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October 26, 2010

Kevin L. McLaury
Division Administrator
Federal Highway Administration
585 Shepard Way
Helena, MT 59601-9785

Attention: Jeff Patten

Subject: Programmatic Categorical Exclusion (PCE) Concurrence Request
BR 9053(103)
Rock Creek – 23 M W Opheim
CN 6287 000

Dear Kevin McLaury:

This submittal requests approval of the above-mentioned proposed project as a Categorical Exclusion under the provisions of 23 CFR 771.117(d) and the Programmatic Agreement as signed by the Montana Department of Transportation (MDT) and the Federal Highway Administration (FHWA) on April 12, 2001. This proposed action also qualifies as a Categorical Exclusion under ARM 18.2.261 (Sections 75-1-103 and 75-1-201, MCA).

The following form provides the documentation required to demonstrate that all of the conditions are satisfied to qualify for a PCE. A copy of the Preliminary Field Review Report is attached. In the following form, "N/A" indicates not applicable; "UNK" indicates unknown.

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

	YES	NO	N/A	UNK
1. This proposed project would have (a) significant environmental impact(s) as defined under 23 CFR 771.117(a).	☐	☒	☐	☐
2. This proposed project involves (an) unusual circumstance(s) as described under 23 CFR 771.117(b).	☐	☒	☐	☐
3. This proposed project involves one (or more) of the following situations where:				
A. Right-of-Way, easements, and/or construction permits would be required.	☒	☐	☐	☐
1. The context or degree of the Right-of-Way action would have (a) substantial social, economic, or environmental effect(s).	☐	☒	☐	☐

	YES	NO	N/A	UNK
2. There is a high rate of residential growth in this proposed project's area.	☐	☒	☐	☐
3. There is a high rate of commercial growth in this proposed project's area.	☐	☒	☐	☐
4. Work would be on and/or within approximately 1.6 kilometers (1± mile) of an Indian Reservation.	☐	☒	☐	☐
5. There are parks, recreational, or other properties acquired/improved under *Section 6(f)* of the *1965 National Land & Water Conservation Fund Act* (16 USC 460L, *et seq.*) on or adjacent to proposed the project area.	☐	☒	☐	☐
The use of such *Section 6(f)* sites would be documented and compensated with the appropriate agencies. (*e.g.*: MDFWP, local entities, etc.).	☐	☐	☒	☐
6. Are there any sites either on, or eligible for the National Register of Historic Places with concurrence in determination of eligibility or effect under *Section 106* of the *National Historic Preservation Act* (16 USC 470, *et seq.*) by the State Historic Preservation Office (SHPO), which would be affected by this proposed project.	☐	☒	☐	☐
7. There are parks, recreation sites, school grounds, wildlife refuges, historic sites, historic bridges, or irrigation that might be considered under *Section 4(f)* of the 1966 *US DEPARTMENT OF TRANSPORTATION Act* (49 USC 303) on or adjacent to the project area.	☐	☒	☐	☐
a. The proposed project would not impact the site(s), so a 4(f) evaluation is not necessary.	☐	☐	☒	☐
b. De minimis finding(s) is/are necessary for this project.	☐	☐	☒	☐
c. "Nationwide" Programmatic *Section 4(f)* Evaluation forms for these sites are attached.	☐	☐	☒	☐
d. This proposed project requires a full (*i.e.*: DRAFT & FINAL) *Section 4(f)* Evaluation.	☐	☐	☒	☐
B. The activity would involve work in a streambed, wetland, and/or other waterbody(ies) considered as "waters of the United States" or similar (*e.g.*, "state waters").	☒	☐	☐	☐
1. Conditions set forth in *Section 10* of the *Rivers and Harbors Act* (33 USC 403) and/or *Section 404* under 33 CFR Parts 320-330 of the *Clean Water Act* (33 USC 1251-1376) would be met.	☒	☐	☐	☐

	YES	NO	N/A	UNK
2. Impacts in wetlands, including but not limited to those referenced under Executive Order (E.O.) #11990, and their proposed mitigation would be coordinated with the US Army Corps of Engineers and other Resource Agencies (Federal, State and Tribal) as required for permitting	☒	☐	☐	☐
3. A 124SPA Stream Protection Authorization would be obtained from the MDFWP?	☒	☐	☐	☐
4. There is a delineated floodplain in the proposed project area under FEMA's Floodplain Management criteria.	☐	☒	☐	☐
The water surface at the 100-year flood limit elevation would exceed floodplain management criteria due to an encroachment by the proposed project.	☐	☐	☒	☐
5. Tribal Water Permit would be required.	☐	☐	☒	☐
6. Work would be required in, across, and/or adjacent to a river which is a component of, or proposed for inclusion in Montana's Wild and/or Scenic Rivers system as published by the US Department of Agriculture, or the US Department of the Interior.	☐	☒	☐	☐
The designated National Wild & Scenic River systems in Montana are:				
a. Middle Fork of the Flathead River (headwaters to South Fork confluence).	☐	☐	☒	☐
b. North Fork of the Flathead River (Canadian Border to Middle Fork confluence).	☐	☐	☒	☐
c. South Fork of the Flathead River (headwaters to Hungry Horse Reservoir).	☐	☐	☒	☐
d. Missouri River (Fort Benton to Charles M. Russell National Wildlife Refuge).	☐	☐	☒	☐
In accordance with *Section 7* of the *Wild and Scenic Rivers Act* (16 USC 1271 – 1287), this work would be coordinated and documented with either the Flathead National Forest (Flathead River), or US Bureau of Land Management (Missouri River).	☐	☐	☒	☐
C. This is a "Type I" action as defined under 23 CFR 772.5(h), which typically consists of highway construction on a new location or the physical alteration of an existing route which substantially changes its horizontal or vertical alignments or increases the number of through-traffic lanes.	☐	☒	☐	☐

	YES	NO	N/A	UNK
1. If yes, are there potential noise impacts?	☐	☐	☒	☐
2. A Noise Analysis would be completed.	☐	☐	☒	☐
3. There would be compliance with the provisions of both 23 CFR 772 for FHWA's Noise Impact analyses and MDT's Noise Policy.	☒	☐	☐	☐
D. There would be substantial changes in access control involved with this proposed project.	☐	☒	☐	☐
If yes, would they result in extensive economic and/or social impacts on the affected locations?	☐	☐	☒	☐
E. The use of a temporary road, detour, or ramp closure having the following conditions when the action(s) associated with such facilities:				
1. Provisions would be made for access by local traffic, and be posted for same.	☒	☐	☐	☐
2. Adverse effects to through-traffic dependant businesses would be avoided or minimized.	☒	☐	☐	☐
3. Interference to local events (*e.g.* festivals) would be minimized to all possible extent.	☒	☐	☐	☐
4. Substantial controversy associated with this pending action would be avoided.	☒	☐	☐	☐
F. Hazardous wastes /substances, as defined by the US Environmental Protection Agency (EPA) and/or the Montana Department of Environmental Quality (MDEQ), and/or (a) listed "Superfund" (under *CERCLA* or *CECRA*) site(s) are currently on and/or adjacent to this proposed project.	☐	☐	☐	☒
All reasonable measures would be taken to avoid and/or minimize substantial impacts from same.	☒	☐	☐	☐
G. The Stormwater Discharge conditions (ARM 17.30.1101-1117), including temporary erosion control features for construction would be met.	☒	☐	☐	☐
H. Permanent desirable vegetation with an approved seeding mixture would be established on exposed areas.	☒	☐	☐	☐
I. Documentation of an "invasive species" review to comply with both EO #13112 and the *County Noxious Weed Control Act* (7-22-2152, MCA), including directions as specified by the county(ies) wherein its intended work would be done.	☒	☐	☐	☐

	YES	NO	N/A	UNK
J. There are "Prime" or "Prime if Irrigated" Farmlands designated by the Natural Resources Conservation Service on or adjacent to the proposed project area.	☐	☐	☐	☒
If the proposed work would affect Important Farmlands, then a CPA 106 Farmland Conversion Impact Rating form would be completed in accordance with the *Farmland Protection Policy Act* (7 USC 4201, *et seq.*).	☒	☐	☐	☐
K. Features for the *Americans with Disabilities Act* (PL 101-336) compliance would be included.	☐	☐	☒	☐
L. A written Public Involvement Plan would be completed in accordance with MDT's Public Involvement Handbook.	☒	☐	☐	☐
4. This proposed project complies with the *Clean Air Act*'s *Section 176(c)* (42 USC 7521(a), as amended) under the provisions of 40 CFR 81.327 as it's either in a Montana air quality:				
A. "Unclassifiable/Attainment" area. This proposed project is <u>not</u> covered under the EPA's September 15, 1997 Final Rule on air quality conformity.	☒	☐	☐	☐
and/or				
B. "Nonattainment" area. However, this type of proposed project is either exempted from the conformity determination requirements (under EPA's September 15, 1997 Final Rule), or a conformity determination would be documented in coordination with the responsible agencies (Metropolitan Planning Organizations, MDEQ's Air Resources Management Bureau, etc.).	☐	☐	☒	☐
C. Is this proposed project in a "Class I Air Shed" under 40 CFR 52.1382(c)(2-4) and 40 CFR 81.417? (Northern Cheyenne, Flathead, and Fort Peck Indian Reservations; Glacier and Yellowstone National Parks; Anaconda-Pintlar, Bob Marshall, Cabinet Mountains, Gates of the Mountains, Medicine Lake, Mission Mountain, Red Rock Lakes, Scapegoat, Selway-Bitterroot, and U.L. Bend Wilderness Areas)	☐	☒	☐	☐
5. Federally listed Threatened or Endangered (T/E) Species:				
A. There are recorded occurrences and/or critical habitat in this proposed project's vicinity.	☐	☒	☐	☐
B. Would this proposed project result in a "<u>jeopardy</u>" opinion (under 50 CFR 402) from the Fish & Wildlife Service on any Federally listed T/E Species?	☐	☐	☒	☐

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

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

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

Moriah Thunstrom, Date: 10/26/10
Moriah Thunstrom, P.E. - Glendive District Project Development Engineer
MDT Environmental Services Bureau

Concur Heidy Bruner, Date: 10/26/10
Heidy Bruner, P.E. - Engineering Section Supervisor
MDT Environmental Services Bureau

Concur Jeffrey A Patten, Date: 11-17-10
Federal Highway Administration

MDT attempts to provide accommodation for any known disability that may interfere with a person participating in any service, program or activity of the Dept. Alternative accessible formats of this information will be provided upon request. For further information, call 406-444-7228 or TTY (800-335-7592), or call Montana Relay at 711.

Attachment: Preliminary Field Review Report (07/28/08)

e-copy (w/o attach.):	Ray Mengel	Glendive District Administrator
	Kent Barnes, P.E.	Bridge Engineer
	Tom S. Martin, P.E.	Environmental Services Bureau Chief
	Suzy Price	Contract Plans Bureau Chief
	Dave Jensen	Fiscal Programming Section Supervisor
	Robert Stapley	Right-of-Way Bureau Chief
	File	Environmental Services Bureau
	Montana Legislative Branch Environmental Quality Council (EQC)	

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