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ENVIRONMENTAL

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

MASTER FILE
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Attention: Jeff Patten

Subject: Programmatic Categorical Exclusion (PCE) Concurrence Request
Yellowstone River – 1 Mile N Terry
BH 253-1(20)1
CN 6838 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 (PFR) 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). Additional documentation addressing public controversy (Item 3.E.4) is attached.

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
1. This proposed project would have (a) significant environmental impact(s) as defined under 23 CFR 771.117(a).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. This proposed project involves (an) unusual circumstance(s) as described under 23 CFR 771.117(b).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
1. The context or degree of the Right-of-Way action would have (a) substantial social, economic, or environmental effect(s).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. There is a high rate of residential growth in this proposed project's area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. There is a high rate of commercial growth in this proposed project's area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Work would be on and/or within approximately 1.6 kilometers (1± mile) of an Indian Reservation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. There are parks, recreational, or other properties acquired/improved under <i>Section 6(f)</i> of the <i>1965 National Land & Water Conservation Fund Act</i> (16 USC 460L, <i>et seq.</i>) on or adjacent to proposed the project area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The use of such <i>Section 6(f)</i> sites would be documented and compensated with the appropriate agencies. (<i>e.g.</i> : MDFWP, local entities, etc.).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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 <i>Section 106</i> of the <i>National Historic Preservation Act</i> (16 USC 470, <i>et seq.</i>) by the State Historic Preservation Office (SHPO), which would be affected by this proposed project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. There are parks, recreation sites, school grounds, wildlife refuges, historic sites, historic bridges, or irrigation that might be considered under <i>Section 4(f)</i> of the <i>1966 US DEPARTMENT OF TRANSPORTATION Act</i> (49 USC 303) on or adjacent to the project area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. The proposed project would not impact the site(s), so a 4(f) evaluation is not necessary.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. De minimis finding(s) is/are necessary for this project.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. "Nationwide" Programmatic <i>Section 4(f)</i> Evaluation forms for these sites are attached.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. This proposed project requires a full (<i>i.e.</i> : DRAFT & FINAL) <i>Section 4(f)</i> Evaluation.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B. The activity would involve work in a streambed, wetland, and/or other waterbody(ies) considered as "waters of the United States" or similar (<i>e.g.</i> , "state waters").	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
1. Conditions set forth in <i>Section 10</i> of the <i>Rivers and Harbors Act</i> (33 USC 403) and/or <i>Section 404</i> under 33 CFR Parts 320-330 of the <i>Clean Water Act</i> (33 USC 1251-1376) would be met.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. A 124SPA Stream Protection Authorization would be obtained from the MDFWP?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. There is a delineated floodplain in the proposed project area under FEMA's Floodplain Management criteria.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The water surface at the 100-year flood limit elevation would exceed floodplain management criteria due to an encroachment by the proposed project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Tribal Water Permit would be required.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The designated National Wild & Scenic River systems in Montana are:				
a. Middle Fork of the Flathead River (headwaters to South Fork confluence).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. North Fork of the Flathead River (Canadian Border to Middle Fork confluence).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. South Fork of the Flathead River (headwaters to Hungry Horse Reservoir).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Missouri River (Fort Benton to Charles M. Russell National Wildlife Refuge).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In accordance with <i>Section 7</i> of the <i>Wild and Scenic Rivers Act</i> (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).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
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.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1. If yes, are there potential noise impacts?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. A Noise Analysis would be completed.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. There would be compliance with the provisions of both 23 CFR 772 for FHWA's Noise Impact analyses and MDT's Noise Policy.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. There would be substantial changes in access control involved with this proposed project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, would they result in extensive economic and/or social impacts on the affected locations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Adverse effects to through-traffic dependant businesses would be avoided or minimized.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Interference to local events (e.g. festivals) would be minimized to all possible extent.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Substantial controversy associated with this pending action would be avoided.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
All reasonable measures would be taken to avoid and/or minimize substantial impacts from same.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G. The Stormwater Discharge conditions (ARM 17.30.1101-1117), including temporary erosion control features for construction would be met.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Permanent desirable vegetation with an approved seeding mixture would be established on exposed areas.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	<u>YES</u>	<u>NO</u>	<u>N/A</u>	<u>UNK</u>
I. Documentation of an “invasive species” review to comply with both EO #13112 and the <i>County Noxious Weed Control Act</i> (7-22-2152, MCA), including directions as specified by the county(ies) wherein its intended work would be done.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. There are “Prime” or “Prime if Irrigated” Farmlands designated by the Natural Resources Conservation Service on or adjacent to the proposed project area.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If the proposed work would affect Important Farmlands, then a CPA 106 Farmland Conversion Impact Rating form would be completed in accordance with the <i>Farmland Protection Policy Act</i> (7 USC 4201, <i>et seq.</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
K. Features for the <i>Americans with Disabilities Act</i> (PL 101-336) compliance would be included.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
L. A written Public Involvement Plan would be completed in accordance with MDT’s Public Involvement Handbook.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. This proposed project complies with the <i>Clean Air Act’s Section 176(c)</i> (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.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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.).	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Federally listed Threatened or Endangered (T/E) Species:				
A. There are recorded occurrences and/or critical habitat in this proposed project’s vicinity.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- | | <u>YES</u> | <u>NO</u> | <u>N/A</u> | <u>UNK</u> |
|--|--------------------------|-------------------------------------|--------------------------|--------------------------|
| B. Would this proposed project result in a “jeopardy” opinion (under 50 CFR 402) from the Fish & Wildlife Service on any Federally listed T/E Species? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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: 12/8/10
Moriah Thunstrom, P.E. - Glendive District Project Development Engineer
MDT Environmental Services Bureau

Concur Heidy Bruner, Date: 12/8/10
Heidy Bruner, P.E. - Engineering Section Supervisor
MDT Environmental Services Bureau

Concur Jeffrey A. Patten, Date: 12/19/10
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: PFR Report (08/25/09)
Additional Documentation Addressing Public Controversy (Item 3.E.4)

e-copy: Ray Mengel Glendive District Administrator
Patty Patterson Glendive District Right of Way Supervisor
Gail Faber Glendive District Environmental Engineering Specialist
Kent Barnes, P.E. Bridge Engineer
Scott Walter, P.E. Glendive District Bridge Area Engineer
Tom S. Martin, P.E. Environmental Services Bureau Chief
Heidy Bruner, P.E. Environmental Services Engineering Section Supervisor
Larry Sickerson Glendive District Biologist
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)

Documentation Addressing Public Controversy
Yellowstone River – 1 M North Terry
BH 253-1(20)1
CN: 6838 000

This site precludes the use of a temporary detour bridge over the Yellowstone River. As a result, it was determined that the road and bridge would likely need to be closed to thru traffic during construction.

A public meeting was held on January 12, 2010, in Terry, with approximately 36 people in attendance. Details of the proposed project were presented and input sought regarding the temporary road closure, specifically impacts to mail system deliveries, emergency traffic, and farm and ranch travel. As a result of the public meeting, MDT received numerous comments from citizens concerned about the impacts of a temporary road closure. A letter writing campaign was proposed in order to prevent any highway closure (see attached newspaper articles).

In response to public comments, MDT formed a technical committee to explore various construction options that would eliminate and/or minimize the need for road closure. The Technical Committee Construction Options Summary is attached which describes the various options considered, along with recommendations for follow-up. At this time, MDT is pursuing Option 2, which involves construction of an additional span while using sheet piling and other construction techniques in order to facilitate phasing the construction to one lane at a time. This option would allow limited thru traffic during construction. Semi traffic would have to be re-routed. It is anticipated that construction of this project could last approximately one month.

As a result of these mitigation measures, MDT believes that substantial controversy resulting from this project can be avoided. No significant impacts are anticipated.

Attachments: News Articles
Technical Committee Construction Options Summary (06/22/10)