

Second Revised
RECORD OF DECISION

for

Improvement of U.S. Highway 93
Evaro through Polson
Missoula and Lake Counties, Montana
Project F 5-1(9)6

Final Environmental Impact Statement
Final Section 4(f) Evaluation
FHWA-MT-EIS-95-01-F

Federal Highway Administration

Date 10-23-01

by

A handwritten signature in cursive script that reads "Janice Weingart Brown". The signature is written over a horizontal line that extends from the "by" text to the right.

Janice Weingart Brown
Division Administrator
Federal Highway Administration
Helena, Montana

**Second Revised
Record of Decision for
U.S. Highway 93 (Evaro through Polson)
Mileposts 6.5 to 62.8
Missoula and Lake Counties, Montana
Project F 5-1(9)6**

**Final Environmental Impact Statement
Final Section 4(f) Evaluation
FHWA-MT-EIS-95-01-F**

History

The Montana Department of Transportation has proposed to improve U.S. Highway 93 (US-93) for a distance of 56.3 miles, from Evaro at MP 6.5 through Polson to MP 62.8. This section of U.S. 93 is located in Lake and Missoula Counties, and except for the first one-half mile at the southerly end, is entirely within the Flathead Indian Reservation. The Federal Highway Administration (FHWA), the Montana Department of Transportation (MDT), and the Confederated Salish and Kootenai Tribes (CSKT) (herein after “the three governments”) on June 17, 1996 prepared a National Environmental Policy Act (NEPA) Final Environmental Impact Statement (FEIS) and Section 4(f) Evaluation to describe the proposed project, alternatives, and the social, economic and environmental impacts. A Record of Decision (ROD) was prepared on August 12, 1996, which selected the existing alignment for improvement throughout the length of the proposed project, called for development of a corridor bypassing Ronan (Ronan Alignment 4), and implementing right-of-way acquisition and access control. However, the ROD deferred making a decision on lane configurations, corridor preservation for an Arlee bypass, corridor preservation or construction of a Polson bypass, mitigation measures, and a Section 4(f) determination until agreement was reached by the three governments on lane configurations, design features, and mitigation measures. The ROD was modified on February 9, 1998, to allow right-of-way acquisition to proceed on non-tribal land.

Representatives from the three governments then negotiated and signed a Memorandum of Agreement (MOA) dated December 20, 2000. The MOA lays out the preferred conceptual roadway improvements, including lane configurations, design features, and mitigation measures for 30.8 miles of US-93 from Evaro to the Red Horn Road / Dublin Gulch Road intersection near St. Ignatius and for 10.6 miles of US-93 from the Spring Creek Road / Baptiste Road intersection near Ronan to the MT 35 intersection near Polson. The MOA does not include an 11.2 mile section between the Red Horn Road/Dublin Gulch Road intersection and the Spring Creek Road/Baptiste Road intersection (Ninepipe section). Also excluded from the MOA is a 3.8 mile section from the MT 35 intersection in Polson to the north end of the project.

The FEIS was re-evaluated to compare the impacts of the MOA lane configuration, design features, and mitigation measures to what was included in the original FEIS. It incorporated changes agreed to by the three governments in the MOA. A draft Re-evaluation was circulated for public comment April 30, 2001, and the subsequent revised Re-evaluation was approved by the three governments on October 22, 2001.

Reason for Re-evaluation

The Council on Environmental Quality (CEQ) regulations require FHWA to prepare a Supplemental EIS (SEIS) when the agency makes substantial changes to a proposed action, or when new circumstances or information are relevant to environmental concerns. Further, FHWA regulations require a SEIS if the changes or new information may result in significant environmental impacts that were not evaluated in the FEIS. In order to determine if such changes are significant, the regulations require the preparation of appropriate environmental studies, or if necessary an Environmental Assessment (EA), as prescribed in 23 CFR 771.130(c). While the regulations do not give a specific name to these environmental studies, it has been accepted practice in FHWA to use an Environmental Re-evaluation, as defined in 23 CFR 771.129, to determine the need for an SEIS.

As a part of the MOA negotiations, the three governments agreed to re-evaluate the 1996 FEIS. However, due to a number of environmental and cultural issues and social concerns, the 11.2-mile Ninepipe segment and the 3.8 mile section north of Polson were excepted out of the MOA. The three governments subsequently agreed to prepare a SEIS for the Ninepipe section as a separate action to explore alternative roadway alignments and to evaluate new circumstances and information relevant to this segment. The three governments, Lake County, and the City of Polson will continue to work together to determine the appropriate improvement project applicable for US-93 from the US-93 / MT 35 intersection north 3.8 miles through Polson to the vicinity of the US-93 / Rocky Point Road intersection. This Second Revised Record of Decision therefore does not include the 11.2 mile Ninepipe/Ronan segment or the 3.8 miles north of MT 35 at Polson.

The Re-evaluation effort included developing an alignment consistent with the conceptual MOA alignment throughout the project length. This alignment was then analyzed for its impact on natural and scenic resources, landscape features, and cultural and historic resources. Changes necessary to bring the preliminary design into compliance with the MOA were accomplished, and modifications to avoid or minimize negative impacts were included.

Decision

The 1996 ROD selected Alternative 1, the existing alignment, for improvement throughout the length of the proposed project, the preservation of a corridor bypassing Ronan (Ronan Alignment 4), and implementing right-of-way acquisition and access control for corridor preservation. It deferred making a decision on lane configurations, corridor preservation for an Arlee bypass, corridor preservation or construction of a Polson bypass, mitigation measures, and a Section 4(f) determination until agreement was reached on lane configurations, design features, and mitigation measures.

The Decision of FHWA, in cooperation with MDT and CSKT, is to select the following:

- lane configurations,
- the Arlee couplet,
- design features in accordance with the MOA,
- mitigation measures.

This Second Revised Record of Decision also:

- records the Section 4(f) approval,
- includes a biological opinion for Endangered / Threatened species,
- defers a decision on the Ninepipe/Ronan segment until the Supplemental EIS is concluded, and
- continues to defer lane configuration and alignment through or around Polson.

These features are described in detail in the Re-evaluation, which incorporates the MOA by reference.

Lane configurations

- Four-lane undivided roadway from Evaro to Finley Creek (1.21 miles)
- Four-lane divided roadway from Coombs Lane to Arlee couplet South; Arlee couplet North to Jocko River; and Ronan to MT 35 intersection in Polson (12.32 miles)
- Two-lane couplet (two lanes each way) through and around Arlee (0.81 mile)
- Approximately 7.5 miles of two-lane undivided highway through Ravalli Canyon and near St. Ignatius
- Alternating 10.80 miles of southbound passing/climbing lanes and 9.05 miles of northbound passing/climbing lanes (including 0.50 mile overlapping)

See Table 3 of the Re-evaluation for relevant mileposts.

There are no changes to the proposed action resulting in significant impacts not previously evaluated in the 1996 FEIS nor is there new information on the proposed action that establishes a new significant environmental impact not previously evaluated in the 1996 FEIS.

Couplet at Arlee

The FEIS evaluated the impacts of Alignment 2 at Arlee, a westerly bypass, as an alternative to widening the highway through the community. As a result of public input and the MOA negotiations, an agreement was made to evaluate the use of an alignment to the west, similar to the bypass alignment, as part of a one-way couplet together with the existing alignment. This configuration will greatly improve the safety and accessibility of cross traffic for both vehicles and pedestrians, provide better parking, and will allow improved landscaping opportunities. It will also improve the accessibility of main line travelers to stop and shop at existing businesses adjacent to US 93. Connecting streets will provide southbound traffic with the opportunity to access the businesses and activities in the town. The couplet will also allow an alternative for through traffic during Pow Wow celebrations on July Fourth.

Following a large amount of input from the citizens of Arlee, the three governments reconsidered the selected option of a couplet for Arlee. Input from the townspeople was mixed, some in favor of the couplet, and some in favor of keeping both directions of US

93 on the existing alignment. Residents of the town presented proposals for both a 3-lane and a 4-lane facility through town. The three governments have agreed to retain the couplet for the following reasons:

- A two-lane facility with turn lanes is a short-term solution and would eventually have to be converted to a four-lane road. A four-lane facility with left turn lanes, while it would function for through-traffic, would create a barrier to cross-traffic and pedestrians and would essentially divide the Arlee community.
- The couplet will be safer for pedestrian use, especially for the young and elderly pedestrians who walk to the school and the post office. It will be less daunting to cross 26 feet of pavement, with traffic coming from one direction, than 76 feet of pavement with traffic coming from both directions.
- The couplet will provide a higher level of service for local and through-traffic now and well past 20 years from now.
- The couplet defines and allows an area for future commercial growth.

As a result of the public input received, however, several changes to the couplet described in the MOA were made, as noted below:

- Powwow Road and North Couture Loop intersections will be straightened to improve sight distance.
- Turn-around access will be designed for traffic at North Couture Loop and Oxford Lane/Finley Creek Road.
- Additional accesses will be added to the southbound couplet at Whitworth and Wessinger Streets to enhance internal traffic circulation as well as access.
- The southbound leg will be shifted to miss a burial site.
- Each of the four east-west access roads will be improved so as to significantly enhance Arlee's road and storm water infrastructure.
- Emergency signals for the Arlee Fire Department will be provided to give safe, quick access to either leg of the couplet.

The impacts of the Arlee couplet were discussed in the 1996 FEIS in the section evaluating Alignment 2. Accordingly, there are no changes to the proposed action resulting in significant impacts not previously evaluated in the 1996 FEIS nor is there new information on the proposed action that establishes a new significant environmental impact not previously evaluated in the 1996 FEIS.

Design features

The guiding philosophy for modification of U.S. 93 is to protect cultural, aesthetic, recreational, and natural resources located along the highway corridor and to communicate the respect and value that is commonly held for these resources pursuant to traditional ways of the Tribes. The design features are spelled out in the Design Guidelines section of the MOA, pages 2-33. In summary, the design features will:

- Safely accommodate the present and future transportation needs.
- Avoid construction in areas of traditional cultural and spiritual significance.
- Minimize intrusion and damage to natural resources located adjacent to the roadway.
- Enhance and restore natural resources that have been injured and/or disconnected by the existence of U.S. 93.
- Provide safe and functional visitor use facilities at several locations along the highway.
- Develop guidelines for integrated roadside detailing, maintenance, signs, and interpretive concepts.

There are no changes to the proposed action resulting in significant impacts not previously evaluated in the 1996 FEIS nor is there new information on the proposed action that establishes a new significant environmental impact not previously evaluated in the 1996 FEIS.

Mitigation Measures

Mitigation measures adopted to minimize environmental harm were discussed in the FEIS, MOA, Re-evaluation, and Biological Assessment. Specifically, they include the following:

Wetlands

Impacts on wetlands and non-wetland riparian areas resulting from the project would be mitigated in compliance with the CSKT Wetland Conservation Program and Aquatic Lands Conservation Ordinance; Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers; the U.S. Environmental Protection Agency; and MDT and CSKT agreements, including the MOA and other guidance for non-wetland riparian areas.

Due to the amount of time that has lapsed, wetland and non-wetland riparian boundaries delineated in support of the 1996 EIS have been verified and wetland impacts have been recalculated and functional assessments completed. The results of this analysis will be used to determine the goals for project mitigation including the replacement of wetland functions lost due to construction.

While the 1996 EIS described several opportunities to mitigate for project impacts on wetlands, the majority of these sites have been developed to mitigate for impacts associated with other projects. Currently project biologists are coordinating with CSKT biologists and MDT staff to identify both onsite and offsite mitigation opportunities. Onsite and offsite mitigation opportunities will seek to restore or enhance wetlands to replace functions lost by project impacts. Suitable opportunities for onsite mitigation include the identification and preservation of wetlands of special concern in the project corridor; enhancement and restoration of wetlands and riparian areas at wildlife crossing structures; stream and riparian habitat restoration where culverts are removed and bridges are constructed; and restoration or enhancement of wetlands throughout the project corridor. Because of the extent of wetland impacts anticipated, additional

mitigation may be required at one or more offsite locations. Similar criteria will be applied to identify suitable offsite mitigation opportunities.

Long-term management and protection plans will be prepared in cooperation with FHWA, CSKT, and resource agencies for each mitigation site to prevent incompatible uses that might jeopardize the purpose of mitigation. Monitoring plans will also be implemented to ensure long-term success of the sites. These mitigation measures include adoption of the terms required by the USFWS in their Biological Opinion, dated October 19, 2001.

Additional mitigation measures:

- Maintain wetland and riparian vegetation buffers to filter sediment and chemical pollutants carried by stormwater runoff.
- Informal pullouts that contribute sediments to area wetlands and streams would be eliminated and restored with native vegetation.
- Create or restore wetlands in the corridor providing similar functions to those lost.

Wildlife

- Construct approximately 44 wildlife and fish passage structures, as detailed in Table 6 of the Re-evaluation, the 1996 and 2001 Biological Assessments (BA's), and the MOA, and implement the conservation measures described therein. Although 44 crossings are currently proposed, others may be added during final design after coordination with tribal and regulatory agencies.
- Construct approximately 16 miles of 8-foot high wildlife fencing in 5 locations to facilitate wildlife use of crossings and improve traffic safety as identified in Table 7 of the Re-evaluation, BA's, and MOA, and implement the conservation measures described therein.
- Implement a wildlife crossing monitoring plan. Utilize the plan to guide design and maintenance of the structures.
- Upon locating dead, injured or sick grizzly bear, gray wolf or Canada lynx, notification will be made within 24 hours to USFWS or the Tribal Fish, Wildlife, Recreation and Conservation Office. Information relative to the date, time and location of dead or injured listed species when found will be recorded, and if possible, the cause of injury or death of each animal, and provided to USFWS.
- The three governments will strive to limit commercial, residential, and industrial development in areas adjacent to wildlife crossings through property purchase and/or easements.

Vegetation

- Restore vegetation along areas leading up to wildlife crossings, and providing cover to shield the entrances from the road

- Preserve large trees wherever possible, including all conifers 50 years and older (i.e., 18-inch diameter at breast height or larger).
- Preserve shrubs and trees at or near stream crossings.
- Develop and implement detailed revegetation plans for stream crossings.
- Use only indigenous plant materials for revegetation of disturbed areas (species considered indigenous for purposes of the project are identified in the MOA).

Fish

- Impassable culverts at East Fork Finley Creek, Schley Creek, and Agency Creek would be removed and replaced with passable ones.
- Fish passage would be improved by the removal of culverts and the installation of bridges at Mission Creek, Jocko Spring Creek, the Jocko side channel, and Mud Creek.
- Stream fish and wildlife habitat would be improved by in-channel and riparian restoration activities at all proposed fish and wildlife passage structures.
- Restrict in-water work to the months outside the spawning period for bull trout. Instream work in the Jocko River and Mission Creek will be conducted only during the period from June 1 through August 31.
- Construction of detour lanes associated with construction of the Mission Creek Bridge will be accomplished utilizing a temporary bridge over Mission Creek. If possible, pilings for the temporary bridge will not be placed within the creek channel.
- To the maximum extent possible, the existing Jocko River Bridge will be removed without any materials falling into the water. Instream bridge removal work will occur during the period from June 1 through August 31.
- Upon locating dead, injured or sick bull trout, notification will be made within 24 hours to USFWS or the Tribal Fish, Wildlife, Recreation and Conservation Office. Information relative to the date, time, and location of dead or injured listed species when found will be recorded, and if possible, the cause of injury or death of each fish, and provide to USFWS.

Water Quality

- Use bioswales composed of indigenous plant materials to minimize impacts associated with roadway runoff. In wetland areas, create ribbon marshes that run parallel to the road to filter runoff. Ribbon marshes would consist of cattails and other appropriate plants.
- In selected populated areas, install curbs and gutters to control runoff. All urban cross-sections shall include stormwater collection and best management practices for treatment.

- In the other areas use surface drainage systems such as swales, culverts, and retention basins instead of closed underground systems. Locate release points to minimize erosion if underground systems must be used, and maintain the site's natural drainage pattern.
- Implement a spill prevention plan during construction.

Stream protection

- In proximity to the existing highway, restore streams that have been channelized due to previous road construction related to US 93. Streams will be restored as close to their original channels as possible. Examples are Spring Creek at Schall Flats, and Mission Creek near St. Ignatius. Other streams will be reviewed during design for similar treatment.

Floodway

- The Jocko River Bridge, which in its current configuration constricts flood flows, will be removed and replaced with a wider structure spanning the ordinary high water mark of the system. The new bridge will provide dry land passage for wildlife.

Stormwater

- Where constructed, maintain stormwater detention facilities so they continue to function as initially intended.

Construction

- Implement temporary erosion and sediment control plan based on best management practices during construction, including:
 - Constructing silt fencing to prevent sediment from reaching water bodies,
 - Using straw bales in borrow ditches to prevent erosion and sediment transport,
 - Quickly reseeding and revegetating all disturbed areas, including embankments and borrow ditches, and adding a woody component to the riparian revegetation plan,
 - Using bank stabilization measures for disturbed channel banks,
 - Maintaining and protecting riparian vegetation to the maximum extent possible within the construction area.
- Monitor daily structures designed to minimize sediment and pollutant runoff from sensitive areas, such as settling ponds, vehicle and fuel storage areas, hazardous materials storage sites, erosion control structures, coffer dams, and drilled shaft casings to ensure these structures are functioning properly and are preventing sediment and pollutants from entering streams or wetlands.
- Restrict in-water work to periods of low flow.

- Construct bridges from land where feasible.
- Collect and dispose of all waste fuels, lubricating fluids, herbicides, and other chemicals in a manner that insures that no adverse environmental impact will occur. Inspect construction equipment daily to insure hydraulic, fuel and lubricating systems are in good condition and free of leaks. Site and contain vehicle servicing and refueling areas, fuel storage areas, and construction staging areas and material storage areas to ensure that spilled fluids or storage materials do not enter streams or wetlands.

Historic and Section 4(f)

Mitigation for historic site impacts will be implemented as agreed in consultation with the Montana State Historic Preservation Office (MSHPO) and Tribal Historic Preservation Officer (THPO).

- At Ravalli School, refinement of the highway alignment has eliminated any impacts. Planting of a vegetative buffer to screen the school from the highway will still be done.
- Northern Pacific Railroad, Dixon-Polson Branchline –a contribution has been made by MDT to the Museum of the Rockies in Bozeman for the purchase of a photo collection. Historical documentation, to be provided by CSKT, will be incorporated into an interpretive sign to be displayed at the new overlook to be constructed adjacent to US 93 at Polson Hill. Photos of the existing location will be taken for archival purposes, and survey documentation will be recorded in the tribal Geographic Information System (GIS).

General

- Implement best management practices.

Monitoring or Enforcement Program

- Long-term management and protection plans will be prepared in cooperation with FHWA, CSKT and resource agencies for each mitigation site to prevent incompatible uses that might jeopardize the purpose of mitigation.
- Monitoring plans will be implemented to ensure long-term success of the sites.

There are no changes to the proposed action resulting in significant impacts not previously evaluated in the 1996 FEIS nor is there new information on the proposed action that establishes a new significant environmental impact not previously evaluated in the 1996 FEIS.

Section 4(f) Determination

The FEIS listed seven parks, recreation areas, and refuge sites (including the CSKT Visitor Center which was identified as the National Bison Range Visitor Center) impacted by the MDT Preferred Alternative. The Re-evaluation determined that the Visitor Center was not a Section 4(f) resource as defined in federal law, and the alignment adopted in it

eliminated impacts to two more sites, Arlee Community Park and the National Bison Range. The remaining four are within the segment covered by the SEIS being prepared for the Ninepipe section.

Impacts to two historic properties were also identified in the FEIS. These properties are also covered under the Section 4(f) provisions:

- Ravalli School – MDT and the Montana State Historic Preservation Office (MSHPO) signed an agreement to mitigate any adverse effects to this property. As design has progressed on the MOA alignment, impact to Ravalli School has been eliminated. Planting of a vegetative buffer to screen the school from the highway will still be done.
- Northern Pacific Railroad, Dixon-Polson Branchline – The FEIS identified the need to relocate approximately 1800 linear feet of rail line. MDT and MSHPO agreed to a plan to provide mitigation in the form of a contribution to the Museum of the Rockies in Bozeman for the purchase of a photo collection. The highway alignment and lane configuration proposed in the MOA and implemented in the Re-evaluation keeps the relocation within 1800 linear feet through the use of retaining walls and reduction of the median to the minimum that would still allow the curvilinear alignment. Also, the relocated railroad alignment was refined, reducing the buffer zone between it and the highway. Coordination with the Tribal Historic Preservation Officer (THPO) resulted in the provision for additional mitigation in the form of historical documentation, to be provided by CSKT, which will be incorporated into an interpretive sign to be displayed at the new overlook to be constructed adjacent to US 93 at Polson Hill. Photos of the existing location will be taken for archival purposes, and survey documentation will be recorded in the tribal Geographic Information System (GIS).

With implementation of these mitigation plans, MSHPO and THPO have determined that this site will remain eligible for the National Register of Historic Places (NRHP).

Section 4(f) Conclusion

Based upon the above considerations and the information contained in the FEIS, Chapter 12 Section 4(f) Evaluation, there is no feasible and prudent alternative to the use of land from the Northern Pacific Railroad Dixon-Polson Branchline and the proposed action includes all possible planning to minimize harm to the resource resulting from such use.

Threatened / Endangered Species

The U.S. Fish and Wildlife Service issued their Biological Opinion on October 19, 2001, as follows:

After reviewing the current status of bull trout, grizzly bears, gray wolves, and Canada lynx, the environmental baseline for the action area, the effects of the proposed reconstruction of US Highway 93 between Evaro and Polson, Montana and the cumulative effects, it is the USFWS biological opinion that this project, as proposed, is not likely to jeopardize the continued existence of the Columbia Basin distinct population segment (DPS) of bull trout, grizzly bears, gray wolves, Canada lynx nor any subpopulations thereof. No critical habitat has been designated for these species, therefore, none will be affected.

Ninepipe/Ronan Segment

The three governments have agreed to prepare a Supplemental EIS to evaluate the impacts of improvements in the 11.2 mile Ninepipe/Ronan segment of U.S. 93. Preparation of that document is underway.

Polson Bypass

The three governments, Lake County, and the City of Polson will continue to work together to determine the appropriate improvement project applicable for US-93 from the US-93 / MT 35 intersection north through Polson to the vicinity of the US-93 / Rocky Point Road intersection.

Circulation of Re-evaluation and Response to Comments

The draft Re-evaluation was circulated and made available for public and agency comments at public open houses in five different locations (Polson, Ronan, Saint Ignatius, Arlee, and Evaro, MT) upon completion of the draft documentation (April 30, 2001). The purpose was to demonstrate the conclusions reached thus far and seek input from the public. The draft Re-evaluation was also circulated to approximately 180 agencies, tribal members, and businesses of interest. The first public meeting was also the beginning of a 45-day formal public comment period, during which 222 comments were received. Very few of the comments related to environmental impacts of the project. The majority dealt with design issues including number of lanes, access points, frontage roads, the Arlee couplet, turn pockets, and individual right-of-way acquisition impacts. All of these issues received serious consideration by the three governments and were reflected in the numerous design changes to be incorporated in the final design. The comments were included, along with responses, as an appendix to the final Re-evaluation. The final Re-evaluation will be sent to the recipients of the draft, and to those who commented on the draft as a response to their comments. It can also be viewed on the project website at:

<http://www.skillsings.com/us93re-evaluation/index.html>



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Region 8

Subject: U.S. Highway 93, Evaro-Polson
Project F 5-1(9)6, Montana
Record of Decision (Modification)

Date: February 9, 1998

From: Regional Administrator
Lakewood, CO

Reply to
Attn. of: HRC-08

To: Ms. Janice W. Brown
Division Administrator (HDA-MT)
Helena, MT

This Memorandum revises the Record of Decision for Project F5-1(9)6 on US Highway 93 from Evaro to Polson within Missoula and Lake Counties, Montana, and the Flathead Indian Reservation.

Background

The Record of Decision (ROD) approved on August 12, 1996, was based on an EIS prepared for 56 miles of US 93 between Evaro and Polson, Montana. This section of US 93 is located in Lake and Missoula Counties and is contained within the Flathead Indian Reservation.

The Montana Department of Transportation (MDT) is charged with the duty to plan, develop, operate, maintain, and protect the highway facilities of Montana. The Confederated Salish and Kootenai Tribes (CSKT) have a unique interest in the lands located within the Flathead Indian Reservation as guaranteed by the Treaty of Hellgate. The Tribes as a sovereign nation have inherent authority to regulate many aspects of this proposed action to the exclusion of state authority. Tribal land is held in trust by the federal government for the benefit of the Tribes and is not subject to state powers of eminent domain, so those portions of the highway corridor owned by the Tribes cannot be used without Tribal consent.

Tribal members are a minority on the Reservation and they believe the non-Indian population is impacting their culture. They are concerned that highway improvements will be a major generator of non-Indian growth. The Tribes favor safety improvements but oppose increasing the number of lanes. MDT recognizes the importance of US 93 as a key link in the Montana highway system and supports a four-lane facility that provides adequate capacity.


Because of this unique relationship and because of differing views about capacity, secondary impacts, and growth, the ROD was written in close cooperation with the Tribes and MDT. The result of this cooperative approach was to defer the lane configuration determination and proceed with corridor preservation through right-of-way acquisition and access control as soon as the Tribes MDT and FHWA could agree on a plan of action. It was intended that right-of-way acquisition would preserve a transportation corridor sufficient to accommodate the range of alternatives presented in the EIS, while access control would enhance safety, improve capacity, and support land use planning.

When FHWA wrote the ROD all parties agreed that the corridor would be preserved in such a manner and discussions regarding the corridor ensued. Unfortunately the parties have come to impasse over issues of lane configuration even though the lane configuration decision was deferred in the ROD. It is clear that concern over lane configuration is so deeply rooted that it has brought corridor preservation talks to a standstill.

However, the benefits of corridor preservation warrant proceeding with access control and right-of-way acquisition. Corridor preservation is in the best interest of the Tribe, the state, and the traveling public as it provides immediate safety benefits while ensuring that all alternatives remain viable. Without corridor preservation the options become limited as unmanaged growth continues. Now, in the absence of agreement, it is necessary to revise the ROD, so that corridor preservation might continue.

The DECISION with respect to “Implementation of right-of-way acquisition and access control” (beginning on the fourth textual page of the ROD) is amended to read as follows:

- Implementation of right-of-way acquisition and access control on non-tribal land that does not preclude future options may proceed in accordance with Section 7.1.3.2 in the EIS.
- Implementation of right-of-way acquisition and access control on tribal land that does not preclude future options may proceed when an agreement is reached between CSKT, MDT and FHWA.



Vincent F. Schimmoller

Attachment

RECORD OF DECISION

FOR

IMPROVEMENT OF U.S. HIGHWAY 93
EVARO THROUGH POLSON
MISSOULA AND LAKE COUNTIES, MONTANA
PROJECT F 5-1(9)6

FINAL ENVIRONMENTAL IMPACT STATEMENT
FINAL SECTION 4(f) EVALUATION
FHWA-MT-EIS-95-01-F

FEDERAL HIGHWAY ADMINISTRATION

DATE

Aug 12, 1996

BY

Jim Lamb

Jim Lamb Director

OFFICE OF PLANNING AND PROGRAM DEVELOPMENT
FEDERAL HIGHWAY ADMINISTRATION, REGION 8
LAKEWOOD, COLORADO

**Record of Decision for
U.S. Highway 93 (Evaro through Polson)
Mileposts 6.5 to 62.8
Missoula and Lake Counties, Montana
Project F 5-1(9)6**

**Final Environmental Impact Statement
Final Section 4(f) Evaluation
FHWA-MT-EIS-95-01-F**

BACKGROUND

The EIS was prepared for 56 miles of US 93 between Evaro and Polson, Montana. US 93 is one of the heaviest traveled National Highway System (NHS) routes in Montana linking premier recreational areas near Flathead Lake and Glacier National Park to Missoula and Interstate 90. This section of US 93 is located in Lake and Missoula Counties and is contained within the Flathead Indian Reservation.

The Record of Decision (ROD) records the decision made based on the purpose and need, analysis, and recommendations found in the Final Environmental Impact Statement (FEIS). The decision maker is the Federal Highway Administration (FHWA). The FHWA represents the Federal Government in this action, but is supported in their decision by the Confederated Salish and Kootenai Tribes of the Flathead Nation (CSKT) and the Montana Department of Transportation (MDT).

The U.S. Department of Transportation is an executive department of the United States Government. 49 U.S.C. §101 (1995). The FHWA is an administration in the U.S. Department of Transportation 49 U.S.C. §104 (1995). FHWA is the lead agency with oversight responsibility for assuring that this proposed action complies with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4370b. FHWA retains ultimate responsibility for participating in and overseeing the preparation of an adequate EIS, identifying the preferred alternatives, issuing a decision on the proposed action and documenting such decision in a concise public record of decision.

MDT is an executive state agency established pursuant to state law, Mont. Code Ann. §2-15-2501 (1995), with custodial responsibility for federal-aid and state highways located within the State of Montana. MDT is charged with the duty to "plan, develop, operate, maintain and protect the highway facilities of [Montana] for present as well as future use". Mont. Code Ann. §60-1-102 (1995). FHWA, pursuant to federal law, is required to cooperate with MDT in the construction of Federal-aid highways, 23 CFR §1.3 (1995). FHWA has effectuated this

requirement in part by designating MDT as FHWA's agent for performing NEPA analysis. For this Project, FHWA has assigned MDT with the responsibility of preparing the EIS. MDT has full authority to determine where transportation funds are allocated to best accomplish this requirement.

CSKT is a tribal government organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. 461, et seq. (1995). CSKT is a cooperating agency in this NEPA process. The CSKT's cooperating agency status is derived from the government to government relationship between the Tribes and both the United States and the State of Montana. CSKT has a unique interest in the lands located within the Flathead Indian Reservation as the Tribal homeland as guaranteed by the Treaty of Hellgate, 12 Stat. 975, July 16, 1855. FHWA, as a federal agency, has a trust responsibility to the Tribes which includes the protection of the sovereignty of the Tribal government and preservation of Tribal culture and other trust resources. The Tribes as a sovereign nation have inherent authority to regulate many aspects of this proposed action to the exclusion of State authority. The Tribes as a government have been delegated additional regulatory authority by Congress under several federal laws applicable to this proposed action which preempts state authority: The Tribes as property owners are not subject to state powers of eminent domain, so those portions of the highway corridor owned by the Tribes cannot be used without Tribal consent.

Tribal members are a minority of the total population on the Flathead Reservation and approximately 60% of the land mass within the Reservation is owned by the Tribes. CSKT believes that the non-Indian population, within the Reservation, has a significant impact on their culture and heritage and they are opposed to any additional development that would impact their traditional ways of life. CSKT is concerned that highway improvements will be a major generator of non-Indian growth. CSKT favors safety improvements but oppose increased capacity. CSKT prefers a two-lane facility.

MDT recognizes the importance of the US 93 NHS route as a key link in the Montana highway system and MDT advocates a design that provides for safety and a high level-of-service for local residents and for those that use the road as a link to other areas of the state and the nation. MDT does not believe that the cost of constructing an "improved" two-lane roadway can be justified because of the high cost and low transportation benefit in terms of increased safety and capacity. The approved FEIS confirms that a two lane facility will not substantially improve safety or capacity and that a four-lane facility will provide for improved safety and capacity beyond the design year. Therefore, MDT prefers a four-lane facility.

ALTERNATIVES

Alternatives that have been considered include:

- No Action (Section 5.1.1. of the FEIS).
- Alignment alternatives (Section 5.1.2. of the FEIS).
- Lane configuration alternatives (Section 5.1.3. of the FEIS).
- Transportation demand management (TDM) measures (Section 5.1.4. of the FEIS).
- Alternate highway routes (Section 5.1.5. of the FEIS).
- Other highway design options (Section 5.1.6. of the FEIS).

These alternatives are evaluated and compared in Section 5.2. of the FEIS).

The existing alignment, also referred to as Alignment 1, consists of reconstructing the roadway with only minor adjustments to allow for widening, to improve horizontal curves and vertical grades and curves, and to avoid important features adjacent to the roadway. Because this alignment will use existing right-of-way and existing roadbeds and will not introduce highway traffic, with related impacts, into new areas, it is considered the environmentally preferred alignment alternative.

The alternative preferred by the MDT is the alternative identified in the FEIS as the MDT Preferred Alternative (Section 5.3). The alternative preferred by the CSKT is the alternative identified in the FEIS as the CSKT Preferred Alternative (Section 5.4).

Similarities

Both preferred alternatives include the use of the existing alignment throughout the length of the project.

Both preferred alternatives designate the preservation of a corridor west of Ronan for a future highway bypass.

Both preferred alternatives indicate that implementation of access control is important for improving safety and preserving traffic capacity.

Differences

The CSKT Preferred Alternative provides for a two-lane configuration with passing lanes in a few locations. The MDT Preferred Alternative provides for a four-lane configuration.

The CSKT Preferred Alternative does not provide for the preservation of a corridor for a future highway route west of Arlee. The MDT Preferred Alternative provides for the preservation of a corridor for a future highway route west of Arlee

The CSKT Preferred Alternative does not include a highway bypass south and west of Polson and recommends against preservation of a corridor of land for future bypass construction.

The MDT Preferred Alternative includes construction of a highway bypass south and west of Polson.

DECISION

The Decision of FHWA, in cooperation with MDT and CSKT, is to select the following:

- Alignment 1 throughout the length of the project. Alignment 1 follows the existing highway alignment with only minor adjustments to improve the horizontal and vertical alignment of the roadway and to avoid, as much as practical, important topographic features, residences or other buildings and environmental features such as wetlands, streams and riparian areas.
- Preservation of a corridor of land for future construction of a highway around Ronan on Alignment 4.
- Implementation of right-of-way acquisition and access control. It is intended that a cooperative agreement and plan for the acquisition of right-of-way that does not preclude future options and access control be developed between CSKT, MDT and FHWA. When agreement is

reached acquisition of right-of way and access control may proceed.

FHWA chooses to defer making a decision regarding the remainder of the recommendations included in the FEIS. These recommendations include:

- Lane Configurations
- Preservation of a corridor of land for future construction of a highway around Arlee.
- Construction of a highway around Polson or the preservation of a corridor of land for future construction of a highway around Polson.

This Decision does not provide for the physical construction of highway projects with Federal-aid funds until CSKT, MDT and FHWA agree on the appropriate design and a project level environmental document is completed that addresses social, economic and environmental impacts. While this Decision does not directly provide for the construction of transportation projects, it leaves the path open to begin activities that lead to transportation projects when agreement on the type of improvement is reached.

The differences between the CSKT and the MDT preferred alternatives are substantial. Before any improvements to US 93 between Evaro and Polson can move forward successfully, resolution of the differences is necessary. Deferral of the Decision on many important issues identified in the FEIS differs from normal expectations for a ROD. FHWA believes that this is appropriate because the jurisdictional authority of the governmental bodies involved is such that agreements must be reached on the improvements to US 93 and the mitigation plans associated with those improvements before it will be possible to successfully construct a project. As the lead agency and decisionmaker FHWA believes that agreement will eventually be reached. At that time the FEIS will serve as a Tiering document for these future improvement projects.

SECTION 4(f)

Impacts and proposed mitigation measures for Section 4(f) properties are identified in the Final Section 4(f) Evaluation in Section 12 of the FEIS. The 4(f) impact will be reevaluated in project level environmental documents.

MEASURES TO MINIMIZE HARM

Mitigation measures for each of the proposed alternatives are discussed in the FEIS. When an agreement regarding lane configuration and other highway features is reached between CSKT, FHWA and the MDT appropriate specific mitigation measures will be identified and committed to in the project level environmental document.

COMMENTS ON THE FINAL EIS/SECTION 4(f) EVALUATION

PUBLIC COMMENTS

A total of thirteen letters containing comments have been received from the public.

Ten of the letters expressed preferences for a 4-lane highway from Evaro to Polson to improve safety and operation.

One of the letters expressed preference for the bypass route around Arlee.

One of the letters expressed concern for "nesting ponds along Highway 93. Their function as food sources and homes as well as natural filters for our underground water." This person requested and was provided a copy of the FEIS which explains how each of the proposed alternatives would impact these sites and what mitigation measures would be taken.

AGENCY COMMENTS

A letter was received from the National Bison Range, Fish and Wildlife Service, US Department of the Interior. The Letter requested a copy of the FEIS and asked about impacts and mitigation measures specifically related to the Ninepipe National Wildlife Refuge and Waterfowl Production Areas. A copy of the FEIS which addresses most of these questions was sent. Specific mitigation information will be provided in future project level environmental documents for each segment of the highway.

A letter was received from Region VIII, Montana Office United States Environmental Protection Agency (EPA). The letter noted that EPA believes FHWA should have identified its preferred alternative in the FEIS. They believe that the CSKT Preferred Alternative is environmentally preferable, but also acknowledges that this is counterbalanced by failure of the two-lane highway to meet the

project purpose and need and to adequately provide the level of traffic operation and safety recommended by the American Association of State Highway and Transportation Officials. EPA believes that direct wetland/riparian impacts of the four-lane highway can be addressed through a comprehensive wetland mitigation plan. They believe that it would be preferable to have Tribal and local county governments develop and enforce local land use plans to manage or control land use population density or, growth rates, rather than allowing land use decisions to result indirectly from highway planning. EPA indicates that it may be beneficial to analyze and evaluate smaller segments of the highway and then perhaps opportunities may be easier to identify. They also provide comments and recommendations regarding air quality, wetlands, water quality/floodplain/stream crossings, and fish and wildlife issues that will be addressed in project level environmental documents. EPA agrees with Alignment 1 along the corridor from Evaro to Polson and supports Access Management Planning.