

Date February 25, 2010

Gene Kaufman  
~~Craig Gonzlinger~~, Operations Engineer  
Federal Highway Administration (FHWA)  
585 Shepard Way  
Helena, MT 59601

Subject: **Categorical Exclusion Group (d) Action Letter**

Reference: Federal-aid Project Number: \_\_\_\_\_  
Federal-aid Project Name: Martin Charlo Sidewalk - Arlee  
MDT Uniform Project Number: 7012

This is a request for FHWA concurrence that the proposed project meets the criteria for classification as a Categorical Exclusion under the provisions of 23 CFR 771.117(d). This proposed action also qualifies as a Categorical Exclusion under the provisions of ARM 18.2.261 (MCA Sections 75-1-103 and 75-1-201). A project location map is attached.

This proposed project is a road improvement project to improve existing gravel roads in Chief Martin Charlo to a paved surface with curb/gutter and sidewalk. The Project also includes drainage features, pavement markings and signage. The CTEP portion of the Project includes all of the curb/gutter and sidewalk only.

The location of the proposed project is in Lake County, Montana on the Flathead Indian Reservation in the NW1/4 SW1/4 OF Section 7, T16N, R19W. The Project is located about 1 mile east of Arlee, MT. The Project location is shown in the NEPA documents.

The intent of the proposed project is to improve road surfaces, improve road connections, and provide associated curb/gutter with sidewalks for the roads in the Chief Martin Charlo subdivision, which has 25 lots.

The proposed project has been evaluated for, and does not have any adverse effect on the following environmental areas of concern:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Stormwater Runoff               | <input checked="" type="checkbox"/> Noise                                |
| <input checked="" type="checkbox"/> Prime and Unique Farmlands      | <input checked="" type="checkbox"/> Section 404 – <i>Clean Water Act</i> |
| <input checked="" type="checkbox"/> Floodplains (EO 11988/FEMA)     | <input checked="" type="checkbox"/> Social/Economic                      |
| <input checked="" type="checkbox"/> Hazardous Waste                 | <input checked="" type="checkbox"/> Stream Preservation/Water Quality    |
| <input checked="" type="checkbox"/> Historical/Cultural Resources   | <input checked="" type="checkbox"/> Threatened/Endangered Species        |
| <input checked="" type="checkbox"/> Changes in Land Use             | <input checked="" type="checkbox"/> Wetlands (EO 11990)                  |
| <input checked="" type="checkbox"/> USDOT – 4(f)/NL&WCF – 6(f) Acts |  |

## PROJECT IMPACTS

The proposed project will have a minor effect on the following environmental area(s):

**Historic/Cultural Resources** – The project has been reviewed by the Tribal Preservation Office (TPO), which operates in place of the SHPO on the Flathead Reservation. The Project received a clearance, which is attached. This clearance is analogous to a concurrence letter of "no adverse effect". NA the National Register of Historic Places (NRHP) in NA. A Section 106 Determination of Effect has resulted in a finding of "No Adverse Effect," which has been reviewed and concurred with by the State Historic Preservation Office (SHPO) on July 30, 2009. A copy of their concurrence letter is attached.

**Threatened/Endangered Species** – The US Department of the Interior's Fish & Wildlife Service (USF&WS) was contacted on On the Flathead Reservation, the Tribal Fisheries Program and the Tribal Wildlife Management Program each review projects and determine effects. When there are no or minor effects, the US Fish and Wildlife Service has agreed to have the Tribal Programs make those determinations. Each program reviewed this project and determined there would be no effects. Their written determinations were attached to the NEPA document. for identifying Federally listed Threatened/ Endangered Species. The following Threatened/Endangered Species were identified by the USF&WS as being in the vicinity of the proposed project and a Biological Resources Report was prepared by NA. The conclusion of the Biological Resources Report is that (there are no biological concerns on this project/the project is "Not Likely to Adversely Effect" Threatened/Endangered Species.

**Fish** – The bull trout is an endangered fish species on the Reservation. For this project, there would be no listed fish species or critical habitat in the affected area or downstream from this area.

**Threatened Wildlife** – The gray wolf, grizzly bear, bald eagle, and peregrine falcon occur on the Flathead Reservation. For this project, there are no threatened or endangered species in the area, and there would be no measurable effects to any listed species that may pass through the vicinity. is a threatened species in the State of Montana.

**Endangered Wildlife** – The see above is an endangered species in the State of Montana.

**Floodplains** – A floodplain delineated under Federal Emergency Management Administration (FEMA) criteria along the none is encroached by the proposed project. There are no FEMA-delineated floodplains on the Flathead Reservation. Thus, there would be no effects to any stream floodplain because of the limited nature of this project. The roads and drainage systems are already in place. This Project would result in paved roads. Stormwater drainage has been addressed by best management practices and are listed in the Stormwater Pollution Prevention Plan (SWPPP), attached to the NEPA document. administers this floodplain for FEMA, and a Floodplain Development Permit will be required for this encroachment.

The floodplain encroachments from the proposed project occur none. The proposed project will not promote or encourage development within this delineated floodplain, or increase flood liability hazards from its construction. The proposed project is therefore considered to be in compliance with Executive Order 11988.

YES **Air Quality** – The proposed project is located in an "unclassifiable"/attainment area of Montana for air quality under 40 CFR 81.327, as amended. As such, this proposed project is not covered under the EPA's Final Rule of September 15, 1997 on Air Quality conformity. Therefore, the

proposed project complies with Section 176(c) of the *Clean Air Act* as amended (42 USC 7521(a)).

## OR

- NO **Air Quality** – The proposed project is located in a (CO/PM10) “nonattainment” area of Montana for air quality under 40 *CFR* 81.327, as amended. However, this type of proposed project is listed in EPA’s Final Rule of September 15, 1997 on Air Quality conformity as being exempt from the requirement of a conformity determination. Therefore, the proposed project complies with Section 176(c) of the *Clean Air Act* as amended (42 USC 7521(a)).
- NO **Section 4(f)** – It has been determined that Section 4(f) does not apply to restoration, rehabilitation or maintenance of historic facilities when there is a “No Adverse Effect” determination, and when SHPO and the advisory council have been consulted and have not objected to this finding.
- NO **Section 4(f)** – While this project involves a Section 4(f) resource, the local entity with specific jurisdiction over the resource has petitioned the Department for funding to finance the development of the proposed improvement. This petition is accepted as written approval from the official having jurisdiction and taken as evidence that this locally proposed project is consistent with the designated use of the property, and that all practical planning to minimize harm has been accomplished in the location and design process.
- YES There is no “use” of a Section 4(f) resource as protected land is not permanently incorporated into a State/Federal transportation facility. There is also no “constructive use” of protected lands. (Constructive use occurs when a transportation facility not on protected land substantially impairs the activities, features, or attributes that qualify a resource for protection under Section 4(f)).

**Section 6(f)** – There is no Conversion of Use involvement as protected property acquired or developed with Land and Water Conservation Funds (LWCF) are not within the project limits.

**Cumulative Impacts** – Cumulative activities are shown in the NEPA document. The site currently has various active and NA proposed projects in the vicinity of the proposed project. There would be no substantial cumulative effects from all activities combined.

Therefore, none of the above projects, in conjunction with the proposed project, will have any significant cumulative environmental impacts. True.

## PERMITS

**Permits Required** – The following permits will be acquired prior to any relevant disturbance: (also see the FEMA Floodplain Development Permit, following):

- This proposed project will be in compliance with the provisions for both Water Quality under *MCA* 75-5-401(2) for Section 3(a) authorizations, and 124 SPA Stream Protection Notification under *MCA* 87-5-501 through 509, inclusive.
- A 124 SPA Stream Protection Notification (was approved/will be required) by the MDFW&P on the Project was reviewed by the Tribal Shoreline Protection Office (SPO), and the

Program Manager determined that no shoreline permit was needed. Written documentation of the "not a project" determination is attached to the NEPA document.

- A Notice of Intent for Storm Water Discharges under the National Pollutant Discharge Elimination System General Permit (PL 92-500) will be required with the EPA for the control of water pollution for both specific and non-point sources. The SWPPP has been prepared and the contractor will contact the EPA with Notice of Intent.
- The proposed project will require the following permit(s) under the *Clean Water Act*:
  - A Section 402/Montana Pollutant Discharge Elimination System permit from the Montana Department of Environmental Quality (DEQ) Permitting and Compliance Division. NA
  - A Section 404 permit from the US Army Corps of Engineers (COE). The COE will be notified that the proposed project qualifies for a "Nationwide" 404 permit under the provisions of 33 *CFR* 330. No 404 permit required because no effect on streams or shorelines.
- All work will be in accordance with the *Water Quality Act of 1987* (PL 100-4), as amended.
- Approximately no of new ROW/construction permits will be needed for the proposed project. There will be no utility involvement.

## **PUBLIC INVOLVEMENT**

**Public Involvement** – This project is in the Flathead Reservation Transportation Improvement Plan (TIP) which reviewed by the public at numerous meetings, and subsequently approved by Tribal Council.

## **EROSION CONTROL PLAN**

An Erosion Control Plan will be prepared for this proposed project. Best Management Practices (BMPs) will be included in the design of this Plan using guidelines as established in MDT's Highway Construction Standard Erosion Control Workplan. The objective is to minimize erosion of disturbed areas during and following construction of this proposed project.

An Erosion Control Plan will be submitted to the Montana DEQ Permitting and Compliance Division in compliance with their Montana Pollutant Discharge Elimination System Regulations (*ARM* 16.20.1314) for the proposed project. BMPs will be included in the design of this Plan using guidelines as established in MDT's Highway Construction Standard Erosion Control Workplan. The objective is to minimize erosion of disturbed areas during and following construction of this proposed project.

In accordance with *MCA* 7-22-2152 and 60-2-208, the proponent will re-establish a permanent desirable vegetation community along all areas disturbed by the proposed construction. A set of revegetation guidelines yes developed by the proponent that must be followed by the contractor. These specifications are listed in the document "PROJECT DESCRIPTION AND CTEP PARTICIPATION" and include instructions on seeding methods, seeding dates, types and amounts of mulch and fertilizer, along with seed mix components. Seed mixes include a variety of species to ensure that areas disturbed by construction are immediately stabilized by vegetative cover. The Seeding Special Provisions developed for this proposed project were

developed by the Tribal Restoration batonist and the Tribal Roads Program staff. Lake County staff was not consulted given the level of expertise available at the Tribal level, thus the plan was not forwarded to the responsible County Weed Board for approval.

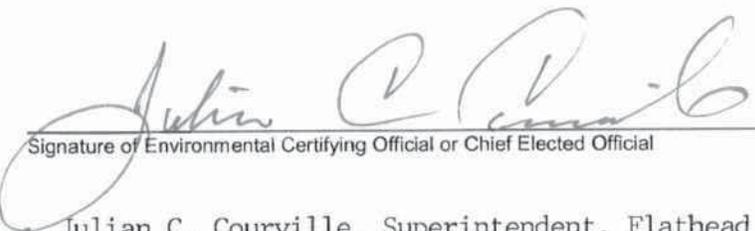
## AMERICANS WITH DISABILITIES ACT

**Americans with Disabilities Act** – ADA sidewalks, curb/gutter, and signage will be installed in compliance with the *Americans with Disabilities Act* (PL 101-336).

## CONCLUSION

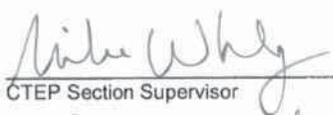
The project will not induce significant land use changes or promote unplanned growth. There will be no significant affects on access to adjacent properties or present traffic patterns. The project will not create disproportionately high and adverse human health or environmental effects on minority and low-income populations (EO 12898) and complies with Title VI of the *Civil Rights Act of 1964* (42 USC 2000d). In accordance with 23 CFR 771.117(a), this action will neither individually nor cumulatively, have any significant environmental impacts. Therefore, we are requesting FHWA's concurrence that the proposed project is properly classified as Categorical Exclusion.

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

 3/17/10  
\_\_\_\_\_  
Signature of Environmental Certifying Official or Chief Elected Official

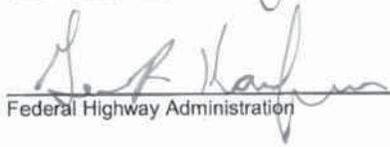
Julian C. Courville, Superintendent. Flathead Agency. Bureau of Indian Affairs  
\_\_\_\_\_  
Type Name and Title

Concur:

  
\_\_\_\_\_  
CTEP Section Supervisor

March 24, 2010  
\_\_\_\_\_  
Date

Concur:

  
\_\_\_\_\_  
Federal Highway Administration

3/29/10  
\_\_\_\_\_  
Date

Attachment: Project Location Map

CC: Doug Moeller – MDT Missoula District Administrator  
Tim Conway, PE – MDT Consultant Design Engineer  
Tom Martin, PE – MDT Environmental Bureau Chief  
David Jensen – MDT Fiscal Planning Administrator

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Michael Wherley, PE – MDT CTEP Supervisor  
Todd Everts – Environmental Quality Council  
Gene Kaufman, PE – FHWA Operations Engineer