



# Montana Fish, Wildlife & Parks

2300 Lake Elmo Drive  
Billings MT 59105

April 1, 2013

TO: Environmental Quality Council  
Director's Office, Dept. of Environmental Quality  
Montana Fish, Wildlife & Parks\*

Director's Office	Lands Section
Parks Division	Design & Construction
Fisheries Division	Legal Unit
Wildlife Division	Regional Supervisors

Tim Baker, Governor's Office \*  
Judy Beck, Press Agent, Governor's Office \*  
Montana Historical Society, State Preservation Office  
Janet Ellis, Montana Audubon Council \*  
Montana Wildlife Federation \*  
Montana State Library \*  
George Ochenski \*  
Montana Environmental Information Center \*  
Wayne Hirst, Montana State Parks Foundation \*  
FWP Commissioner Matt Tourtlotte\*  
Montana Parks Association/Our Montana (land acquisition projects)  
Matt Wolcott, DNRC Area Manager, Southern Land Office \*  
County Commissioners \*  
Other Local Interested People or Groups  
\* (Sent electronically)

Ladies and gentlemen:

The enclosed draft Environmental Assessment (EA) has been prepared to provide a right-of-way (ROW) easement for the construction of a new access approach north of the highway for the Sand Creek Canal Co. and the Nash Family trust within Parcel 58A of the MDT project. This project involves the transfer of a 0.75 acre replacement easement to MDT in Tract 2 Amended Agricultural Tract n Section 5, Township 7 South, Range 23 East so this access can be constructed. Questions and/or comment may be submitted until 5 p.m., April 8, 2013 and addressed to Ken Frazer, 2300 Lake Elmo Drive, Billings, MT 59105 or emailed at [kfrazer@mt.gov](mailto:kfrazer@mt.gov).

Gary Hammond  
Regional Supervisor  
Enclosure

# MONTANA FISH WILDLIFE & PARKS

## MEPA/NEPA CHECKLIST

### PART I. PROPOSED ACTION DESCRIPTION

Project Title: Clarks Fork of the Yellowstone FAS right-of-way (ROW) easement change for Sand Creek Canal Co. and Nash Family Trust as part of MDT Project STPP72-1(12)10

Project Location: Clarks Fork of the Yellowstone FAS

Estimated Completion: April 2013

**Description of Project:** Right-of-way easement

The Montana Department of Transportation (MDT) has reconstructed the section of Hwy 72 (Belfry-N Project) that runs through the north side of the FAS. Part of this project includes the construction of a new access approach north of the highway for the Sand Creek Canal Co. and the Nash Family trust within Parcel 58A of the MDT project. Due to a change in grade on the project the location of this proposed approach had to be moved and the new location was outside of the existing easement. This project involves the transfer of a 0.75 acre replacement easement to MDT in Tract 2 Amended Agricultural Tract in Section 5, Township 7 South, Range 23 East so this access can be constructed.

**Other groups of agencies contacted or which have overlapping jurisdiction:**

None

## **PART II. ENVIRONMENTAL REVIEW**

1. Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the Physical and Human Environment.

### **A. PHYSICAL ENVIRONMENT**

1. <b><u>LAND RESOURCES</u></b>  Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Soil instability or changes in geologic substructure?		X				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil which would reduce productivity or fertility?		X				
c. **Destruction, covering or modification of any unique geologic or physical features?		X				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		X				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		X				
f. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

2. <b><u>AIR</u></b>  Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Emission of air pollutants or deterioration of ambient air quality? (also see 13 (c))		X				
b. Creation of objectionable odors?		X				
c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?		X				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		X				
e. ***For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regs? (Also see 2a)		NA				
f. Other:						

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Air Resources (Attach additional pages of narrative if needed):**

- \* Include a narrative explanation under Part III describing the scope and level of impact. If the impact is unknown, explain why the unknown impact has not or can not be evaluated.
- \*\* Include a narrative description addressing the items identified in 12.8.604-1a (ARM)
- \*\*\* Determine whether the described impact may result and respond on the checklist. Describe any minor or potentially significant impacts.
- \*\*\*\* Include a discussion about the issue in the EA narrative and include documentation if it will be useful.

3. <u>WATER</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. *Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?		X				
b. Changes in drainage patterns or the rate and amount of surface runoff?		X				
c. Alteration of the course or magnitude of floodwater or other flows?		X				
d. Changes in the amount of surface water in any water body or creation of a new water body?		X				
e. Exposure of people or property to water related hazards such as flooding?		X				
f. Changes in the quality of groundwater?		X				
g. Changes in the quantity of groundwater?		X				
h. Increase in risk of contamination of surface or groundwater?		X				
i. Effects on any existing water right or reservation?		X				
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		X				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?		X				
l. ****For P-R/D-J, will the project affect a designated floodplain? (Also see 3c)		NA				
m. ***For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a)		NA				
n. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Water Resources (Attach additional pages of narrative if needed):**

4. <u>VEGETATION</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?		X				X
b. Alteration of a plant community?		X				
c. Adverse effects on any unique, rare, threatened, or endangered species?		X				
d. Reduction in acreage or productivity of any agricultural land?		X				
e. Establishment or spread of noxious weeds?		X				X
f. ****For P-R/D-J, will the project affect wetlands, or prime and unique farmland?		NA				
g. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

4 a., e. Surface disturbance from highway reconstruction has eliminated existing vegetation at this location. MDT will reclaim the area after construction. FWP has an ongoing agreement with the Carbon County weed District to control weeds on the entire Clarks Fork of the Yellowstone FAS so they will control the spread of noxious weeds on the project site.

** 5. <u>FISH/WILDLIFE</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Deterioration of critical fish or wildlife habitat?		X				
b. Changes in the diversity or abundance of game animals or bird species?		X				
c. Changes in the diversity or abundance of nongame species?		X				
d. Introduction of new species into an area?		X				
e. Creation of a barrier to the migration or movement of animals?		X				
f. Adverse effects on any unique, rare, threatened, or endangered species?		X				
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?		X				
h. ****For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f)		NA				
i. ***For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d)		NA				
j. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

## B. HUMAN ENVIRONMENT

6. <u>NOISE/ELECTRICAL EFFECTS</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Increases in existing noise levels?		X				
b. Exposure of people to severe or nuisance noise levels?		X				
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?		X				
d. Interference with radio or television reception and operation?		X				
e. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

7. <u>LAND USE</u> Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?		X				
b. Conflicted with a designated natural area or area of unusual scientific or educational importance?		X				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		X				
d. Adverse effects on or relocation of residences?		X				X
e. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

7 d. This project is necessary to allow access to the Nash residence.

<b>8. <u>RISK/HEALTH HAZARDS</u></b>	<b>IMPACT *</b>				<b>Can Impact Be Mitigated *</b>	<b>Comment Index</b>
	<b>Unknown *</b>	<b>None</b>	<b>Minor *</b>	<b>Potentially Significant</b>		
<b>Will the proposed action result in:</b>						
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?		X				
b. Affect an existing emergency response or emergency evacuation plan or create a need for a new plan?		X				
c. Creation of any human health hazard or potential hazard?		X				
d. ***For P-R/D-J, will any chemical toxicants be used? (Also see 8a)		NA				
e. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

<b>9. <u>COMMUNITY IMPACT</u></b>	<b>IMPACT *</b>				<b>Can Impact Be Mitigated *</b>	<b>Comment Index</b>
	<b>Unknown *</b>	<b>None</b>	<b>Minor *</b>	<b>Potentially Significant</b>		
<b>Will the proposed action result in:</b>						
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?		X				
b. Alteration of the social structure of a community?		X				
c. Alteration of the level or distribution of employment or community or personal income?		X				
d. Changes in industrial or commercial activity?		X				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		X				
f. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

<b>10. <u>PUBLIC SERVICES/TAXES/UTILITIES</u></b>	<b>IMPACT *</b>				<b>Can Impact Be Mitigated *</b>	<b>Comment Index</b>
	<b>Unknown *</b>	<b>None</b>	<b>Minor *</b>	<b>Potentially Significant</b>		
<b>Will the proposed action result in:</b>						
a. Will the proposed action have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:		X				
b. Will the proposed action have an effect upon the local or state tax base and revenues?		X				
c. Will the proposed action result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		X				
d. Will the proposed action result in increased used of any energy source?		X				
e. **Define projected revenue sources						
f. **Define projected maintenance costs.						
g. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

<b>** 11. <u>AESTHETICS/RECREATION</u></b>	<b>IMPACT *</b>				<b>Can Impact Be Mitigated *</b>	<b>Comment Index</b>
	<b>Unknown *</b>	<b>None</b>	<b>Minor *</b>	<b>Potentially Significant</b>		
<b>Will the proposed action result in:</b>						
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		X				
b. Alteration of the aesthetic character of a community or neighborhood?		X				
c. **Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report)		X				
d. ***For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c)		NA				
e. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

<b>12. CULTURAL/HISTORICAL RESOURCES</b>	<b>IMPACT *</b>				<b>Can Impact Be Mitigated *</b>	<b>Comment Index</b>
	<b>Unknown *</b>	<b>None</b>	<b>Minor *</b>	<b>Potentially Significant</b>		
<b>Will the proposed action result in:</b>						
a. **Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?		X				
b. Physical change that would affect unique cultural values?		X				
c. Effects on existing religious or sacred uses of a site or area?		X				
d. ****For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a)		NA				
e. Other:		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Land Resources (Attach additional pages of narrative if needed):**

**SIGNIFICANCE CRITERIA**

<b>13. SUMMARY EVALUATION OF SIGNIFICANCE</b>	<b>IMPACT *</b>				<b>Can Impact Be Mitigated *</b>	<b>Comment Index</b>
	<b>Unknown *</b>	<b>None</b>	<b>Minor *</b>	<b>Potentially Significant</b>		
<b>Will the proposed action, considered as a whole:</b>						
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total.)		X				
b. Involve potential risks or adverse effects which are uncertain but extremely hazardous if they were to occur?		X				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?		X				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		X				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		X				
f. ***For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e)		X				
g. ****For P-R/D-J, list any federal or state permits required.		X				

**Narrative Description and Evaluation of the Cumulative and Secondary Effects on Water Resources (Attach additional pages of narrative if needed):**

### **PART III. ENVIRONMENTAL REVIEW, Alternatives**

No action: Would not allow necessary access for the Sand Creek Canal or the Nash family

Preferred alternative: Grant replacement easement as indicated

### **PART IV. EA CONCLUSION SECTION**

**No significant impacts will occur from this action so an EIS is not required**

**Individuals or groups contributing to, of commenting on this EA: None**

**Questions and/or comments may be submitted until 5 p.m. April 8, 2013** and addressed to: Ken Frazer or emailed to: [kfrazer@mt.gov](mailto:kfrazer@mt.gov)  
2300 Lake Elmo Drive  
Billings, MT 59105

**EA prepared by: Ken Frazer**

**Date Completed: 3/29/2013**

## **APPENDIX A**

### **PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST**

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney

General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

***(LIST ANY MITIGATION OR STIPALTIONS REQUIRED, OR NOTE "NONE")***

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

YES	NO	
_____	<u>  X  </u>	1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
_____	<u>  X  </u>	2. Does the action result in either a permanent or indefinite physical occupation of private property?
_____	<u>  X  </u>	3. Does the action deprive the owner of all economically viable uses of the property?
_____	<u>  X  </u>	4. Does the action deny a fundamental attribute of ownership?
<u>  X  </u>	_____	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is <b>NO</b> , skip questions 5a and 5b and continue with question 6.]
<u>  X  </u>	_____	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
<u>  X  </u>	_____	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
_____	<u>  X  </u>	6. Does the action have a severe impact on the value of the property?
_____	<u>  X  </u>	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is <b>NO</b> , do not answer questions 7a-7c.]
_____	_____	7a. Is the impact of government action direct, peculiar, and

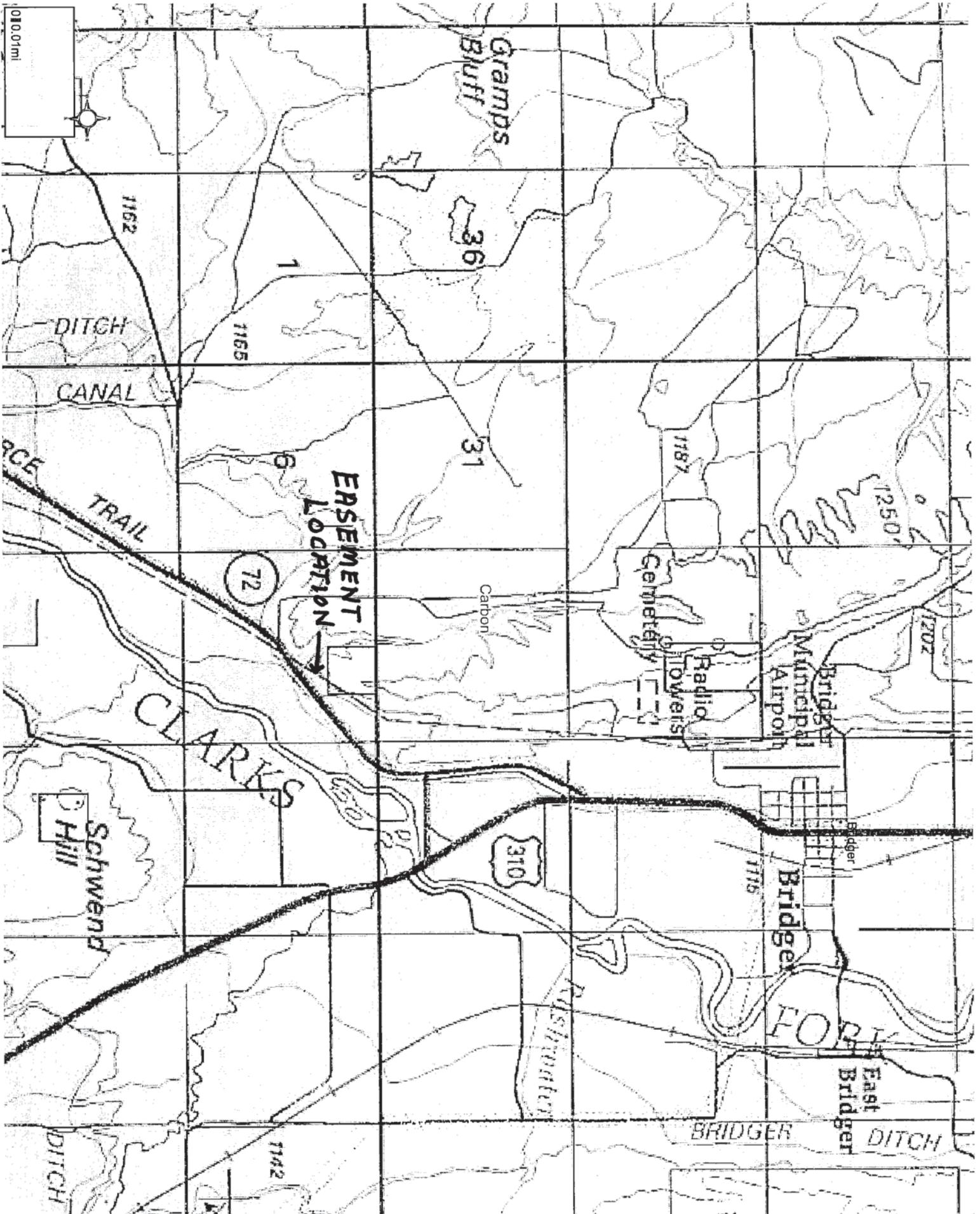
significant?

\_\_\_\_\_      \_\_\_\_\_      7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?

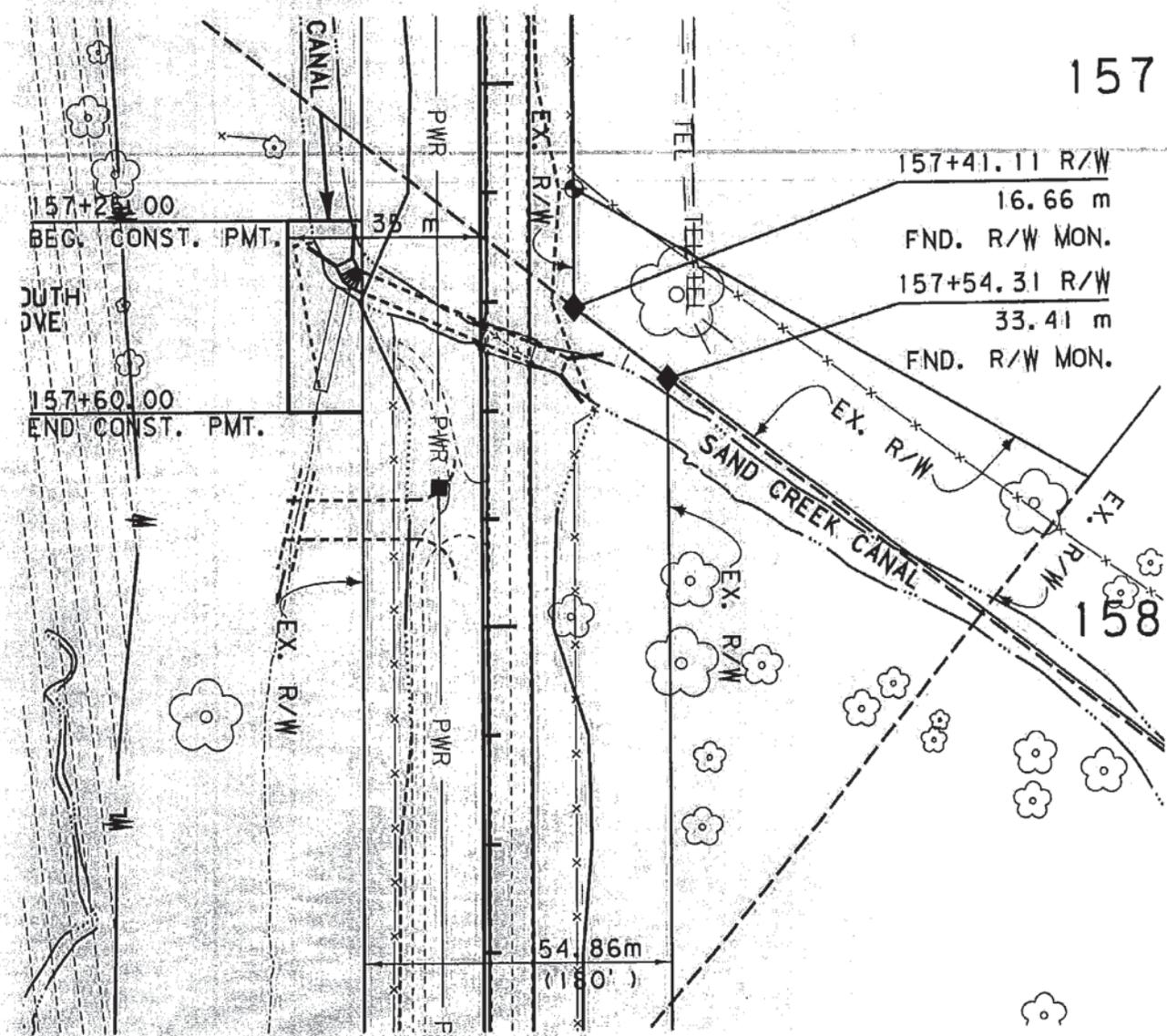
\_\_\_\_\_      \_\_\_\_\_      7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.



157



157+41.11 R/W  
16.66 m  
FND. R/W MON.  
157+54.31 R/W  
33.41 m  
FND. R/W MON.

158

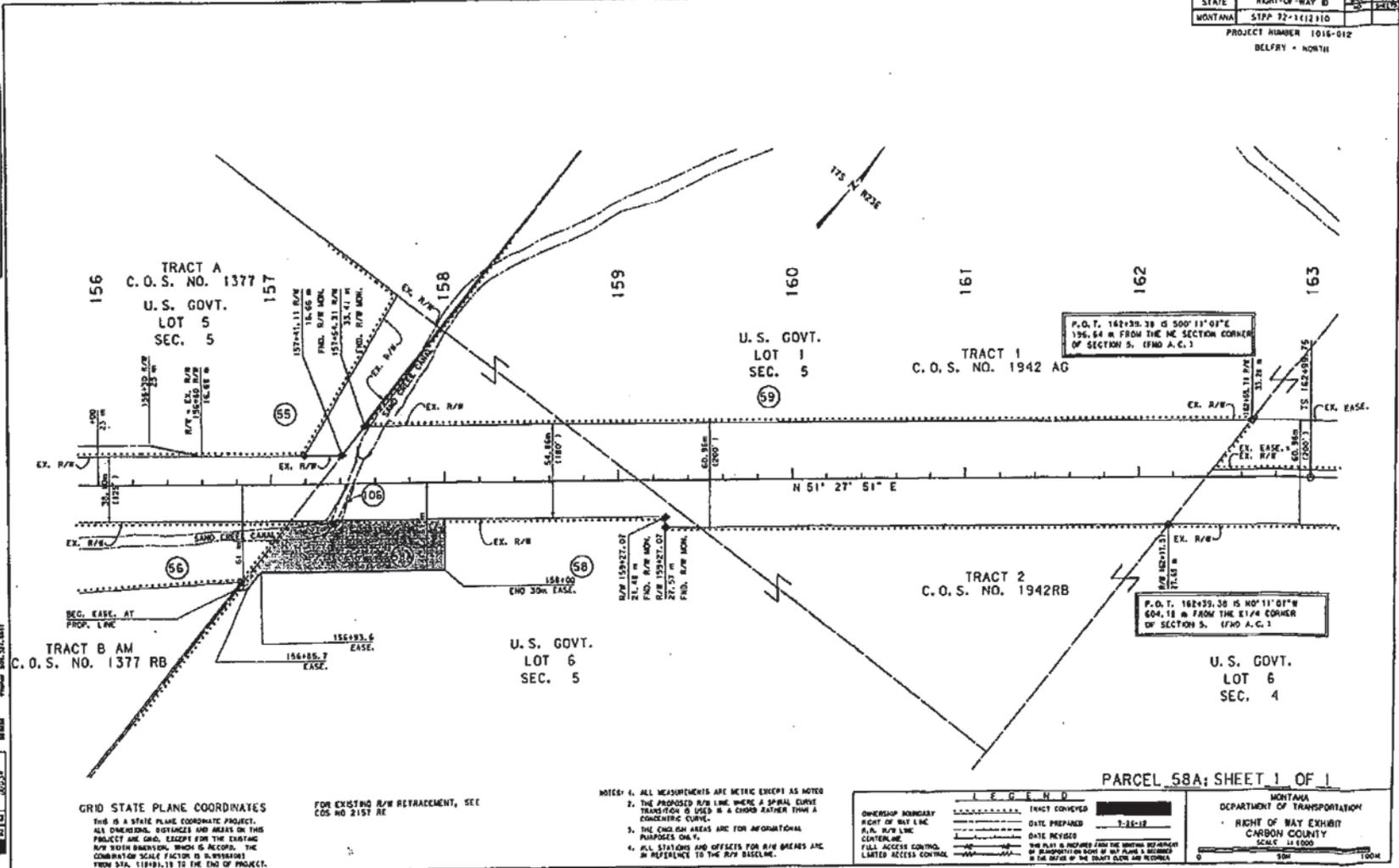
54.86m  
(180')

STATE	RIGHT-OF-WAY ID	PROJECT TITLE
MONTANA	STPP 72-1(12)110	RDROW
PROJECT NUMBER 1016-012		
BELFRY - NORTH		

MONTANA  
CADD

RDROW

DANIEL SWANEY  
ENGINEERING ASSOCIATES, INC.  
1000 W. 10TH AVENUE, SUITE 100  
BOZEMAN, MONTANA 59717  
PHONE (406) 552-1111  
FAX (406) 552-1111



**GRID STATE PLANE COORDINATES**  
This is a STATE PLANE COORDINATE PROJECT. ALL DIMENSIONAL DISTANCES AND AREAS ON THIS PROJECT ARE GRID, EXCEPT FOR THE EXISTING R/W WITHIN BOUNDARY, WHICH IS RECORD. THE COMBINATION SCALE FACTOR IS 0.9999997 FROM STA. 118+81.18 TO THE END OF PROJECT.

FOR EXISTING R/W RETRACTIONMENT, SEE CDS NO 2157 RE

- NOTES:**
1. ALL MEASUREMENTS ARE METRIC EXCEPT AS NOTED
  2. THE PROPOSED R/W LINE WHERE A SPIRAL CURVE TRANSITION IS USED IS A CHORD RATHER THAN A CONCENTRIC CURVE.
  3. THE CHORD ON AREAS ARE FOR INFORMATIONAL PURPOSES ONLY.
  4. ALL STATIONS AND OFFSETS FOR R/W BOUNDS ARE IN REFERENCE TO THE R/W BASELINE.

**LEGEND**

-----	TRACT CONVEYED
-----	DATE PREPARED 3-28-18
-----	DATE REVISION
-----	THE PLAN IS PREPARED FROM THE SURVEY INSTRUMENTS OR PLANS ON FILE IN THE OFFICE OF THE COUNTY CLERK AND RECORDS
-----	LIMITED ACCESS CONTROL

PARCEL 58A; SHEET 1 OF 1

MONTANA  
DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY EXHIBIT  
CARBON COUNTY  
SCALE 1:1000