easement was original built to service a development and remaining timberlands in sections 5 and 6. Use of this road by the public under today's standards were not planned for.
- ② Via this new easement public access to section 36 would be improved. Access to this section would not create conflicts with the existing landowners in the area.
- ③ This new access would provide greater opportunities to access other private timberlands in the area as long as those owners are agreeable.

This is a good proposal for both the State, the public, and the private landowner. Thank you for considering my comments.

Sincerely Yours,
Ronald Buenteleer

Lakeside, Montana
January 29, 2010

RECEIVED
FEB 04 2010
C.R.M. WILL LARON OFFICE

To: Mr. Greg Poncin
Department of Natural Resources and Conservation
655 Timberwolf Parkway, Suite 2
Kalispell, MT 59901

Subject: Proposed Forrey Creek Easement - Comments

Ref: Your Letter Dated January 4, 2010

Dear Mr. Poncin:

Thank you for the opportunity to comment on the Proposed Forrey Creek Easement Exchange. Our property adjoins the eastern boundary of the DNRC land parcel in which the proposed easement is to be located. The legal description of our property is Tract E Lot 2 Section 9 Township 25 North Range 20 West. The northwestern corner of our property is near where the currently proposed path of the easement swings towards the west, after first coming from the north and its junction with Highway 93.

The proposed easement parallels the boundaries of two residential properties immediately to our north and is only a few hundred feet from those properties. Any road constructed on the currently proposed easement route would be quite visible from our house and property as well, and our home as well as the homes of our immediate neighbors to the south would be visible from a road following the presently proposed route. When we purchased our property, the privacy and solitude it offered was of great importance to us, and that remains the case today. If a public access road were to be constructed on the easement as presently proposed, we believe that the solitude and privacy we currently enjoy would be significantly diminished. Our neighbors to the north will be affected the most, but our neighbors to the south will feel the effects as well. We object to the easement route as presently proposed, and request that an alternate route be established.

The currently proposed route has been flagged, so it has been possible for us to do a walk through and look into possible alternate routes. It is obvious that from a strictly topographical perspective, the proposed route makes sense. However this route does not take into account the interests of the residents of the properties adjoining the eastern boundary of the DNRC land.

We believe alternative routes might be feasible that would mitigate our concerns, and

request that the following suggested alternatives be looked into by the appropriate parties. The alternates we propose would involve either (1) rerouting of the road in the vicinity of the north boundary of DNCR land, such that the easement will run along the north and west sides of the ridge, rather than along the east and south sides of the ridge as is presently the case, or (2) put in place a switchback for the purpose of gaining sufficient elevation to allow the roadway to cross over to the west side of the ridge line and beyond the view of our neighbors and ourselves. We are aware that the allowable grade for a new roadway places some limitations on what is possible, but it appears that with a switchback, the road could follow a route we would have no objection to, while at the same time complying with rules or regulations regarding maximum allowable grade. We request that action be taken to determine if either of these suggestions would be feasible.

Regarding opening public access to the DNRC parcel, we are aware the the current policy of the State of Montana is to improve public access to state lands where possible, and certainly have no objection to that policy. We do have a concern however, in that easy public access to the DNRC land adjoining our property will almost certainly increase the amount of hunting in the immediate area. It is our understanding that shooting is prohibited on DNRC lands within 1/4 mile of any residential area. If a roadway is constructed, we would like to see appropriate signs posted, alerting hunters that there are private residences in the vicinity, and indicating the general area in which shooting is not allowed.

We hope your office will give serious consideration to our concerns and suggestions, and a solution can be arrived at which will be acceptable to all parties concerned.

Sincerely,



William and Lone Savage

39863 Highway 93
PO Box 697
Lakeside, Montana 59922-0697

Tel: (406) 844 0992
e-mail: william168@centurytel.net

#14

February 22, 2010

Mr. Greg Poncin
Department of Natural Resources and Conservation
655 Timberwolf Parkway, Suite 2
Kalispell, MT 59901

Subject: Proposed Forrey Creek Easement

Dear Mr. Poncin,

I appreciate the opportunity presented to have a public hearing in Lake County regarding the above easement exchange proposal.

I have reviewed the RECIPROCAL ACCESS AND EASEMENT EXCHANGE POLICY and all its appendixes. Although there is no mention of the order of events concerning this particular issue, it seems that having a public hearing without having the formal application materials to comment on, is putting the cart before the horse. The Application Contents and its required ten listed items, along with its addressing the seven criteria referred to in the Land Board Exchange Policy, would be critical to the public's understanding and review of this proposal.

There are numerous items of interest that would be contained in such an application, including, but not limited to the fact that the easement to be granted the State is owned by a different entity than the owner of the option upon which property the road users association is supposed to be formed. I can clearly see various scenarios where the financial failure of the proposed development would put payment for the proposed roadway maintenance in jeopardy and, since the proposed roadway is adjoining my property, the possible implications for erosion or pollution that could occur. There are many issues regarding the benefits to the applicant that only a formal proposal can address and details as to the "ownership to which they are acquiring access" would be of interest since (based on verbal discussion) the proposed roadway doesn't exit the Trust Land upon any property under option. I'm doing mental gymnastics in trying to clarify all these issues and

the only way to properly approach this is to have the formal application presented for public review.

I'm respectfully requesting that the sequence of proceeding with the public portion of this proposal be structured so that an application, which complies with the RECIPROCAL ACCESS AND EASEMENT EXCHANGE POLICY and all its appendixes, be made available for review prior to any further public hearings. It is my understanding that only the public's formal comments made at such a public hearing will be transmitted to the State Land Board and it is therefore critical that the information to be gleaned from the formal application be available prior to making such comments. If this is not the DNRC's policy, please let me know that.

Very truly yours,



Martin Miller
P.O. Box 383
18185 U.S. Hwy. 93
Lakeside, MT. 59922

Tele. 406-844-3113
e-mail backacre@centurytel.net

#15

Poncin, Greg

From: Jenny Leineke [mailto:jleineke@yahoo.com]
Sent: Sunday, January 10, 2010 12:49 PM
To: Poncin, Greg
Subject: Forrey creek easement

I am opposed on this easement exchange,for a few reasons.More access would destroy the resources that have already been butchered.

1

#16

Poncin, Greg

From: phil@philsauer.com
Sent: Monday, January 04, 2010 12:55 PM
To: Poncin, Greg
Subject: Forrey Easement

Montana DNRC
Greg Poncin

We live just south of the State Park and I frequent the Forrey basin often. In regards to the Forrey Creek Easement: I believe that is a great idea. There is some nice recreational land in section 8 and I think the public should have access. I am also hoping Plumb Creek will cooperated by allowing motorized access to the main road as they have always done. Many of the branch roads are non-motorized and that is OK.

Yes I think that is a good proposal.

Phil Sauer, 406-871-0319, phil@philsauer.com

#17

-----Original Message-----

From: Robert J. Lavin
Sent: Friday, February 19, 2010 10:02 AM
To: Poncin, Greg
Cc: 'Sue Shannon'
Subject: Proposed TR Access Exchange Agreement

TO: Department Of Natural Resources & Conservation, Kalispell

ATTN: Mr. Greg Poncin, DNRC, Kalispell
INFO: Ms Sue Shannon, Lake County Planning, Polson

FROM: Robert J. Lavin, Section 5 (Timberlake Ranches), Lake County

SUBJ: Proposed Easement Exchange, Forrey Creek, Lake County

REF: DNRC memos 22 December 2009 and 20 January 2010, re Forrey Creek easement exchange.

1. I have no objections to those portions of the proposed easement exchange that do not involve Section 5 (Timberlake Ranches) of T25N/R20W. Since the proposal involves a significantly improved road through Section 8 at the expense of a third party commercial entity, there should be no logical reason why any current holder of access easements through Section 8 would object to the proposal. It essentially re-routes those easements over a much better road.

2. With regard to Section 5, however, the proposal envisions opening up a new access road from the highway through Section 5 (Tract 15) to Section 8 (State Lands). The new road through Section 5 would also be a desired improvement over the existing road. However, Section 5 is where I and others have long maintained our homes; we thus have a very significant and direct interest in maintaining the value of our property. Our concerns with this proposal thus involve through traffic and utilities to all points beyond arising from (1) State Lands, (2) Plum Creek, (3) Stoltze Lumber, (4) the public, (5) future residential development(s) under the auspices of "New Mountain Heights II", and (6) all other future parties, developments and contingencies.

a. Such a new access road through Section 5 would require the signed approvals of two-thirds of all current Section 5 (Timberlake Ranches) landowners in accordance with long-established and legally filed covenants governing Section 5. Based on past experience, this is a very difficult and time-consuming process that must meet exacting legal requirements.

b. I am opposed to any new access road through Section 5 (Track 15) that does not at the same time permanently close the existing access road ("South B-N Road" or "Timberlake Road") to ALL public and commercial through traffic. Furthermore, I will actively campaign to have other Section 5 landowners also withhold their approval of a new access road unless all currently existing access easements are permanently terminated at the same

time.

c. Should agreements be reached that succeed in permanently ending all currently existing access easements through Section 5 in exchange for new access agreements over the proposed new road, the new road must meet certain engineering minimum requirements, as follows.

1. The existing road ("South B-N Road" or "Timberlake Road") should be landscaped out of existence for several hundred feet on both sides of the border, and the border gate should be removed and replaced with cattle-proof fencing.

2. The new road in Section 5 (Track 15) should be designed and engineered so as to minimize view and noise from Tract 1, and specifically from the Tract 1 (Schipper) residence.

3. The new road's highway entrance in Section 5 should be designed and engineered so as to facilitate easy and safe highway ingress and egress AND safe and easy division of traffic between that bound for Section 8 and beyond and that bound for Timberlake Ranches via White Boulevard. Ideally an automatic gate should be installed across White Boulevard to discourage the entry of public and commercial through traffic to Timberlake Ranches.

4. The gravel pit mining operation in Section 5 (track 15), which the new road will traverse, should be permanently ended and its landscaping be rendered aesthetically attractive no later than a specific legally binding date established now. Despite state approval, this ugly and noisy mining operation has been in violation of established covenants since 1977.

3. I have previously communicated these views to representatives of the proponent party ("New Mountain Heights II"). In short, a piecemeal approach to a new access route is unacceptable; any proposal should be a compreh

ensive agreement that addresses all involved parties and their concerns at the same time. I see no logical reason why this should not be possible.

Sincerely,

Robert J. Lavin
US Regular Army (ret)
17620 Benchmark Drive
P.O. Box 265
Lakeside, MT 59922

#18

Dan H. Schipper

Greg-Attached are my concerns. Why is this being rushed through now in mid winter and without notifying me? I have been gone during the winter for the past 20 years. There should be a public hearing on this matter after 1 May.

I am in Mexico now and will be out of the USA almost entirely until the end of March after which I will be in Arizona.

I will return to Montana after 1 May.

Dan H. Schipper

--- On Mon, 1/18/10, Robert J. Lavin <rjlavin@centurytel.net> wrote:

From: Robert J. Lavin
Subject: RE: New Access Involving Timberlake Ranches
To: "Dan Schipper"
Date: Monday, January 18, 2010, 4:40 PM

From: Dan Schipper [mailto:waldsee2001@yahoo.com]
Sent: Monday, January 18, 2010 4:29 PM
To: Robert J. Lavin
Subject: RE: New Access Involving Timberlake Ranches

Bob-Thanks for exchange info. I received nothing about it from DNRC. I thought DNRC had previously agreed to close

general public access through Timberlake to Section 8. Isn't that what the notice at the gate says? What's going on ?

As the landowner most affected, why wasn't I notified about this exchange and change in access? I thought we had made it

clear to DNRC that we did not want access to State lands through Timberlake property except for logging.

That was the purpose for installing the gate on old BN Road . There needs to be a public hearing after 1 May when

all concerned residents of Timberlake Ranch are in residence. Why is this being done in the middle of winter ?

Please pass on my concerns to the appropriate person at DNRC and to Hoker. Than ks, Dan ---

MINUTES-PUBLIC HEARING FEB. 2, 2010

of the Public Hearing conducted by the Department of Natural Resources and Conservation (DNRC) and held on Monday, February 22, 2010 at 6:00 p.m. in the Lakeside Community Chapel in Lakeside, Montana in order to receive public comment on the proposed Forrey Creek easement exchange. The public hearing for the proposed Forrey Creek Easement Exchange was called to order at 6:00 p.m. on Monday, February 22, 2010. Present were DNRC personnel Greg Poncin (Kalispell Unit Manager), Anne Shaw Moran (Kalispell Unit Planner), and Norm Kuennen (Northwest Land Office Senior Right of Way Specialist). Also present were: Mike Wilson, Jaunita Landau, Martin Miller, Jay Hoker, William Savage, Lone Savage, Jim Kuhlman, Chris Damrow, Steve Rosso, Arla Rosso, Sue Shannon, Joel Nelson, Larry Shetler, Flo Shetler, and David Fortenberry.

Poncin opened the session with a reminder to sign-in and introductions of DNRC personnel, as well as the proponents of the project (Hoker, Hanson, and Kuhlman. Poncin noted that he would review how Trust lands are managed in Montana, entertain questions on the project and outline its general terms, and then initiate the formal hearing process.

Poncin reviewed the Trust land Mission Statement ("Manage the State of Montana's trust land resources to produce revenues for the trust beneficiaries while considering environmental factors and

protecting the future income-generating capacity of the land.”). He noted that Montana owns 5.2 million acres of School Trust lands across the State, and the parcel under discussion this evening is one of those. The beneficiary is the School of Mines (Montana Tech out of Butte). DNRC’s interest is generating and protecting their revenue on their behalf.

Poncin then reviewed the proposal at hand. In 2008, New Mountain Heights came to DNRC with a proposal to do an easement exchange involving them granting to DNRC a new access into Section 8, they would grant DNRC all lawful purposes, with rights in the name of the public, 60’ to a county standard, and the same in the southwest corner of section 6 (quarter mile on each end, totaling ½ mile). DNRC would in turn grant the same on the road that follows the existing road except the east end (which segment is yet to be determined). It leaves the existing road, and would involve new construction, in the northwest portion, and then would tie into the existing road known locally as the South BN Road. Also important to know in this proposal is that since there would be rights in the name of the public, there would be legal public motorized access into Section 8, and DNRC would contemplate possibly two gates to prevent motorized traffic going into Plum Creek and/or smaller private holdings. Poncin then reviewed the difference between what is currently in place (resource management only, no rights for the public, a lesser width than the proposed 60’).

Poncin then opened the session to question and answers, and addressed questions pertaining to related land ownership, which portions of the existing road would be used for this access, the status of consent from the Timberlake Homeowners’ Association, and the criteria for the land exchange hearing process. Poncin also clarified that this hearing is part of the easement exchange process, not specifically part of the MEPA (“Montana Environmental Policy Act”) activities associated with this project, although comments that have been received to date will be useful to help develop the issues that will be analyzed through the MEPA process. He further clarified that the question and answer portion of the meeting (before testimony is given) is not part of the formal record. He added that those present must submit their comments either in writing on the forms provided here tonight, or verbally testify on the recorder to be considered part of the hearing.

There being no further questions, Poncin moved directly to the public hearing segment of the agenda at 6:24 p.m. and per the hearing requirement read the following text into the recorder:

“This part of the hearing is for formal comment, not a question and answer period. This is the time and the place to give your comment. They may be either written or verbal. Those wishing to speak please come forward and complete the sign in form at the front table then step over to the microphone so that your comments may be recorded, and you’ll note that the sign-in form is right here in front of this chair.

“This is the time set for the public hearing in the matter of the Forrey Creek Easement Exchange. My name is Greg Poncin, I am the Kalispell Unit Manager of the Montana Department of Natural Resources and Conservation and I am acting as the Hearings Officer for these proceedings. Before I proceed further, I want the record to reflect that we have just finished a public question and answer session. Persons were advised at that time and I now repeat that the question and answer period was not recorded. Comments made at that time were not recorded and are not part of the official record of this proceeding. Persons who wish to make comments for agency consideration must do so in this formal hearing. Those wishing their comments to be a part of the official record must now repeat their statements, if they made any prior and want them actually recorded.

“The purpose of this hearing is to allow any person to submit data, views, or arguments either orally or in writing on the Proposed DNRC Forrey Creek Easement Exchange. Written comments may be submitted on the forms provided here tonight, and those are written forms at the back of the room, on the small podium there. Comments will be accepted until the close of this meeting. Any person who wishes to submit written testimony, but does not wish to testify orally may do so by placing your written comments on this front table before you leave.

“I will now receive oral testimony on the proposed Forrey Creek Easement Exchange. Please begin your testimony by stating your name, physical address, and who you are representing.

“At this time persons testifying may not ask questions or be asked questions by anyone but me. DNRC personnel will remain for an informal discussion for a short while after the close of the formal hearing. If you have any more questions, or if you would like to talk to a specific person, you may do so then. If persons testifying have reproduced their remarks in writing, they may submit copies to me if so inclined.

“We will allow each person wishing to do so their chance to comment. Once everyone who wishes to speak has had their turn, anyone wishing to testify again will be allowed that opportunity.

“We will now open the hearing for anyone wishing to testify. Comments will be accepted from Opponents first, then Proponents. Neutral parties or persons not sure of whether or not they are an Opponent or Proponent, but who wish to make a comment, will be taken last.

“Again, please come forward to this lectern, you’ll see the recorder right here, and speak clearly into the microphone, and remember if you would, please state your name, address, and who you are representing for the record.

“Are there any opponents that would like to speak?”

The following opponents approached the podium and offered the comments below:

Martin Miller: “Physical address or the postal box?”

Poncin: “Physical address. Did I call for opponents first, then proponents.”

Miller: “My name is Martin Miller, the address is 18185 US Highway 93, Lakeside, and I’m representing myself as an owner. The current map configuration of the property of the proposed easement has the roadway coming about 100 feet from the edge of our property and it is directly visible from our house—it’s quite close—we’re concerned about a whole number of issues, from which I have written my original comments, including potential dust, noise, pollution, because we have a

wellhead downslope from the roadway, the certainly diminishment our property values, and most importantly the loss of privacy and the security risks that a whole bunch of cars right on the edge of my property are going to present to us. That's a given and that's a physical issue. Were the roadway to be moved to another location, all those objections would be gone. Unfortunately, with the current configuration, there's a whole bunch of other issues are now raised, and that is as follows: it appears that the formal proposal has not yet been written out for this, in accordance with the reciprocal access and exchange policy of the DNRC, therefore I have to presume that it will have answers to most of these questions, but I'm going to raise some:

“The first thing it indicates is that it's a requirement for the description of the cooperator, and I assume that that's the applicant. Is that correct? “The cooperator's ownership to which they are acquiring access. They don't have any ownership. Am I correct in assuming that none of this will go through unless the ownership is acquired by the applicant?”

Poncin: “I don't know if that's fair to say that or not at this time.”

Miller: “Okay. Again, I'm just repeating what your rules require. It says the cooperator's ownership. The cooperator doesn't have it now, and so I'm not sure how that fits in to your formal application form. It would be very helpful if we could see that form, for... with some additional comments at that time. That is a big concern. In addition, I understand that there has to be road user's association that is formed, and again if the option is not exercised, there is no one to maintain that road, all the burden is going fall upon the DNRC. And I don't know how you can justify the cost factors on that, you indicated that, I understand that, well you said that you're not sure if this will go through prior to or subsequent to, the exercise of the option by the applicant. It's still up in the air?”

Poncin: “Let me...I'm coming over to the microphone because I want to remind you that this is a hearing, and not a question and answer session.”

Miller: “Okay. . . all right...well...A concern I have is that the road users' association would never be formed and therefore that the cost of maintaining any roadway that's put through is going to fall on the DNRC and the taxpayers.

“In addition to that, it's my understanding, since this is a hearing on the exchange policy, that a public hearing is supposed to be held in the county in which the state land is located, but this is not in the county in which the state land is located. I don't know how that gets resolved. But under the requirements of Montana Code 77-22-04 it appears that.. we're not in Lake County here, so I don't know how this hearing is. . .”

Poncin: “And we are aware of that, and I will answer at the end if you don't mind.”

Miller: “Okay. Essentially, those are my comments, and hopefully the roadway will be in fact if I is approved, moved to an area that does not affect myself or all of the

neighbors to the south of me, because they all have exactly the same issue. Thank you.”

Poncin: “Are there any other opponents that would like to speak? Please do. You might want to... yes sign in right here.”

William Savage: “My name’s William Savage and I’m a neighbor of Marty Miller’s to the south. My physical address is 39863 Highway 93, which is about 20,000 numbers higher than Marty’s. That’s...Lake County did that to us, I don’t know why but... I’m not going to .. I’m basically in agreement with what Marty said, and my main reason for just wanting to address you now is I have submitted my comments to Mr. Poncin, and my only concern was that those comments of course be taken into account and someplace be put on the record, but we are also opposed to the present proposed path of the road, not to the road itself, and whereas it goes right behind Marty Miller’s property, it just comes to the edge of us it kind of teases us and then heads out west, but it is still closer than we would like it, so we we’re hoping that perhaps an alternate route that would get the road over the other side of the ridge behind our property could be found so that we would maintain the privacy that we have. And I’m pretty certain the neighbors to my south feel the same way. The further south you go, the less the problem is, but we’d rather not see the road visible from our property. And that’s all I have, thank you.”

David Fortenberry: “My name is David Fortenberry. I live at 605 7th Avenue East, Kalispell. I’m a landowner in Timberlake Ranches. I would like to reiterate what the last two speakers have presented as [*salient? word not clear*] points, that being the destruction of privacy, the intrusion of views, and the possible degradation of land values with this proposed road or any other road going through Timberlake Ranches. Mountain Heights has taken it upon themselves to put their will upon their neighbors, and it is unfortunate that it’s worked out this way. And I think that any destruction of property, loss of property value, loss of intrinsic privacy of property should be accounted for, and also reimbursed by, New Mountain Heights.”

Poncin: “Any other opponents wishing to speak?” [*pause.*]

Poncin: “Seeing none, are there any proponents that would wish to speak?” [*pause.*]

Poncin: “Okay, seeing no proponents, are there any others that would wish to speak?”

Larry Shetler: “My name is Larry Shetler, I live at Timberlake Ranches. I’m remaining neutral for relationship’s sake, since my neighbor is the guy that’s proposing this. There’s a perfectly good road that goes through there right now, and I see no reason to change that. There’s one of my comments. And I would like to be recorded that I think that should be called an easement purchase, seeing as how there will be money involved, you’ve informed me of that, instead of an easement exchange. Maybe we can get a little bit of that money as landowners nearby. But, anyway. . . that’s all I have.”

Poncin: “Okay, is there anyone else wishing to testify? *[pause.]* Seeing none, this hearing is now closed. Thank you.”

The public hearing segment of the meeting was thus closed at 6:40 p.m.

Poncin added that DNRC staff would be available for additional questions if those present so desired. He added that typically, the hearing in such situations is held within the County where the exchange is to occur, however DNRC felt it would be most convenient for potential participants to attend locally. Another hearing will be held in Lake County (likely Polson), and there will be another opportunity to speak at that hearing. DNRC will apprise participants of when and where that will be.

Poncin added that one additional clarification is that an exchange is an equal value for an equal value. In this case, what would be traded to the proponent is worth arguably more than what DNRC is receiving, so that as an additional detail to that, they will pay us an offset amount of money, and build the road at no cost to DNRC. That’s the valuation equalization part of the exchange. If you would like to catch any of us, we would love

6:45 p.m. meeting adjourned.

Respectfully submitted,
Anne Moran, Planner
DNRC-KU

Attachments submitted at hearing (following):

McKenzie/Stoltze Letter
Shetler written comment

Attachments

February 22, 2010 Proposed Forrey Creek Easement Exchange Hearing

Wilson written comment:

TO SUBMIT WRITTEN COMMENTS

Forrey Creek Easement Exchange
Flathead County, Montana
February 22, 2010

As a convenience to the public, DNRC will accept written comments during this hearing. Comments can be written on this sheet, if desired. Please print your name and address below, and hand it to the Hearings Officer. Comments must be turned in by the end of the public hearing session on February 22, 2010.

Name: Mike Wilson

Address: PO Box 645 Lakeside MT 59922

E-mail: mike@timberlakelandworks.com

Comments: Property owner in Timberlake Ranches Subdivision just to
the north of the existing Timberlake Ranches entrance. I
support the easement exchange because it will help to
reduce traffic (potential) through the existing timberlake
subdivision - It will also improve public access to
public land in the area. Currently public access is very
limited and there is a great deal of land that
could be used by the public for recreation within
the appropriate guidelines/regulations (ie non-motorized etc)

Damrow/Stoltze letter:



F. H. STOLTZE LAND & LUMBER COMPANY

Lumber Manufacturers

Box 1429 • Columbia Falls, Montana 59912
Phone (406) 892-7000 • FAX (406) 892-1612
E mail info@stoltzelumber.com
www.stoltzelumber.com

Established in 1912
Affiliations:

February 22, 2010

Greg Poncin
Department of Natural Resources
655 Timberwolf Parkway, Suite 2
Kalispell, MT. 59901



Charter Member

RE: Comments on Forrey Creek Easement Exchange

Greg:

Stoltze is in favor of this exchange. We just want to say that though the investment group is the applicant for the exchange, we are still the owner of record of Section 6 and we would need to review, approve, and sign all documents. All documents should state clearly that when the land transfers ownership then the easements would transfer with the property to the new owners.

Please call us if you have any questions and thank you for the opportunity to comment.

Sincerely,

Chris Damrow
Forester

Flathead Valley



Member Since 1960

MINUTES-PUBLIC HEARING JULY 7, 2010

MINUTES

of the Public Hearing conducted by the Department of Natural Resources and Conservation (DNRC) and held on Wednesday, July 7 at the Rollins Community Clubhouse in Rollins, Montana in order to receive public comment on the proposed Forrey Creek easement exchange. The public hearing for the proposed Forrey Creek Easement Exchange was called to order at 5:04 p.m. on Wednesday, July 07, 2010. Present were DNRC personnel Greg Poncin (Kalispell Unit Manager), Anne Shaw Moran (Kalispell Unit Planner), and Norm Kuennen (Northwest Land Office Senior Right of Way Specialist). Also present were: Jay Hoker, Sue Hoker, Jaunita Landau, Martin Miller, Paul McKenzie, Dan Schipper, Bill Fischer, Steve Rosso, Arla Ross, William Savage, Love Savage, Scott Lovett, Sonia Lovett, A.D. Rovig, Maureen Rovig, Edward A. Hanson, Annie Lou Prezioso, Mike Wilson, and Bob Smith.

Poncin opened the session by noting that he would review the project briefly before the public hearing, and with a reminder to sign-in and introductions of DNRC personnel. He noted that the public hearing portion of the meeting will be recorded, however the rest of the meeting is not recorded, so recommended that if anyone wishes to have comments recorded, they should be repeated during the hearing part of it. He also noted that comments made at prior meetings are part of the record, and that DNRC will be taking comments on the draft Environmental Assessment for this project, and encouraged all present to review it (either online or obtaining a hard copy from DNRC). Comments on that will be taken until July 21.

Discussion ensued on the proposed easement exchange, with an informal question and answer period following. Poncin also reviewed the criteria for easement exchanges and the fact that the State Land Board is the ultimate decision-making authority on this type of transaction. He also reviewed the process for moving through the public comment period and the way this project would proceed to the Land Board. Kuennen also commented on the status of rights pertaining to both the status quo and this proposal, what DNRC's general policy on obtaining rights is, and DNRC's management authority on specific types of rights. Further discussion followed on the merits of particular access routes.

There being no further questions, Poncin moved directly to the public hearing segment of the agenda at 5:44 p.m. and per the hearing requirement read the following text:

“This part of the hearing is for formal comment, not a question and answer period. This is the time and the place to give your comment. They may be either written or verbal. Those wishing to speak please come forward and complete the sign-in form at the front table then step over to the microphone so that your comments may be recorded, and you'll note that the sign-in form is right here in front of this chair.

“This is the time set for the public hearing in the matter of the Forrey Creek Easement Exchange. My name is Greg Poncin, I am the Kalispell Unit Manager of the Montana Department of Natural Resources and

Conservation and I am acting as the Hearings Officer for these proceedings. Before I proceed further, I want the record to reflect that we have just finished a public question and answer session. Persons were advised at that time and I now repeat that the question and answer period was not recorded. Comments made at that time were not recorded and are not part of the official record of this proceeding. Persons who wish to make comments for agency consideration must do so in this formal hearing. Those wishing their comments to be a part of the official record must now repeat their statements, if they made any prior and want them actually recorded.

“The purpose of this hearing is to allow any person to submit data, views, or arguments either orally or in writing on the Proposed DNRC Forrey Creek Easement Exchange. Written comments may be submitted on the forms provided here tonight, and those are written forms at the back of the room, on the small podium there. Comments will be accepted until the close of this meeting. Any person who wishes to submit written testimony, but does not wish to testify orally may do so by placing your written comments on this front table before you leave.

“I will now receive oral testimony on the proposed Forrey Creek Easement Exchange. Please begin your testimony by stating your name, physical address, and who you are representing.

“At this time persons testifying may not ask questions or be asked questions by anyone but me. DNRC personnel will remain for an informal discussion for a short while after the close of the formal hearing. If you have any more questions, or if you would like to talk to a specific person, you may do so then. If persons testifying have reproduced their remarks in writing, they may submit copies to me if so inclined.

“We will allow each person wishing to do so their chance to comment. Once everyone who wishes to speak has had their turn, anyone wishing to testify again will be allowed that opportunity. Poncin requested that everyone limit their comments to approximately 3 minutes so that everyone has a chance to testify.

“We will now open the hearing for anyone wishing to testify. Comments will be accepted from Opponents first, then Proponents. Neutral parties or persons not sure of whether or not they are an Opponent or Proponent, but who wish to make a comment, will be taken last.

“Again, please come forward to the podium here, and please remember to speak clearly into the microphone, and remember if you would, please state your name, address, and who you are representing for the record.

“Are there any opponents that would like to speak?”

The following opponents approached the podium and offered their comments as follows:

Martin Miller: “My name is Martin Miller and I live at 18185 Hwy 93. I would like to first state that philosophically, I am not opposed to this development and appreciate the applicant's need to access the Stoltze property. My issues are with the location of the proposed roadway.

“The proposed easement location will probably impact my property and my enjoyment and use of it more than any other nearby parcel. A photo of my property was taken at some point from the proposed easement location and included in the documents the

DNRC was kind enough to provide to me. However, subsequent to the original estimated roadway location, markers were placed which came even closer to my property [*Mr. Miller's Photo #1 was accepted into the record*]. I would like to submit this photo taken while standing alongside one of those markers. This photo does not have any zoom factor applied to it and correctly depicts the view from the proposed roadway. I would appreciate the photo being accepted into the DNRC records of this project.

“I have previously submitted a comment letter, which raised a number of issues affecting me. There are others that were not included in those comments. Some of them are:

1. One of the stated objectives is to allow logging trucks on the proposed roadway. Those will create additional noise that I didn't originally anticipate.
2. I'm concerned about the fact that snow from plowing will have to be dumped on my side oldie roadway and could dislodge due to the steep slope.
3. There will have to be culverts to drain the ditch on the uphill side of the road. If those culverts exit unchecked and drain down the hill toward my property, there will be continued erosion of the hill above me.
4. The paving of the proposed roadway will mean that hydrocarbons from the vehicles will inevitably run off in the direction of my house and my well which is located directly downhill.
5. Lights from vehicles at night will be an additional annoyance I did not previously discuss.

“During the course of this project I have requested and received the contents of the DNRC files. However, I have, on numerous occasions requested a copy of a formal application. I believe that Montana Code Annotated section 77-2-102 requires such an application to be submitted to the DNRC. In addition, substantial

other information is required by' the Reciprocal Access and Easement Exchange Policy effective Sept. 18, 2006. The DNRC has taken the position that a letter from the applicant's roadway consultant dated Oct. 14, 2008 suffices as that application. I respectfully disagree and wish to show just one aspect of failing to include the required information in any document available to the public prior to this hearing.

"Because of the lack of information, I must make certain assumptions about the applicant. I may be wrong due to this, but I submit that most likely the property to be benefited is the Stoltze section to the west of the property owned by NEW MOUNTAIN HEIGHTS, LLC which is a Texas entity registered to do business in Montana on 11/1/2007. I also believe that property is the subject of an option to purchase by that entity.

"However, the easement property being granted to the state through the quarry area is not owned by that entity. It is owned by a different LLC called NEW MOUNTAIN HEIGHTS II, LLC. That is also a Texas entity registered to do business in Montana on 5/18/2009. These two entities have different registered agents. It would appear as if the benefited entity holding the option, would have no detriment whatsoever since they own nothing they can give the state in exchange for the easement grant. Conversely, the entity owning the quarry area, will be receiving nothing in exchange as they can't derive benefit from the exchange. I believe the calculations of cost and benefits fail to take this issue into consideration.

"I would like to address a couple issues in the Draft Environmental Assessment.

1. It would appear that section 11-5 of the assessment requires discussing both surface and groundwater issues. While surface water is mentioned, no groundwater issue such as my well is addressed.
2. Section 11-9 of the assessment clearly indicates that no impact on Grizzly bear would occur and states that the closest Grizzly documented was 10 miles west. It's apparent that the recently trapped Grizzly about a mile from the proposed easement, indicates that there is in fact Grizzly habitat in the area. I would also like to point out that the environmental assessment glosses over the impact on other wildlife in the area, however the letter dated Jan. 13, 2010 from John Vore, the wildlife biologist with Montana Fish Wildlife & Parks states that development within all of the area being discussed will have "permanent negative impacts on wildlife. Deer, elk, moose, bear, mountain lion, wolf and host of other game and nongame species use all of the area being discussed here. Most of it is also big game winter range". In spite of this analysis, the Draft Assessment states that this is not a winter range for Elk or Moose.

"I have a concern that I have experienced many times before in my law practice and is especially obvious in today's economic climate. Notwithstanding the duty of the applicant to impose a roadway maintenance covenant on the development parcel, there is always a substantial risk that the developer cannot sell the property and will become insolvent. In such case, there is simply no money to maintain the roadway and the state

will have to assume that obligation. While I have no suggestions to solve this potential problem, my experience indicates that it is a frequent occurrence.

“ I have various proposals to alleviate the negatives this roadway would cause to my neighbors and myself.

1. The most obvious solution is to find a way to connect with the existing roadway at some point before reaching our property.
2. If that isn't feasible, it should be possible to increase the grade occasionally to have this roadway reach the ridge above my property before the road becomes visible from my house. While I realize that may require lowered speed limits at times due to the grade and justifying the additional grade to the county, it should be able to be done. This road has length of approximately 1/2 mile from its start to where the picture I submitted was taken. Somewhere along that distance, there should be some opportunity to allow the grade to be increased. I have a photo I would like to submit that was taken from the exact spot where the house photo was taken. [*Mr. Miller's photo #2 was accepted into the record*]. I simply turned in the opposite direction and took the picture. I would estimate that the ridge above the current location is between 25 and 30 feet in height. By increasing the average grade even one percent over 1/2 mile distance you can gain over 26 feet in height. On the other side of that ridge, the slope flattens out considerably. A roadway placed there would, for the most part, be out of sight from my property and alleviate most of the negatives created by its current location.
3. The third alternative would be to prohibit public access. While I realize that the applicant used this as a point of benefit when they approached this issue and that the state policies favor this, there are so many negatives associated with the public recreating on this land so close to the existing and proposed developments, that I would hope this possibility could be considered.
4. Lastly, if all the other options are unavailable, I would request that at all points where the proposed roadway becomes visible to myself or my neighbors, that berming or screening of some sort be provided to maintain the privacy, solitude and lifestyle we currently have.”

[Please see photos 1 and 2 as attached to this record.]

Dan Schipper: “I am Dan Schipper, and I own tract 1 in Timberlake Ranch, P.O. Box 714, Lakeside, 59922.

[Pointing to map] “This is my house right here; this is the proposed new road, this is the existing south BN Road. If this exchange is allowed to go ahead without Plum Creek vacating the existing the existing south BN Road, then I have traffic on both sides of my property. That would result in logging trucks on the west side of my property and public traffic on the east side and that's not acceptable. I'm not opposed to the new road as long as the old road is vacated and some of the residents of Timberlake Ranch have been raising this issue for the last six months and that Plum Creek has to be involved and that they need to give up their rights, as I said I have nothing in writing, but I guess historically exists to using South BN road. So I'm not opposed to the new road but I'm

opposed to having roads on both sides of my property. And I'm also opposed to having public motorized access to Section 8. Bill talked of the problems we've had historically with squatters, hunters, people abusing the use of that. Not in favor of the paved road on the new road for the same reason we didn't want the old road paved, in that the paved road just encourages more traffic. Again I'm not opposed to the new road as long as the old road is vacated, and we've been raising the issue for the last six months. Thank you."

Bill Fischer: "I'm Bill Fischer, 18795 Hwy 93, Lakeside. I'm representing myself and members of my family, and my objection is not necessarily with the road, it's the location and with the fact of it becoming open public road so that it's on the record I'll restate my comments from earlier. I've lived there pretty much my entire life and historically when that road was open the frequency of issues concerning public safety or security was dramatically greater than what it currently is with the road closed. On our property we had constant issues with people trespassing, cutting our fences, bullet holes in vehicles, those were all things that happened when that road was opened. And there was because of its proximity to Kalispell it was one of the favorite party sites for the younger generation because you've got a paved highway, you get there in 20 minutes, have your kegger, so there is the whole issue of having people intoxicated which historically leads to a greater issue of safety as far as theft and those sorts of things so the potential for that is dramatically increased. The potential for people to discharge firearms in the proximity of homes is going to be dramatically increased.

"I don't see any way that having an open road is going to decrease those issues, and also the whole issue of the increased risk of fire, you're going to have people back there with bonfires, campfires, shooting off fireworks; in my opinion it's going to be greatly increased over what it is now. There are also a couple of issues concerning the historical or archeological finding that says there are going to be no change to that, and what's called Big Bill's campground is in close proximity to where that road is, and I don't know standards of something being of archaeological concern is, but that's adjacent to where the proposed road is, and also not too far away is what's known as medicine rock, which is not actually on the state's section, but it is just off the state section on Plum Creek, and at one point that was blown by archeological seekers. So there is the whole issue that hasn't been addressed in the issue.

"And I just want to concur with Marty and Dan and their issues too, that those are all issues I myself have in regards to the road. And Jay, I didn't talk with you about it, but just something to consider and maybe you've already considered it, just getting the easement through Timberlake now, I think you have to get 100% agreement of the homeowners to change the current easement, (some interaction with members) oh, is it 70%?"

Poncin: "Point of order: comments only, questions after the hearing."

Fischer: "That you would consider, even though it is not directly pertaining to this but related pertaining to this about the other access option, is this part of this?"

Poncin: "If you want to ask questions. . . ."

Fischer: "No, I'm not asking a question, I'm making a statement. That to consider the possibility of getting your easement through here, I've already talked to one individual that was opposed to it going through, but when I talked to him about historically the increased activity and the potential implications of having this road open, they were like 'oh, I didn't realize that,' it would be better because it would be limited traffic going through it versus an open road there. That's my comments."

Poncin: "Any other opponents?"

Bill Savage: "I would like to make a statement if I may. I am Bill Savage, I am a neighbor just to the south of Marty Miller's 39863 Hwy 93, also called Lodge Lane; UPS can never find us. Marty already said everything I wanted to say, I don't want to repeat it all. Our property is right here. Our property line is maybe a hundred feet or so from the proposed easement and the one comment I wanted to make is that I've raised this issue before of grade, 8 percent versus 10 percent and it sounds like the proposal now is at 8 percent. I would like to make the request that the 10 percent be considered on that first section of the road heading south because that would bring the road up to slope and possibly over the ridge before it gets to the side of our houses and I would hope that would be revisited and that's really all I have."

Poncin: "Any other opponents?"

Larry Shetler: "I'm Larry Shetler, 17945 Demerseville Wagon Road. I'm not against the road to get to the property they want to buy and develop but I am completely against public access, completely disappointed in the State's unwillingness to try to move this road away from these neighbors of mine. I think it's a very sad thing to try to intrude on them like that. I'd suggest it's a gated community or better yet run it up through Timberlake Ranches, which a beautiful road goes right up there right now. I think that would be the best solution. I'm not against the road, but I'm completely against public access. I think it would be nothing but trouble. I don't believe the state have people that come out and patrol it, or can manage it. I believe the state's done a good job, there's beautiful state park right across the highway where there's actually a lake, for people that want to enjoy the state properties can go and they also have hired rangers to watch things, which is a pretty neat idea and people who don't want to cause trouble usually go there, so please don't make that a public access road. I've done road building and surveying, I'll volunteer to go out there and help figure out a way get this road off these guy's back. I'm willing to do this. You have my address, will give you my phone number after. We'll figure a way to do this right."

Poncin: "Anybody else wishing to testify in opposition? Seeing none: proponents, anyone wishing to testify in favor?"

Paul McKenzie: My name is Paul McKenzie, I'm the Lands and Resource Manager for F.H. Stoltze Land & Lumber Co. 600 Half Moon Road, Columbia Falls, MT. I do have

some brief written comments [*entered, see attachment*] and my verbal comments will be brief as well. We are in favor of this project, and of the easement exchange process in general. We found in our experience that anytime adjoining landowners can cooperate on access issues, the impacts are able to be mitigated better. Without a doubt, public access issues require management, but that's also the job of DNRC to manage those public impacts too. We have not been particularly closely involved with this process, but have been involved with Jay on his projects, and have had very good experience with him in trying to do the best outcome of product we can. And we always work hard to address some of these issues in the past and I'm sure he'll work hard to mitigate these impacts into the future. That's all I have."

Poncin: "Any other proponents? Anybody else in favor? Anyone considering themselves neutral wishing to testify? Seeing no proponents, no more neutral parties, I will offer if there are any other opponents who wish to come forward to testify again, with something new; we'll open that up at this point. Seeing no one wishing to speak, the hearing is now closed. Thank you.

Poncin observed that the state staff would be available to discuss any questions anyone may have, and that comments would be taken on the draft Environmental Assessment through July 21, 2010. In response to questions, Poncin responded that previously submitted emails will be part of the EA comments, and that the Land Board (five highest elected officials) will make the final decision. He reviewed how the information is assimilated into a "package" for submission to the Land Board members and their staffs so that they are informed on the project and issues. A number of additional questions specific to the project were raised and discussed by those present, with the meeting adjourning at 6:33 p.m.

Respectfully submitted,



Anne Moran, Planner
DNRC-KU

Attachments submitted at hearing (following):

Photo #1
Photo #2
McKenzie/Stoltze Letter
Shetler written comment

Attachments

July 7, 2010 Proposed Forrey Creek Easement Exchange Hearing

Photo #1:

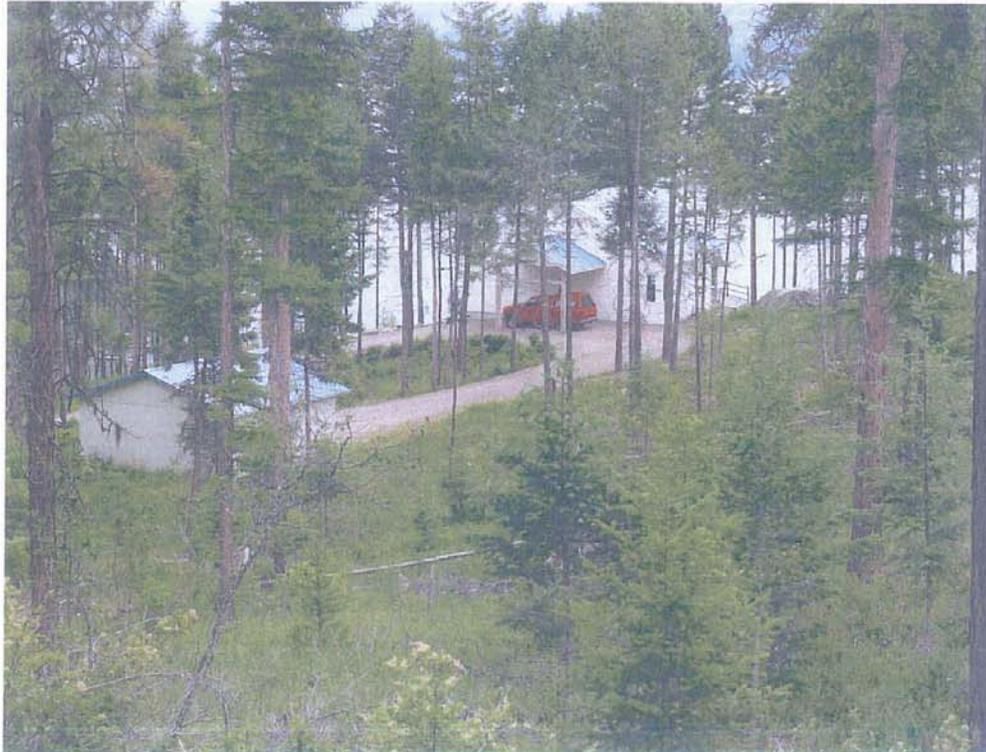


Photo #2:



McKenzie/Stoltze Letter:



F.H. STOLTZE LAND & LUMBER COMPANY

Lumber Manufacturers
Box 1429 Columbia Falls, MT 59912
Phone (406) 892-7005 Fax (406) 892-1612
www.stoltzelandlumber.com

July 7, 2010

Greg Poncin
DNRC Kalispell Unit
655 Timberwolf Parkway, Suite 2
Kalispell, MT 59901

Mr. Poncin,

Please accept the following comments in favor of the proposed Forrey Creek Easement Exchange project.

The proposed project will resolve long standing access issues to both State and private lands in the area. The public will enjoy improved access to State School Trust Lands. DNRC will enjoy improved access for traditional forest management activities while also gaining improved land value due to improved access standards. The cooperative access route provides for efficient and lowest impact access to multiple ownerships improving the environmental foot print and economic efficiencies for all involved.

Cooperative access agreements generally provide multiple benefits to all parties involved. It is good land management practice to coordinate and cooperate in road access projects when possible. This project is an example of good coordination and cooperation between multiple landowners to minimize impacts on the ground and have well engineered road access to these properties for the long term.

We encourage you to proceed with the analysis of the project and hope to be kept informed of your progress.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Paul R. McKenzie', written in a cursive style.

Paul R. McKenzie C.F.
Lands & Resource Manager

Shetler Comment:

TO SUBMIT WRITTEN COMMENTS

Forrey Creek Easement Exchange
Lake County, Montana
July 7, 2010

As a convenience to the public, DNRC will accept written comments during this hearing. Comments can be written on this sheet, if desired. Please print your name and address below, and hand it to the Hearings Officer. Comments must be turned in by the end of the public hearing session on ~~June 29~~ ^{July 7,} 2010.

Name: F10 Shetler

Address: 17945 Demersville Wagon Road

E-mail: P.O. Box 20 Lakeside - We don't have internet available.

Comments:

I'm totally opposed to public access on the new proposed road! As a landowner - mother, grandmother, we live there because of the area surrounding. We have voluntarily "managed state lands" - requesting wild parties, etc. to go elsewhere. We have never seen or experienced management of the lands in the area of safety. Our home is situated too close to the proposed road with public access suggested - to not oppose it being public access! Please consider this request. We chose here as the last best place! But it being in the water park I realize this would mean the state would need to compromise on this issue, as it was stated the state is to give public access to their lands. We as the neighbors are "the public" too!

Attachment III Preparers and Consultants

Preparers:

Pete Seigmund, MT DNRC, Kalispell Unit, Forester

Marc Vessar, MT DNRC, Northwestern Land Office, Kalispell, Montana-Area
Hydrologist, soils specialist

Garrett Schairer, MT DNRC, Northwestern Land Office, Kalispell, Montana-Area Wildlife Biologist

Consultants Individuals Consulted

Greg Poncin, Unit Manager, MT DNRC, Kalispell Unit, Kalispell, Montana

Norm Kuennen, Senior Right-of-Way Specialist, MT DNRC, Northwestern Land Office, Kalispell,
Montana

Marc Vessar, Hydrologist / Soils Specialist, MT DNRC, Northwestern Land Office, Kalispell,
Montana

Garrett Schairer, Wildlife Biologist, MT DNRC, Northwestern Land Office, Kalispell, Montana