



January 11, 2012

Alan Woodmansey
Operations Engineer
Federal Highway Administration
585 Shepard Way
Helena, MT 59601-9785



Subject: Statewide Pavement Preservation Project
NH 4-2(36)54
Laurel - South
Control Number: 7594 000

Dear Alan Woodmansey,

The MDT Environmental Services Bureau has reviewed the Preliminary Field Review/Scope of Work Report (PFR/SOW) for the subject project. Based on the completed Environmental Checklist for Pavement Preservation Projects (Checklist), we conclude that the Statewide Programmatic Categorical Exclusion for these types of projects would cover this project.

The following special provision will be included in this project:

- PROTECTION OF AQUATIC RESOURCES
- MIGRATORY BIRD MITIGATION AND CONSERVATION –MAINTENANCE [107]

For your information, I have attached a copy of the PFR/SOW, the signed Environmental Checklist, and the special provision listed above. If you have questions or concerns, please contact Tom Gocksch at 444-9412. He will be happy to assist you.

Sincerely,

Heidy Bruner, P.E.
Engineering Section Supervisor
Environmental Services Bureau

e-copy (w/ all attach):

- | | |
|-----------------------|--|
| Stefan Streeter, P.E. | Billings District Administrator |
| Paul R. Ferry, P.E. | Highway Engineer |
| Tom S. Martin, P.E. | Chief, Environmental Services Bureau |
| Heidy Bruner, P.E. | Environmental Services Bureau Engr. Section Supervisor |
| Kevin Christensen, PE | Construction Engineer |
| Suzy Price | Contract Plans Bureau Chief |
| Nicole Pallister | Fiscal Programming |
| Tom Erving | Fiscal Programming Tom Gocksch, PE |
| Services | Environmental |

Hard copy (w/ checklist):

- ✓ Montana Legislative Branch Environmental Quality Council (EQC)
- Environmental Services File

HSB:tgg:S:\PROJECTS\BILLINGS\7000-7999\7594\7594000ENPPCSPFHW01.DOC

PROTECTION OF AQUATIC RESOURCES

Aquatic resources include, but are not limited to, wetlands, springs, streams (perennial, ephemeral, and intermittent drainages), rivers, lakes, ponds, reservoirs, irrigation systems, and associated riparian areas.

Impacts to aquatic resources are not anticipated in association with this project. MDT has NOT acquired any water quality permits or authorizations, including a Clean Water Act Section 404 permit (COE), a Stream Protection Act 124 (MFWP), or a 318 Authorization (DEQ). Therefore, impacts to any and all aquatic resources located adjacent to the project are not permitted. Avoid all equipment traffic, fill material, staging activities and other disturbances to aquatic resources.

In areas adjacent to any water body; including streams, irrigation ditches, wetland areas or in areas immediately adjacent to the highway susceptible to sediment transport conduct operations in a manner to avoid placement of materials in these areas.

Any impacts to these areas and associated consequences, without the proper permitting, are the responsibility of the Contractor. The Contractor must secure the appropriate permits or authorizations prior to working in these areas. If complete avoidance of these areas is not possible, contact the Project Manager immediately and coordinate the permitting effort with the District Biologist at 444-7227 or the District Environmental Engineering Specialist at 657-0273.

MIGRATORY BIRD MITIGATION AND CONSERVATION –MAINTENANCE [107] (Initiated X-X-XX)

Description. Migratory birds may nest on the structures affected by this project (Yellowstone River Bridge). Migratory birds of any kind (including but not limited to swallows and other song birds) are protected under the Migratory Bird Treaty Act. This provision identifies requirements to comply with the Migratory Bird Treaty Act to avoid the taking of migratory birds, their eggs, hatchlings, or fledglings during structure removal and construction. For the purposes of this provision "structure" means existing, new permanent or temporary structures (including but not limited to forms, framing, scaffolding and other construction related structures), or any structure part or member thereof.

General. The Migratory Bird Treaty Act provides that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. The Act does not contain any prohibition that applies to the destruction of an unoccupied migratory bird nest (without birds or eggs), provided that no possession occurs during the destruction. Direct disturbance of an occupied nest is prohibited under the law.

As included below, "active nests" means any nest that is occupied by birds, hatchlings, fledglings or viable eggs.

Requirements.

MDT has installed nesting deterrent (Bird-X, Bird-Proof, Bird Repellent Liquid) for 30' on each side of the failed deck joint to be repaired. To discourage new nesting in the area the deterrent was applied, remove any un-occupied nests, partially completed nests, new nests as they are built (prior to occupation). Do not disturb any active nests that are present within the area the deterrent was applied on the structure without prior coordination with the Project Manager and the District Biologist.

Do not conduct any work if active nests are present within the area the deterrent was applied.

Do not collect or possess any migratory bird, part, nest, nest fragment, egg or egg fragments. Leave nests where they fall until they can be disposed of incidental to disposal of other material under 201.03.5 or Section 202.

Direct disturbance of an active nest is not permitted under the law. If potentially active nests are re-established within the area the deterrent was applied, do not conduct work until it can be determined if the nests are occupied by birds, hatchlings, fledglings or viable eggs, and the Project Manager, in coordination with the District Biologist provides approval. Work that could result in a take of migratory birds, hatchlings, fledglings or viable eggs may be suspended by the Engineer under 105.01, or by the Project Manager under 105.09.

Contact the MDT District Biologist (406-444-7227) if further instruction, clarification or consultation is required prior to or during construction.

Method of Measurement and Basis of Payment. Work described in this provision is not measured for payment. Consider all costs associated with this provision incidental to performance of the work. Include the cost in the cost of other items.

(FOR PROJECTS WITH NO RIGHT-OF-WAY INVOLVEMENT)

Applicant cannot be authorized to proceed with the proposed work until ALL of the conditions of the checklist have been satisfied.

ENVIRONMENTAL CHECKLIST FOR PAVEMENT PRESERVATION PROJECTS

(CRACK SEALING, SEAL & COVER, THIN OVERLAYS, MILL & FILL, PLANT MIX LEVELING, MILL OGFC, MICRO SURFACING, FOG SEAL)

UPN: 75940000 ID: NH 4-2(36)54 Project Name: Laurel – South
 Reference Post (Station) 53.94 to Reference Post (Station) 54.28
 Applicant's Name: Montana Department of Transportation Address: PO Box 201001; Helena, MT 59620-1001
 Type of Proposed Pavement Preservation Activity: Mill and Overlay

IMPACTS ON THE PHYSICAL ENVIRONMENT (TO BE COMPLETED BY APPLICANT)			
Impact Questions	[Y/N] There are Potential Impacts; or Item Requires Documentation, Evaluation, Mitigation Measures, and/or (a) Permit(s).		
	Yes	No	Comment (Use attachments if necessary)
1. Does the proposed action require work in, across, and/or adjacent to a listed or proposed Wild or Scenic River? (See http://www.rivers.gov/wildriverslist.html)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
2a. Are there any listed or candidate threatened or endangered species in the vicinity of the proposed activity?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Unknown
2b. Will the proposed action adversely affect listed or candidate threatened or endangered species, or adversely modify critical habitat?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> Unknown
3. Will the proposed action have potential to affect water quality? If 'Yes', an environment-related permit or authorization may be required. If 'No', go to question 4.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
3a. If the answer to question 3 is yes, is a Clean Water Act Section 402 permit (i.e., MPDES or NPDES permit) required? (Need for an MPDES or NPDES is generally triggered by a disturbance area equal to or greater than one acre.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> N/A
3b. Is the proposed project within an MS4 Permit Area? (See http://deq.mt.gov/wqinfo/MPDES/StormWater/ms4.mcp.x). (Billings, Great Falls, and Missoula Urbanized areas, and Butte, Bozeman, and Helena)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
4. Does the proposed project have impacts to wetlands, streams, or other water bodies? If 'No', go to question 5.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	not directly. Bridge work will take place over a section 10 water
4a. If the answer to question 4 is 'Yes', is a Clean Water Act Section 404 permit authorization required?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> N/A A section 10 permit will be required
4b. If the answer to question 3 or 4 is 'Yes', is a Stream Protection Act 124SPA consultation required?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> N/A
5. Are solid wastes, hazardous materials or petroleum products likely to be encountered? (For example, project occurs in or adjacent to Superfund sites, known spill areas, underground storage tanks, or abandoned mines.) (See http://nris.mt.gov/deq/remsitequery/portal.aspx)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
6. Is the proposed activity on and/or within approximately 1 mile of an Indian Reservation? If answer is 'No', go to question 7.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
6a. Are any Tribal water permits required?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> N/A
7. Is the proposed project in a "Class I Air Shed" or a nonattainment area? (See http://deq.mt.gov/AirQuality/Planning/AirNonattainment.mcp.x) (Class I Air Sheds include the Northern Cheyenne, Flathead, and Fort Peck 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 checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	The project is located within the Level SO ₂ nonattainment area. However, this air pollutant is not transportation related. Therefore no further evaluation is needed.

Checklist prepared by:

Rod Nelson
Applicant

Project Design Engineer
Title

12/7/2011
Date

Approved by:

[Signature]
ENVIRONMENTAL ENGINEERING
SECTION SUPERVISOR

Environmental Services

Title

1/3/12
Click here to enter a date.
Date

(When any of the above questions are checked "Yes")

The Applicant is **not** authorized to proceed with the proposed work until the checklist has been reviewed and approved, as necessary, and any requested conditions of approval have been incorporated.

- A. Complete the checklist items 1 through 7, indicating "Yes" or "No" for each item. Include comments, explanations, information sources, and a description of the magnitude/importance of potential impacts in the right hand column. Attach additional and supporting information as needed. The checklist preparer, by signing, certifies the accuracy of the information provided.
- B. When "Yes" is indicated on any item, the checklist preparer must explain why and provide the appropriate documentation, evaluation, permit, and/or mitigation measures required to satisfy environmental concerns for the project. Use attachments if necessary. **Any proposed mitigation measures will become a condition of approval.**
- C. If the applicant checks "Yes" for any one item, the checklist and MDT's mitigation proposal, documentation, evaluation and/or permit shall be submitted to MDT Environmental Services Bureau. Electronic format is preferred. Contact Number 444-7228.
- D. When the applicant checks a "Yes" item, MDT cannot be authorized to proceed with the proposed work until Environmental Services Bureau reviews the information and signs the checklist.
- E. MDT will obtain all necessary permits or authorizations from other entities with jurisdiction prior to beginning the Pavement Preservation Activity.
- F. The links above are provided as a starting point for potential sources of information for completing the checklist. The Applicant is encouraged to consult Environmental Services Bureau and/or other information sources.