

**CATEGORICAL EXCLUSION DOCUMENTATION FOR  
DNRC FOREST MANAGEMENT ACTIVITY**

Project Name:Shay Lake Easement Exchange

Proposed Implementation Date: June, 2013

Proponent: Shay Lake Road User's Association & DNRC

Type and Purpose of Action: Through an easement exchange DNRC would receive a 60-foot right of way for all lawful purposes where Fatty Creek Road crosses private ownership in Section 19, T23N, R17W, and private landowners who use Fatty Creek and Shay Lake Roads would receive a 60-foot right of way for all lawful purposes across state lands in Sections 18, 19, 30, T23N, R17W, and Section 24, T23N, R18W to access their property.

Location: Swan River State Forest, Sections 18, 19, 30, T23N, R17W, and Section 24, T23N, R18W

County: Lake

**Category (refer to ARM 36.11.447 (3)(a) through (w) for additional detail):**

- a)  Temporary Uses of Land with Negligible Effects
- b)  Plans and Policies
- c)  Leases and Licenses
- d)  Acquisition of Land or Interest in Land
- e)  Road Maintenance and Repair
- f)  Bridges and Culverts
- g)  Crossing Class 3 Streams
- h)  Temporary Road Use Permits
- i)  Road Closure
- j)  Material Stockpiles
- k)  Backfilling
- l)  Gathering Forest Products for Personal Use
- m)  Regeneration
- n)  Nursery Operations
- o)  Water Wells
- p)  Herbicides and Pesticides
- q)  Other Hazardous Materials
- r)  Fences
- s)  Waterlines

- t)  Removal of Small Trees
- u)  Removal of Hazardous Trees
- v)  Cone Collection
- w)  Timber Harvest (<100 MBF green or 500 MBF salvage)

By process of the adoption of the Forest Management Rules on February 27, 2003, pursuant to ARM 36.2.523(5)(a), the Department of Natural Resources and Conservation, Trust Land Management Division, has adopted the above categorical exclusions for activities conducted on state forested trust lands. "Categorical Exclusion" refers to a type of action that does not individually, collectively, or cumulatively require an EA or EIS unless extraordinary circumstances occur (ARM 36.2.522(5)).

**Extraordinary Circumstances:**

Will the proposed action affect one or more of the following resources, species or situations in the project area? If the resource, species, or situation is present, but project design avoids potential adverse effects on the resource, the answer is "No". One "Yes" answer indicates that Categorical Exclusion is not appropriate for the project, and an EA or EIS must be conducted.

YES      NO

- YES       NO      a) Sites with high erosion risk.
- YES       NO      b) Federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the USFWS.
- YES       NO      c) Municipal watersheds.
- YES       NO      d) The SMZ of fish bearing streams or lakes, except for modification or replacement of bridges, culverts and other crossing structures.
- YES       NO      e) State natural area.
- YES       NO      f) Native American religious and cultural sites.
- YES       NO      g) Archaeological sites.
- YES       NO      h) Historic properties and areas.
- YES       NO      i) Several related projects that individually may be subject to categorical exclusion but that may occur at the same time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review.
- YES       NO      j) Violations of any applicable state or federal laws or regulations.

The project listed above meets the definition of the indicated categorical exclusion, including specified conditions and extraordinary circumstances, as provided in the Forest Management Rules (ARM 36.11.447).

Prepared by: Dan Roberson \_\_\_\_\_ February 21, 2013  
(Name) (Date)

Decision by: Steve Frye \_\_\_\_\_ NWLO Area Manager  
(Name) (Title)

 \_\_\_\_\_ June 3, 2013  
(Signature) (Date)

## Attachment A: Decision Rationale

Project: Shay Lake Easement Exchange Project

Date: June 3, 2013

Decision-maker: Steve Frye

Although this particular project does not fit any of the listed activities that qualify as categorical exclusions under ARM 36.11.447 (3)(a-w), it has been determined that it qualifies as a categorical exclusion for the reasons listed below under the *Finding* statements following the listed statute and Administrative Rules.

**MCA 75-1-201** (1)(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) [*i.e. environmental review*] if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

*Finding: This project is considered a transfer of ownership interest where no material change in terms or conditions is occurring – thereby adhering to cat-ex requirements as outlined in statute.*

**ARM 36.2.523**(5) The agency is not required to prepare an EA or an EIS for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify any extraordinary circumstances in which a normally excluded action requires an EA or EIS;

(b) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) minor repairs, operations, or maintenance of existing equipment or facilities;

(d) investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;

(e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and

(f) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.

*Finding: This project is considered an administrative action and one that is primarily economic in nature with no affect to the human environment – thereby adhering to cat-ex requirements as outlined in DNRC ARMs for MEPA.*

**ARM 36.11.447**(2) Categorical exclusions shall not apply where extraordinary circumstances may occur. This includes, but is not limited to, activities affecting one or more of the following:

(a) sites with high erosion risk;

(b) federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the USFWS;

(c) within municipal watersheds;

(d) the SMZ of fish bearing streams or lakes, except for modification or replacement of bridges, culverts and other crossing structures;

(e) state natural area;

(f) Native American religious and cultural sites;

(g) archaeological sites;

(h) historic properties and areas;

(i) several related projects that individually may be subject to categorical exclusion but that may occur at the same time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or

(j) violations of any applicable state or federal laws or regulations.

**Finding:** *Even though this activity is not specifically listed as a categorical exclusion in ARM 36.11.447(3) (a-w), this project does not affect any of the extraordinary circumstances listed above (see Attachment B) – thereby adhering to cat-ex requirements as outlined in Forest Management ARMs.*

## Appendix B

**To:** Dan Roberson, Swan Unit Manager

**CC:** file

**From:** Marc Vessar

**Date:** February 13, 2013

**Subject:** Shay Lake Easement Project CatEx Documentation

The proposed easement exchange on approximately 2.73 miles of existing road on the Swan River State Forest would occur in sections 18, 19 & 30, T23N, R17W. This exchange is on existing roads with 3 bridges and several culverts. Users would be existing landowners that are currently using the road.

According to ARM 36.11.447 (d), the project meets the criteria necessary to be nominated as a Categorical Excluded project. To ensure the soil, water and fisheries resources present in the project area do not preclude the CatEx designation; this document will assess the risk to existing resources including addressing the extraordinary circumstances listed in ARM 36.11.447 (a) (b) (c) (d) and (i).

Issue	Assessment	Meet Criteria for CatEx?
High erosion risk soils? ARM 36.11.447 (2)(a)	In the Soil Survey of the Flathead National Forest Area (USDA, 1998), The landtypes are not considered as a <u>highly</u> erosivel.	Yes
Federally listed threatened and endangered <i>aquatic</i> species or critical habitat for threatened and endangered <i>aquatic</i> species as designated by the USFWS? Adapted from ARM 36.11.447 (2)(b)	The project is primarily in the Cedar Creek watershed. Streams in this watershed contain bull trout, Westtslope cutthroat trout, rainbow trout and eastern brook trout (Koopal, 2004). This watershed is not considered as Bull Trout Critical Habitat per the USFWS website <a href="http://www.fws.gov/pacific/bulltrout/CrHabitat.html">http://www.fws.gov/pacific/bulltrout/CrHabitat.html</a> nor is it proposed as Critical Habitat in the 2010 revision <a href="http://www.fws.gov/pacific/bulltrout/Index.cfm">http://www.fws.gov/pacific/bulltrout/Index.cfm</a> The crossing over the Swan River however is listed as critical habitat for bull trout. Because the project does not build new roads or encourage new road use, and the road is maintained to meet forestry best management practices a low risk of impacts would exist.	Yes
Within a municipal watershed? ARM 36.11.447 (2)(c)	No municipal watersheds are present in the project area.	Yes
SMZ of fish bearing streams or lakes...? ARM 36.11.447 (2)(d)	No harvesting or ground disturbing activities are proposed.	Yes
Cumulative effects? Adapted from ARM 36.11.447 (2)(i)	Due to the small scale of this project, a consideration of the four issues above, and other existing conditions, the potential for additional impacts would be very low and likely immeasurable. Therefore, cumulative impacts would remain acceptable for this watershed.	Yes

### Conclusion:

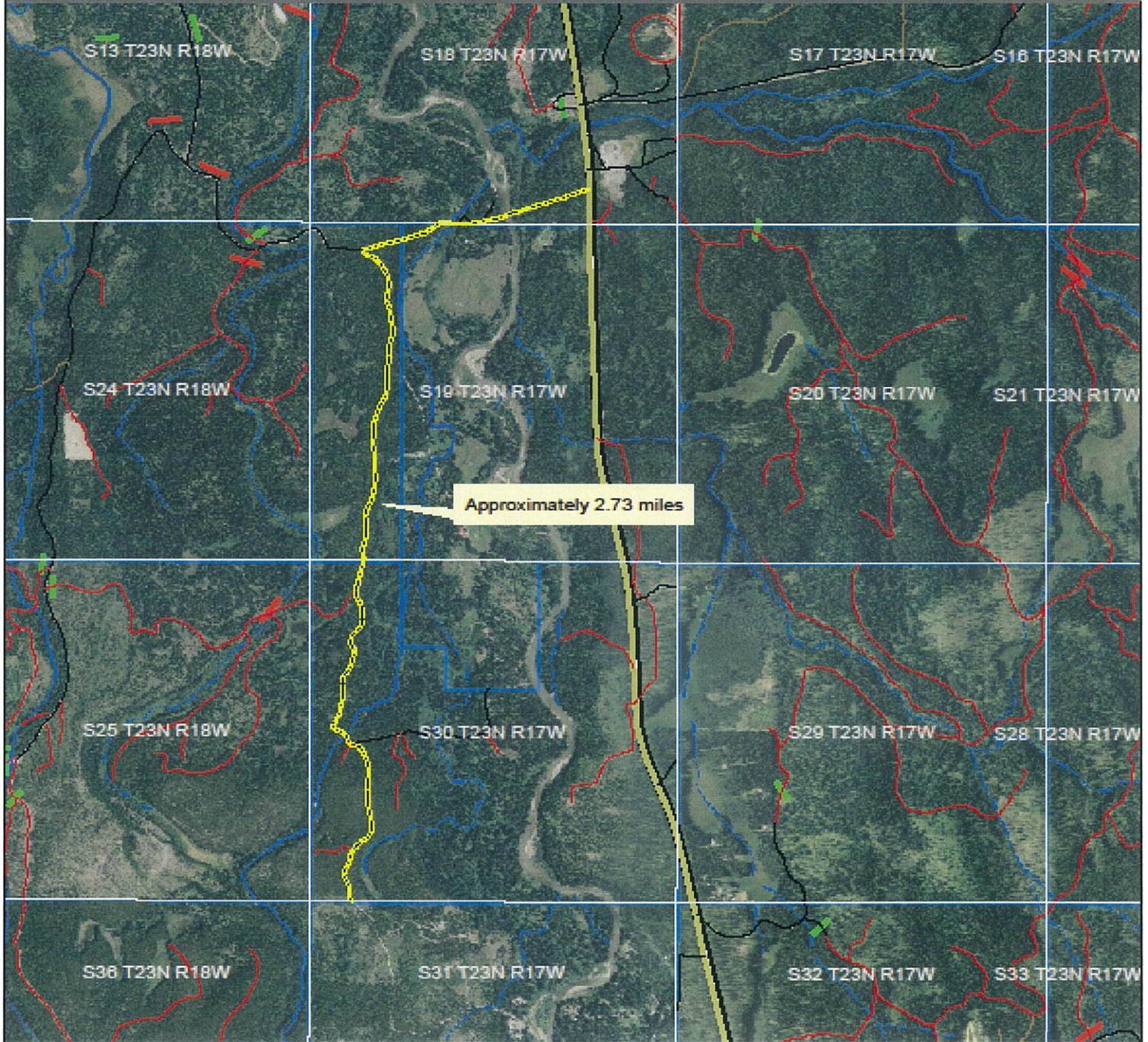
This project meets watershed, soils and fisheries criteria for a categorical exclusion because the potential for impacts to these resources would be very low.

### References:

Martinson, A.H. and Basko, W.J. 1998. Soil Survey of Flathead National Forest Area, Montana. USDA Forest Service, Region 1, Flathead National Forest. Kalispell, MT. 206 pp.

Koopal, M. 2004. Fisheries Resource Summary Report. Unpublished. Prepared for Montana Department of Natural Resources and Conservation Northwestern Land Office. Kalispell, MT.

# Shay Lake Easement Exchange Project Section 18, 19 & 30, T23N R17W



## Legend

Montana DNRC  
Northwestern Land Office  
Hydrology/Soils Specialist



# Memorandum

**To:** Dan Roberson, Swan River State Forest Unit Manager  
**From:** Chris Forristal, Wildlife Biologist  
**Date:** 5/23/2013  
**Re:** Shay Lake Easement Exchange Project - wildlife comments

I reviewed the proposal to exchange easements along approximately 2.73 miles of existing roads within the Swan Unit. These portions of road are located in sections 18, 19 and 30 of T23N, R17W. These portions of Fatty Creek and Shay Lake roads have historically been open to public motorized use and receive regular vehicle traffic by year-round residents. The proposed transfer does not include any actions which would alter wildlife habitat features or wildlife use of the area.

The following table shows how each Threatened species, Endangered species, sensitive species, or big game was either reviewed with anticipated effects of the proposal or dismissed because suitable habitat does not occur within the project area or proposed activities would not affect their required habitat components.

	SPECIES/HABITAT	DETERMINATION – BASIS
Threatened and Endangered Species	<b>Canada lynx (<i>Felis lynx</i>)</b> Habitat: Subalpine fir habitat types, dense sapling, old forest, deep snow zones	The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to Canada lynx would be expected to occur as a result of the easement exchange.
	<b>Grizzly bear (<i>Ursus arctos</i>)</b> Habitat: Recovery areas, security from human activity	The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Open road density would not change under this proposal. Thus, negligible direct, indirect, or cumulative effects to grizzly bears would be expected to occur as a result of the easement exchange.
Sensitive Species	<b>Bald eagle (<i>Haliaeetus leucocephalus</i>)</b> Habitat: Late-successional forest less than 1 mile from open water	The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to bald eagles would be expected to occur as a result of the easement exchange.
	<b>Black-backed woodpecker (<i>Picoides arcticus</i>)</b> Habitat: Mature to old burned or beetle-infested forest	No recently (less than 5 years) burned areas are in the easement area. Thus, no direct, indirect, or cumulative effects to black-backed woodpeckers would be expected to occur as a result of either alternative.

<p><b>Coeur d'Alene salamander</b> (<i>Plethodon idahoensis</i>) Habitat: Waterfall spray zones, talus near cascading streams</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to Coeur d'Alene salamander would be expected to occur as a result of the easement exchange.</p>
<p><b>Columbian sharp-tailed grouse</b> (<i>Tympanuchus Phasianellus columbianus</i>) Habitat: Grassland, shrubland, riparian, agriculture</p>	<p>No suitable grassland communities occur in the project area. Thus, no direct, indirect, or cumulative effects to Columbian sharp-tailed grouse would be expected to occur as a result of either alternative.</p>
<p><b>Common loon</b> (<i>Gavia immer</i>) Habitat: Cold mountain lakes, nest in emergent vegetation</p>	<p>No suitable lakes occur within 500 feet of the project area. Thus, no direct, indirect or cumulative effects to common loons would be expected to occur as a result of either alternative.</p>
<p><b>Fisher</b> (<i>Martes pennanti</i>) Habitat: Dense mature to old forest less than 6,000 feet in elevation and riparian areas</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to fishers would be expected to occur as a result of the easement exchange.</p>
<p><b>Flammulated owl</b> (<i>Otus flammeolus</i>) Habitat: Late-successional ponderosa pine and Douglas-fir forest</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat. Thus, negligible direct, indirect, or cumulative effects to Coeur d'Alene salamander would be expected to occur as a result of the easement exchange.</p>
<p><b>Gray Wolf</b> (<i>Canis lupus</i>) Habitat: Areas with ample big game populations, security from human activities</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to gray wolves would be expected to occur as a result of the easement exchange.</p>
<p><b>Harlequin duck</b> (<i>Histrionicus histrionicus</i>) Habitat: White-water streams, boulder and cobble substrates</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to harlequin ducks would be expected to occur as a result of the easement exchange.</p>

	<p><b>Northern bog lemming</b> (<i>Synaptomys borealis</i>) Habitat: Sphagnum meadows, bogs, fens with thick moss mats</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to northern bog lemming would be expected to occur as a result of the easement exchange.</p>
	<p><b>Peregrine falcon</b> (<i>Falco peregrinus</i>) Habitat: Cliff features near open foraging areas and/or wetlands</p>	<p>No known cliffs suitable for peregrine falcon nesting exist within the project area. Thus, no direct, indirect, or cumulative effects to peregrine falcons would be anticipated as a result of either alternative.</p>
	<p><b>Pileated woodpecker</b>(<i>Dryocopus pileatus</i>) Habitat: Late-successional ponderosa pine and larch-fir forest</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to pileated woodpeckers would be expected to occur as a result of the easement exchange.</p>
	<p><b>Townsend's big-eared bat</b> (<i>Plecotus townsendii</i>) Habitat: Caves, caverns, old mines</p>	<p>No suitable caves or mine tunnels are known to occur in the project area. Thus, no direct, indirect or cumulative effects to Townsend's big-eared bats are anticipated as a result of either alternative.</p>
	<p><b>Wolverine</b> (<i>Gulo gulo</i>) Habitat: Alpine tundra and high-elevation boreal and mountain coniferous forests, areas that maintain deep persistent snow into late spring</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to wolverines would be expected to occur as a result of the easement exchange.</p>
Big Game Species	<p><b>Elk</b> (<i>Cervus canadensis</i>)</p> <p><b>Moose</b> (<i>Alces alces</i>)</p> <p><b>Mule Deer</b> (<i>Odocoileus hemionus</i>)</p> <p><b>White-tailed Deer</b> (<i>Odocoileus virginianus</i>)</p>	<p>The proposed easement exchange would not appreciably change motorized use of the existing road system or alter habitat attributes. Thus, negligible direct, indirect, or cumulative effects to big game species would be expected to occur as a result of the easement exchange.</p>

Conclusion:

In general, the potential for effects to threatened and endangered species is extremely low and overall negligible effects to wildlife would be anticipated. None of the extraordinary circumstances listed under ARM 36.11.447 (2) (b) and (i) affecting the wildlife resources would preclude the use of a categorical exclusion for this proposal.