

7.0 CONSULTATION AND COORDINATION

An issue is a particular concern regarding the environmental effects of a proposed project. The regulations governing EISs require that lead agencies determine “the significant issues to be analyzed in depth in the environmental impact statement” and to “identify and eliminate from detailed study the issues that are not significant” (40 CFR 1501.7). This process of identifying significant issues is called *scoping*. The overall purpose of scoping is to focus the environmental review on those issues that are relevant to the proposal and decision to be made.

7.1 INITIAL SCOPING

Chapter 2 discusses how issues were used to develop alternatives. FHWA convened the SEE team (FHWA, IPNF, ITD, and ESHD) during the initial project-scoping phase to identify and assess the environmental affects of the proposal and recommend alternatives for evaluation. FHWA held public meetings in May and September 2000 to learn more about issues and concerns regarding the project. More information on these events can be found in the early project newsletters (Appendix C). Public feedback was considered in FHWA’s decision to prepare an EIS instead of a NEPA Environmental Assessment.

A Notice of Intent to prepare an EIS was published in the Federal Register on October 3, 2000. Letters were sent to interested agencies and individuals in May 2001. A public scoping meeting was held on June 20, 2001. The first project update distributed in September 2001 summarized the scoping process and studies being conducted.

7.2 PUBLIC INVOLVEMENT

The second project update was issued in June 2003, as technical studies were being revised to include additional alternative preliminary designs. Since then project newsletters or updates have been distributed every two or three months to keep the public informed on the project schedule, preliminary findings, and coordination with other studies. The project mailing list totals almost 500 individuals, agencies, organizations and corporations. Appendix C contains all project newsletters and updates.

Development of the Fernan Lake Watershed Management Plan in 2003 provided an opportunity to exchange information between the concurrent studies. For example, the road project provided detailed wetland results for the watershed plan. The watershed study provided results of 2003 water quality sampling to the road project. The draft watershed management plan issued in November 2003 was considered in preparing this EIS.

The March 2004 project update encouraged the public to visit FHWA’s project website for Fernan Lake Road on the Internet (www.wfl.fhwa.dot.gov/projects/fernan). Project information available on the website includes purpose and need, preliminary alternatives, Project Checklist (May 2000), aerial photos, newsletters and project updates. Links are provided to related websites on boating, fishing, birding, IPNF recreation, and the Draft EIS. Some of these sites have reciprocated by providing links to FHWA’s Fernan Lake Road website. FHWA’s site also includes a quicknote contact form that can be used to

provide comments on the project electronically. This Final EIS can be viewed on and downloaded from the project website.

The Draft EIS Summary was sent to everyone on the project mailing list. The complete document was distributed to agencies, organizations, local libraries, and anyone requesting a copy. Notices that the Draft EIS was available for review and comment were published in the Federal Register, Coeur d'Alene Press, and Spokane Spokesman-Review newspapers. News articles about the project appeared with the release of the Draft EIS.

A public meeting was held at Fernan Elementary School on June 24, 2004. Project engineers and scientists joined representatives of the partner agencies in providing detailed responses to questions from approximately 50 attendees. The variety of media used to present project information included a narrated PowerPoint presentation, display panels (now available on FHWA's Fernan project website), wall-sized preliminary plans matched in scale to aerial photo mosaics, design simulations showing virtual drives of the existing road and build alternatives, and extra copies of the Summary and complete Draft EIS.

The public was encouraged to submit comments on the Draft EIS at the June meeting by using the comment forms provided or by having a stenographer transcribe their verbal comments. Other Draft EIS comments were received by mail and email. Over 230 comments were received from 36 individuals, families, agencies and organizations (Appendix D).

Developing the Fernan Creek realignment / restoration concepts (Appendix E) offered another opportunity for public interaction. The project team met with each of the landowners where this mitigation would occur to explain the proposed concepts, confirm their willingness to cooperate, and learn about their concerns and property stewardship objectives. These meetings and site visits led to concept of returning flow to the old creek channel on the east side of the valley.

7.3 INTERAGENCY AND TRIBAL COORDINATION

In addition to periodic meetings of the SEE team agencies, the Fernan project team has coordinated with regulatory and resource agencies. Many meetings were held with individual agencies. Multi-agency project meetings were held on several occasions. Frequently contacted agencies include:

Federal Agencies

- Army Corps of Engineers
- Environmental Protection Agency
- Fish and Wildlife Service
- Forest Service

Idaho State Agencies

- Department of Environmental Quality
- Department of Fish and Game
- Department of Lands, Division of Navigable Waters

Department Parks and Recreation
Department of Water Resources
State Historic Preservation Office
Transportation Department

Local Agencies

City of Coeur d'Alene
City of Fernan Lake Village
East Side Highway District
Kootenai County Parks, Recreation, and Waterways Department
Kootenai County Planning Department

Section 106 of the National Historic Preservation Act (NHPA) requires that FHWA, as lead federal agency, consult with the Advisory Council on Historic Preservation (ACHP) and the Idaho State Historic Preservation Office (SHPO) regarding effects of the project on cultural resources and historic properties. Idaho SHPO determined the all three build alternatives would have an adverse effect on Segments 1 and 2 of Fernan Lake Road, which are eligible historic properties. FHWA and Idaho SHPO negotiated a Memorandum of Agreement (MOA, Chapter 5) to mitigate the adverse effects should the ROD select a build alternative. To date ACHP has not actively participated in the Section 106 consultations.

NHPA Section 106 and federal directives on Government-to-Government Relations with Native American Tribal Governments require that federal government plans, projects, programs and activities assess tribal cultural and traditional uses in the project area and impacts on tribal trust resources. The U.S. has a unique relationship with tribal governments, which requires each federal agency to consult to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally-recognized tribal governments. FHWA has consulted with Coeur d'Alene Tribe regarding this project, and the Tribe also provided comments on the Draft EIS (Appendix D, comment 112).

Section 7 of the Endangered Species Act (ESA) requires that FHWA, as lead federal agency, consult with the U.S. Fish and Wildlife Service (FWS). As part of this consultation, FHWA prepared a Biological Assessment (BA) that describes ESA protected species in the area, effects of the Fernan Lake Road project, and conservation and mitigation measures that will be implemented. ESA consultation must be completed before the ROD is signed. The most recent communication from FWS follows.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Upper Columbia Fish and Wildlife Office
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August 26, 2004

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Subject: Corrected Species List for the Fernan Lake Road Safety Improvement Project in Kootenai County, Idaho (File # 1102.0200; Reference Number 1-9-04-SP-0399)

Dear Ms. Callahan:

On August 17, 2004, we provided you with an updated species list (Reference Number 1-9-04-SP-0371), which responded to your request, dated August 6, 2004, for an updated species list for the subject project. Unfortunately, the updated species list (1-9-04-SP-0371) was incorrect; we indicated that there were no federally listed, proposed or candidate species within the vicinity of the project. However, there is a bald eagle (*Haliaeetus leucocephalus*) nest within a ½ mile of the project area. Therefore, we are providing you with a corrected species list reflecting the presence of the bald eagle within the project area. This letter officially corrects the previously updated list, and provides you with a new reference number, 1-9-04-SP-0399. You should refer to this species list number in all subsequent correspondence.

This corrected species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act of 1973, as amended (Act). Should the project plans change, or if it is delayed more than 90 days, you should verify the current accuracy of this response with the Service.

Information regarding Federal agency obligations under the Act, biological assessments, and candidate species has been provided to you in previous correspondence from this office. If you have questions, please contact Bryon Holt in this office at (509) 893-8014. Thank you for your efforts to protect our nation's species and their habitats.

Sincerely,

Acting Supervisor

**Responsibility of Federal Agencies under Section 7
of the Endangered Species Act**

Section 7(a) - Consultation/Conferencing

- Requires: 1) Federal agencies to utilize their authorities to carry out programs to conserve endangered and threatened species;
- 2) Consultation with the U.S. Fish and Wildlife Service (Service) when a federal action may affect a listed species to ensure that any action authorized, funded, or carried out by a federal agency will not jeopardize the continued existence of listed species, or result in destruction or adverse modification of critical habitat. The process is initiated by the federal agency after determining that the action may affect a listed species; and
- 3) Conferencing with the Service when a federal action may jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat.

Section 7(c) - Biological Assessment for Major Construction Activities

Requires federal agencies or their designees to prepare a Biological Assessment (BA) for major construction activities¹. The BA analyzes the effects of the action, including indirect effects and effects of interrelated or interdependent activities, on listed and proposed species, and designated and proposed critical habitat. The process begins with a request to the Service for a species list. If the BA is not initiated within 90 days of receipt of the species list, the accuracy of the list should be verified with the Service. The BA should be completed within 180 days after its initiation (or within such a time period as is mutually agreeable between the Service and the involved federal agency). No irreversible commitment of resources is to be made during the BA process that forecloses reasonable and prudent alternatives for the project that could protect listed and proposed species. Project planning, design, and administrative actions may proceed, however, no construction may begin.

We recommend the following for inclusion in a BA: an onsite inspection of the area to be affected by the proposal, which may include a detailed survey of the area to determine if listed or proposed species are present; a review of pertinent literature and scientific data to determine the species' distribution, habitat needs, and other biological requirements; interviews with experts, including those within the Service, state conservation departments, universities, and others who may have data not yet published in scientific literature; an analysis of the effects of the proposal on the species in terms of individuals and populations, including consideration of cumulative effects of the proposal on the species and its habitat; and an analysis of alternative actions considered. The BA should document the results of the impacts analysis, including a discussion

of study methods used, any problems encountered, and other relevant information. The BA should conclude whether or not any listed species may be affected, proposed species may be jeopardized, or critical habitat may be adversely modified by the project. Upon completion, the BA should be forwarded to the Service.

Major concerns that should be addressed in a BA for listed and proposed animal species include:

1. Level of use of the project area by the species, and amount or location of critical habitat;
2. Effect(s) of the project on the species' primary feeding, breeding, and sheltering areas;
3. Impacts from project construction and implementation (*e.g.*, increased noise levels, increased human activity and/or access, loss or degradation of habitat) that may result in disturbance to the species and/or their avoidance of the project area or critical habitat.

Major concerns that should be addressed in a BA for listed or proposed plant species include:

1. Distribution of the taxon in the project area;
2. Disturbance (*e.g.*, trampling, collecting) of individual plants or loss of habitat; and
3. Changes in hydrology where the taxon is found.

Section 7(d) - Irreversible or Irretrievable Commitment of Resources

Requires that, after initiation or reinitiation of consultation required under section 7(a)(2), the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied.

¹ A major construction activity is a construction project, or other undertaking having similar physical impacts, which is a major action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [42 U.S.C. 4332 (2)(c)].