

## CHECKLIST ENVIRONMENTAL ASSESSMENT

<b>Project Name:</b>	Budginas Easement Request
<b>Proposed Implementation Date:</b>	January, 2011
<b>Proponent:</b>	Leon Budginas
<b>Location:</b>	Sections 30 & 31, Township 3 South – Range 6 West, and Section 36, Township 3 South – Range 7 West
<b>County:</b>	Madison

### I. TYPE AND PURPOSE OF ACTION

Leon Budginas of 218 Pennington Road, Twin Bridges, MT has applied for a permanent easement across state Sections 30 & 31, T3S – R6W, and Section 36, T3S – R 7W for the purpose of access to deeded property in Section 1, T4S – R7W in Madison County. Mr. Budginas is interested in building a residence on his deeded land and would like to access it using an existing road on State land.

The existing road on State land currently accesses two residences. TP and Susan Cobb have a residence in Section 31, T 3S – R 6W, (Government Lots 3 & 4 in the E1/2 SW1/4 & W1/2 SE1/4, 186.636 acres) and John and Susan Pohl have property in Section 6, T 4S – R 6W (58.68 acres). The Cobb's easement provides access to their deeded land and for the addition of no more than 5 single family rural residential home sites.

Mr. Budginas purchased his property with an easement from the southwest via the Pennington Bridge Road, County Road # 224 (Camp Creek Road). Having driven the access road to his property in the spring of 2009 I found it in poor shape and it would need considerable construction and re-construction to guarantee secure year round access.

### II. PROJECT DEVELOPMENT

#### 1. PUBLIC INVOLVEMENT, AGENCIES, GROUPS OR INDIVIDUALS CONTACTED:

*Provide a brief chronology of the scoping and ongoing involvement for this project.*

John and Susan Pohl  
The Highlands  
Seattle, WA 98177

Krestin Clark  
3783 Cardiff Way  
Bountiful, UT 84010-5828

Michael Cooperman  
505 Western Ave  
Hampden, ME 04444-1034

TP and Susan Cobb  
PO Box 685  
Twin Bridges, MT 59754

Seyler Ranch, Inc.  
P.O. Box 1353  
Dillon, MT 59725

Madison County Commissioners  
PO Box 278  
Virginia City, MT 59755

Madison County Planner  
Charity Fletcher  
PO Box 278  
Virginia City, MT 59755-0278

Robert Adams Trust  
1024 Palisades Beach Rd  
Santa Monica, CA 90403-3534

Bob Brannon  
Fish Wildlife & Parks  
3413 MT Hwy 287  
Sheridan, MT 59749

George Trishman  
Box 447  
Twin Bridges, MT 59754

Patrick Rennie, MT DNRC Archeologist

NRIS Search, Montana Natural Heritage Program

**2. OTHER GOVERNMENTAL AGENCIES WITH JURISDICTION, LIST OF PERMITS NEEDED:**

Madison County Planning Board, No permits would be needed for this proposal.

**3. ALTERNATIVES CONSIDERED:**

**Alternative A.** Allow Leon Budginas an easement across state land to access his property over an existing road easement, but require him to enter into a road user's agreement with the existing easement holders. This would require him to pay 1/3 of the costs that were associated with the re- construction of the road when the easement was originally granted and agree to help pay for on-going maintenance.

**Alternative B. No Action Alternative** Deny Leon Budginas an easement over state land to access his property due to the fact he currently has an easement to his property and is unable to negotiate a road user's agreement with the current easement holders over State land.

### III. IMPACTS ON THE PHYSICAL ENVIRONMENT

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" if no impacts are identified or the resource is not present.*

#### 4. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:

*Consider the presence of fragile, compactable or unstable soils. Identify unusual geologic features. Specify any special reclamation considerations. Identify any cumulative impacts to soils.*

The existing easement travels through three different soil types with the majority of the easement being in Kalstad sandy loam, and the rest being in two minority soil types, Crago-Scravo complex in the dry draws that the road crosses and Trimad very stony loam present on the ridge tops. All three soil types are well drained and are somewhat slippery when wet, due to the amount of loam in them. The current lease holders have improved the road by installing culverts in the dry draw crossings and rocking portions of the road where necessary. The road is in good shape, is situated on gentle terrain and poses little potential for erosion or soil stability problems in its current condition. When I visited the site in the spring of 2009 there were no signs of erosion or rutting on the road, due to proper maintenance and construction measures taken by the current easement holders over the last eighteen years.

Mr. John Pohl commented in a letter on this proposal that he was concerned with the potential for soil erosion caused by the construction of a new road where the easement would leave the state land (just south of the state section line in Section 36, T 3S – R7W) and be constructed across Michael Cooperman's property to access Mr. Budginas' property. Mr. Pohl comments that "This access would require a road to be built up and across the edge of the alluvial bluff back up to his property. This is an extremely sensitive area and is subject to erosion which would be directly above our cabin, exposing us to unnecessary risk." Mr. Pohl also expressed concerns that the road would require additional construction measures to be completed because of the additional use of the road if the easement was granted.

These are legitimate concerns if this easement proposal is granted and would need to be addressed before an easement could be granted. A possible mitigation measure for these concerns would be to form a road users association and these types of concerns would be addressed in that agreement, including who will pay for the mitigations prescribed. Erosion concerns could be address through the installation of rolling dips, rocking portions or the entire road, and setting up a maintenance schedule to maintain the road. As mentioned above, the soils in this area are well drained and the slopes are gentle, so erosion concerns could be addressed, mitigated, and prevented from occurring if the road is properly engineered.

Additional travel on the road would require additional maintenance to retain the roads current condition; however the overall impacts to the soils long term stability can be addressed and mitigated if the road is re-constructed and maintained properly. No long term or cumulative effects are anticipated to soils if this easement is granted.

#### 5. WATER QUALITY, QUANTITY AND DISTRIBUTION:

*Identify important surface or groundwater resources. Consider the potential for violation of ambient water quality standards, drinking water maximum contaminant levels, or degradation of water quality. Identify cumulative effects to water resources.*

The existing roads location is on gentle terrain far enough away from any water source that potential impacts to water quality are very low. The Big Hole River, a blue river trout stream, is located within one half mile of the existing road. Average annual precipitation in the area is between 9 - 10 inches with the greatest rainfalls occurring in the spring of the year.

Any erosion and sediment delivery would need to travel a great distance to impact the river. The existing road at this time does not present any long term or cumulative impacts to the Big Hole River or overall water quality in the area. An additional easement holder over the road could slightly increase the risk, but with proper maintenance to the road this risk could be mitigated.

If this proposal is granted no long term or cumulative impacts to water quality are anticipated.

**6. AIR QUALITY:**

*What pollutants or particulate would be produced? Identify air quality regulations or zones (e.g. Class I air shed) the project would influence. Identify cumulative effects to air quality.*

This easement is located in a sparsely populated area and the amount of travel on this dirt/gravel road will have very little impact on the air quality of the surrounding area. If dust and particulates become a problem during the dry summer months the road could be treated with magnesium chloride to reduce any air quality problems that arose. The area currently meets EPA ambient air quality standards and is not located in a class I air shed. The granting of this easement would not cause any long term or cumulative impacts to air quality standards in the Twin Bridges area.

**7. VEGETATION COVER, QUANTITY AND QUALITY:**

*What changes would the action cause to vegetative communities? Consider rare plants or cover types that would be affected. Identify cumulative effects to vegetation.*

Because the road is already constructed and is in use, the impacts to the vegetation have already occurred. Allowing an additional easement over the existing road would have little impact to the current vegetative communities in this area. There is an existing weed management plan established with Madison County to control noxious weeds. The current lessees have not complained about any noxious weed problems on these easements. If the easement was granted adding Mr. Budginas to the weed management plan would be a requirement of the easement. Any disturbed areas would need to be broadcast seeded with native grass seed if any new construction or re-construction of the road is done.

An NRIS search didn't reveal any sensitive or rare plant communities located on these state sections or in the location of the current easement.

Granting of the easement would not have any long term or cumulative impacts to the current vegetative communities in this area.

**8. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:**

*Consider substantial habitat values and use of the area by wildlife, birds or fish. Identify cumulative effects to fish and wildlife.*

An NRIS search of this area identified the area as having a confirmed Bald eagle nesting site within 1 mile of state Section 30, T3S- R6W, Bobolink a songbird species using habitat within 1 1/2 miles of the easement, the possibility of Arctic grayling using the Big Hole River and the possibility of gray wolf passing through this location. No sensitive species have been identified using habitat within the easement right of way.

The road is currently a low standard dirt/gravel road with minimal traffic. By granting the easement the amount of use would increase slightly, but the overall use would not increase significantly. Because of this any long term impacts or cumulative effects to wildlife, or aquatic life are not anticipated.

**9. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:**

*Consider any federally listed threatened or endangered species or habitat identified in the project area. Determine effects to wetlands. Consider Sensitive Species or Species of special concern. Identify cumulative effects to these species and their habitat.*

**Bald Eagle, *Haliaeetus leucocephalus*** is listed as a threatened species by the US Forest Service. A bald eagle nest has been identified along the Big Hole River within 1 mile of the easement location in section 36, T3S – R 6W. According to the map that was provided by the NRIS the easement is not currently close enough to the buffer area around the nest to affect the eagle's activity in this area. The map indicates that the most use is identified as being in the Big Hole River corridor. Bald eagles live along lakes and rivers where their main food source is fish, although they will also feed on carrion.

The state easement was first issued in April of 1995. The eagle nest was first observed in March of 1996 and the last observation was in August of 2005. This would indicate that the eagles using this nesting site have not been disturbed enough by use of this existing easement on State land to abandon the nest. The granting of an additional easement to Mr. Budginas in all likelihood would not have any long term or cumulative impacts on the overall eagle population in Southwest Montana.

**Bobolink, *Dolichonyx oryzivorus*** is listed as a sensitive species by the BLM. It is a migratory song bird that inhabits open grasslands and fields, and nests on the ground. It's a ground forager with insects and seeds being its main food source. An NRIS search reveals that the bird was observed using the area (within 1.5 miles of the easement) in August 1994 and no recent reports have been made. The bird has been identified as declining over much of its range. Much of that decline is attributed to early mowing of agricultural hay ground. There is no hay production near any of these sections at this time.

More recently there have not been any sightings or recording of the bird species presence near the easement location. Most of the grasslands in this area are moderately grazed and overall habitat may not be good enough to support the bird's needs in this area. This proposed easement would not have any long term or cumulative impacts on Bobolink in Southwest Montana.

**Gray Wolf, (*Canis lupus*)**, Occasional use of the area by gray wolf could potentially occur but is generally considered outside of their normal occupied habitat. All of Southwest Montana is listed as grey wolf habitat. The Southwest Montana wolf population has been deemed as an experimental population and has been proposed for delisting from the endangered species act. This proposed easement would not have a long term or cumulative effect on grey wolf habitat or distribution in Southwest Montana.

**Arctic Grayling, (*Thymallus arcticus*)**, are listed as a sensitive species by the Forest Service and BLM and listed as a Critically Imperiled Species of Special Concern by the Fish & Wildlife Service. The fish are found in are found in the Big Hole River. The main concentration of the fish is found in the upper Big Hole Valley, but an occasional fish is found all the way to the confluence of the Beaverhead River. The easement proposal is far enough away from the river and the population densities are low enough in this part of the Big Hole River that no long term or cumulative effects to the fish are anticipated.

#### **10. HISTORICAL AND ARCHAEOLOGICAL SITES:**

*Identify and determine effects to historical, archaeological or paleontological resources.*

Montana DNRC archeologist Patrick Rennie was contacted concerning this easement proposal and no cultural concerns were identified.

#### **11. AESTHETICS:**

*Determine if the project is located on a prominent topographic feature, or may be visible from populated or scenic areas. What level of noise, light or visual change would be produced? Identify cumulative effects to aesthetics.*

This easement application is located in a rural area approximately three air miles from the town of Twin Bridges, Montana. The town has a population of approximately 450 people. The aesthetics in this area are good, with beautiful mountain views, blue ribbon trout streams, world class hunting and fishing, and plenty of clean water and air. Over the past twenty years rural housing development around the town has sprung up in all directions. There are still enough large ranches surrounding these pockets of development though, that this keeps the "open space" look in the Twin Bridges area intact.

In the area of this application there are numerous tracts of subdivided land. This easement application will not affect whether the land is developed or not, for the development is already occurring and the lots around the easement have been sold. Eventually they will be developed with residences.

The easement in this proposal has been used for the last eighteen years by TP & Susan Cobb, and more recently by John & Susan Pohl. In addition the Cobb's have the right to add up to four additional easement holders onto their easement.

The property that Mr. Budginas owns will eventually be developed for a residence whether he accesses it through the state or on his existing easement. The current easement holders, (Mr. Cobb and Mr. Pohl) are concerned that additional land owners in the area will apply for an easement across the state if this easement is granted to Mr. Budginas.

TP & Susan Cobb commented that granting an additional easement across this road would affect their property value, and stated that the party that the easement would be given to (Mr. Budginas) "... would not care about road maintenance for a retired couple, who have had the quiet enjoyment of their property for the past eighteen years."

Granting this easement to Mr. Budginas would alter the aesthetics values in a small manner, for there would be more light, noise and some slight visual changes, however the overall aesthetic values of the area will not be diminished and any long term or cumulative effects to the area are not anticipated, for the property can be developed no matter which direction the access comes from either the Camp Creek road on his existing easement or on the High Bridge Road over the state easement.

So no matter which alternative is chosen the end result is the possible construction of an additional single family dwelling on the current Budginas property.

**12. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:**

*Determine the amount of limited resources the project would require. Identify other activities nearby that the project would affect. Identify cumulative effects to environmental resources.*

The demands on the environmental resources would be minimal if the easement was approved. This is an existing road across state land that is currently being used as an access right-of-way to access deeded property. Adding an additional easement to the road would have little effect on land, water, air or energy in this area.

**13. OTHER ENVIRONMENTAL DOCUMENTS PERTINENT TO THE AREA:**

*List other studies, plans or projects on this tract. Determine cumulative impacts likely to occur as a result of current private, state or federal actions in the analysis area, and from future proposed state actions in the analysis area that are under MEPA review (scoped) or permitting review by any state agency.*

At this time I am unaware of any other studies, plans or projects proposed or being reviewed in this area.

**IV. IMPACTS ON THE HUMAN POPULATION**

- *RESOURCES potentially impacted are listed on the form, followed by common issues that would be considered.*
- *Explain POTENTIAL IMPACTS AND MITIGATIONS following each resource heading.*
- *Enter "NONE" if no impacts are identified or the resource is not present.*

**14. HUMAN HEALTH AND SAFETY:**

*Identify any health and safety risks posed by the project.*

Additional traffic on the easement could cause a safety concern to residents and visitors using the road. The road however is on relatively flat ground with good sight distances and the risks posed by issuing an easement

would be small to the current easement holders. In talking to the Madison County Planner this road is currently considered a “drive way” and if the easement was granted it would stay in that status. If however there was an additional sub-division that was developed in the area, and this new sub-division would like to travel over the states existing easement, it would require that the road be improved and widened to a 60 ‘easement to accommodate the access of emergency vehicles, like fire engines. Mr. Budginas has no plans to subdivide his property and has entered into a conservation easement with the Montana Land Reliance to ensure his property is not sub-divided.

W. John Tietz the Cobbs’ attorney argues that in Mr. Budginas’ easement application it never addresses the number of visitors that Mr. Budginas’ could have using the state easement. He states” There is no guarantee; however, that the use of the road would be limited to Budginas himself. State lands easements also permit guests of the easement holder, and the Budginas application places no limit on the number of guests that may use the road. The developer of the Braids of the River Ranch, which includes the Budginas property, has been known to provide guest access to owners of other developments under cross-use agreements for hunting and fishing. While a cross–use agreement has not been identified in the chain of title for the Budginas property, there is no assurance in Buginas’s application stating that the use would be limited solely to Budginas for his access alone”

This is a legitimate concern that would need to be addressed if the easement was granted. Increased traffic on a low standard road could present a safety hazard to any of the road users using the road and would certainly cause additional maintenance concerns to the current easement holders.

**15. INDUSTRIAL, COMMERCIAL AND AGRICULTURE ACTIVITIES AND PRODUCTION:**  
*Identify how the project would add to or alter these activities.*

These state lands are currently being used for grazing of livestock by the Seyler Ranch, Section 30, T3S – R6W & Section 36, T 3 S – R 7W (lease #329) and Hamilton Livestock Section 31, T 3S – R 6W (lease #1877). Looking through the files on these three sections there have not been any recorded complaints by the lessees concerning the easement holders on these sections. I talked with George Trishman, Ranch Manager of Hamilton Ranches about the easement and they have not had any issues with the current easement holders.

The road is currently being used without impacts to the lessee’s. By granting an additional easement over the same road to an additional single family dwelling would probably not alter the current agricultural use of the sections. If an easement was granted Mr. Budginas would need to enter into an approved weed management plan with Madison County and agree to continued use of the sections for grazing purposes.

**16. QUANTITY AND DISTRIBUTION OF EMPLOYMENT:**  
*Estimate the number of jobs the project would create, move or eliminate. Identify cumulative effects to the employment market.*

Granting this easement will not change the overall employment picture in the general vicinity of this proposal. If granted there would be some additional contractor employment to the area for road maintenance and construction but the overall affect would be minimal.

**17. LOCAL AND STATE TAX BASE AND TAX REVENUES:**  
*Estimate tax revenue the project would create or eliminate. Identify cumulative effects to taxes and revenue.*

None

**18. DEMAND FOR GOVERNMENT SERVICES:**  
*Estimate increases in traffic and changes to traffic patterns. What changes would be needed to fire protection, police, schools, etc.? Identify cumulative effects of this and other projects on government services.*

Granting an additional easement over the road would not require the road easement to be widened to meet Madison County sub-division standards. At this time the road is considered a “drive way” by the County and could limit access by structural fire engines and other emergency vehicles.

The High Bridge County Road travels between the town of Twin Bridges and Melrose in Madison County. The road is a petitioned County road that is the access point to state section 30, T 3S – R 6W where this proposed access begins.

**19. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:**

*List State, County, City, USFS, BLM, Tribal, and other zoning or management plans, and identify how they would affect this project.*

I am unaware of any zoning or management plans that are in place or being worked on by any government agency that would affect this proposal.

**20. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:**

*Identify any wilderness or recreational areas nearby or access routes through this tract. Determine the effects of the project on recreational potential within the tract. Identify cumulative effects to recreational and wilderness activities.*

None

**21. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:**

*Estimate population changes and additional housing the project would require. Identify cumulative effects to population and housing.*

If granted the easement would allow access to Mr. Budginas’ property allowing him to build a new residence on his property. The residence however could still be built if the access is denied for he could access his property using his existing easement over the Camp Creek Road. So either alternative could have the same affect on housing and population in the area.

During the scoping process we received comments from one of Mr. Budginas’ neighbors, Mr. Robert Adams who is against granting an easement across the state because Mr. Budginas currently has a recorded easement over Mr. Adams ranch. If the state would grant an easement to Mr. Budginas, Mr. Adams stated that “... it should be contingent on Mr. Budginas rescinding his current easement”.

Neither alternative would have any long term or cumulative effect on the density of population in Twin Bridges.

**22. SOCIAL STRUCTURES AND MORES:**

*Identify potential disruption of native or traditional lifestyles or communities.*

None

**23. CULTURAL UNIQUENESS AND DIVERSITY:**

*How would the action affect any unique quality of the area?*

Both current easement holders have expressed their desire for the state to deny this easement request. They state that Mr. Budginas purchased his property with the knowledge that his easement was a poor one and that he would need to spend a lot of money to access his land for year round use. He purchased the property anyway, hoping that the state would grant him an easement.

They also state that if the DNRC grants an easement we will be going against our own written policies and therefore violate our procedures. In the process we would lower their property values and cost them additional money in road maintenance costs and increase the value of Mr. Budginas’ property at the detriment of the State. Mr. Pohl states that he purchased his property thinking he was getting an end of the road property on the Big

Hole River and he paid a high price for the property with that factor in mind. The Cobb's have talked with realtors who have told them if the easement is granted their property value will go down.

Mr. Tietz, the Cobb's attorney believes that granting this easement would amount to the state allowing the value of Mr. Budginas's property to increase at the expense of the State. It would also encumber and burden the state with an additional easement on their property. He also believes that other property owners in the general vicinity of Mr. Budginas's property will apply for an easement across the state and use the reasoning that granting an easement to Budginas as a precedent for them to receive one as well.

On the other hand Mr. Cobb reserves the right to add up to an additional four road users to his easement at any time. At this time he has no plans to subdivide, but he could add the additional easements at his discretion. In response Mr. Budginas "... asserts that the impact to the state trust land will be minimal due to the fact that it is an existing road that already provides for six separate rights of use. In addition, the tract of land that Mr. Budginas is attempting to access is encumbered by a conservation easement. The conservation easement only allows for one single family residence and no further development is allowed."

**24. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:**

*Estimate the return to the trust. Include appropriate economic analysis. Identify potential future uses for the analysis area other than existing management. Identify cumulative economic and social effects likely to occur as a result of the proposed action.*

If granted the easement would generate a onetime fee of approximately \$7,684.00 for the trust.

<b>EA Checklist Prepared By:</b>	<b>Name:</b> Tim Egan	<b>Date:</b> December 23, 2010
	<b>Title:</b> Dillon Unit Manager	

**V. FINDING**

**25. ALTERNATIVE SELECTED:**

I have selected Alternative B, the No Action Alternative, which denies issuing an easement to the applicant for use of the existing road across state land to access his property. The applicant purchased his property with an easement for access provided by the developer which is still available for his use and provides access to other lots within the development. Consequently it is not necessary for the applicant to receive an easement across state land to access the applicant's ownership. The applicant also has been unable to negotiate a road use agreement with existing easement holders of the road across state land on which he seeks as a substitute access route.

**26. SIGNIFICANCE OF POTENTIAL IMPACTS:**

Significant impacts are not anticipated as a result of the selected, No Action Alternative. The existing road on state land will likely continue to be maintained appropriately for the current use. The road is in good condition and is not contributing to significant environmental effects.

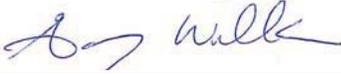
The route currently available to access the applicant's property is currently not suitable for year round use and will likely need to be improved. However terrain along that route is suitable for road construction and there is no indication significant impacts would occur with the necessary improvements.

**27. NEED FOR FURTHER ENVIRONMENTAL ANALYSIS:**

EIS

More Detailed EA

No Further Analysis

<b>EA Checklist Approved By:</b>	<b>Name:</b> Garry Williams
	<b>Title:</b> Area Manager, Central Land Office
<b>Signature:</b> 	<b>Date:</b> 02/08/2011

# Bunginas Easement Application Near Twin Bridges, Montana



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