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September 9, 2005

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LEGISLATIVE ENVIRONMENTAL POLICY OFFICE

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Janice W. Brown
Division Administrator
Federal Highway Administration
2880 Skyway Drive
Helena, MT 59602-1230

Subject: **Project Name:** **Big Horn County Line East**
Project Number: **IM 90-9(94)473**
Control Number: **5175**

Dear Janice Brown:

This is to request approval of this proposed project as a Categorical Exclusion (CE) under the provisions of 23 CFR 771.117(d), and the Programmatic Agreement as signed by the MONTANA DEPARTMENT OF TRANSPORTATION (MDT) and the FHWA on April 12, 2001. Copies of its Preliminary Field Review Report (PFR) and Project Location Map are attached. This proposed action also qualifies as a CE 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 Programmatic Categorical Exclusion Approval (PCE) as initially agreed by the (former) MONTANA DEPARTMENT OF HIGHWAYS (MDOH) and the FHWA on December 6, 1989. (Note: An " X " in the "N/A" column is "Not Applicable" to, while one in the "UNK" column is "Unknown" at the present time for this proposed project.)

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.	☐	☒	☐	☐

		YES	NO	N/A	UNK
1.	The context or degree of the Right-of-Way action would have (a) substantial social, economic, or environmental effect(s).	☐	☐	☒	☐
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 this would affect 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.	"Nationwide" Programmatic *Section 4(f)* Evaluation forms for these sites are attached.	☐	☐	☒	☐
b.	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 water body(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 (EO) #11990, and their proposed mitigation would be coordinated with the Montana Inter-Agency Wetland Group.	☐	☐	☒	☐
3.	A 124SPA Stream Protection permit 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.	☐	☒	☐	☐
1.	If yes, are there potential noise impacts?	☐	☐	☒	☐

		YES	NO	N/A	UNK
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 it.	☒	☐	☐	☐
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 Montana Pollutant Discharge Elimination System's conditions (ARM 16.20.1314), 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* (7-22-21, MCA), including directions as specified by the county (ies) wherein its intended work would be done.	☒	☐	☐	☐
J.	There are "Prime" or "Prime if Irrigated" Farmlands designated by the Natural Resources Conservation Service on or adjacent to the proposed project area.	☐	☐	☒	☐

		YES	NO	N/A	UNK
	If the proposed work would affect Important Farmlands, then an AD-1006 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 not covered under the EPA's September 15, 1997 Final Rule on air quality conformity.	☒	☐	☐	☐
	and/or				
B.	"No attainment" 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 Quality Division, etc.).	☐	☐	☒	☐
C.	Is this proposed project in a "Class I Air Shed" (Indian Reservations) under 40 CFR 52.1382(c)(3)?	☐	☒	☐	☐
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 "jeopardy" 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.

Heidy Bruner, Date: Sept 9, 2005
Heidy Bruner
MDT Environmental Services
Billings District Project Development Engineer

Concur _____, Date: Sept 9, 2005
Thomas L. Hansen, P.E.
MDT Environmental Services
Engineering Section Supervisor

Concur _____, Date: 15 SEP 05
Federal Highway Administration

TLH:hsb:S:\PROJECTS\BILLINGS\5175\5175ENPCEFHWA01.DOC

Attachments

cc:	Bruce Barrett	MDT Billings District Administrator
	Kent Barnes, P.E.	MDT Bridge Engineer
	Paul Ferry, P.E.	MDT Highway Engineer
	John H. Horton	MDT Right-of-Way Bureau Chief
	Suzy Althof	MDT Contract Plans Section Supervisor
	David W. Jensen	MDT Fiscal Programming Section Supervisor
	Jean Riley, P.E.	MDT Environmental Services Bureau Chief
	Tom Hansen, P.E.	MDT Environmental Services Bureau Engineering Section Supervisor
	FILE	MDT Environmental Services
	Montana Legislative Branch Environmental Quality Council (EQC)	