



**Montana Fish,
Wildlife & Parks**

Region One
490 North Meridian Rd.
Kalispell, MT 59901
(406) 752-5501
FAX: 406-257-0349
Ref: JS067-12
September 13, 2012

Ladies and Gentlemen:

Montana Fish, Wildlife & Parks (FWP) has completed an environmental assessment (EA) for the purchase of one or more conservation easements, referred to as the Kootenai Valleys Conservation Easement Project, to protect approximately 28,000 acres of highly productive timberland and important fisheries and wildlife habitat in the far northwest corner of Montana near the City of Troy. The property is owned by the Stimson Lumber Company, Inc.

The draft environmental assessment was out for a 30-day public review through August 31, 2012. A public meeting was held at the Troy High School on August 22, and the project was presented to the Lincoln County Planning Board on August 21, with the public welcome to attend. A total of 15 comments were received, with all but one strongly in favor of the project. Summaries of the public comments, public meetings, and Lincoln County Planning Board discussion, and the FWP responses to public comments are contained in the enclosed decision notice.

In reviewing all the public comment and other relevant information, and evaluating the environmental effects, I recommend that FWP pursue the completion of the Kootenai Valleys Conservation Easement Project subject to final approval by the FWP Commission and the State Land Board.

Sincerely,

A handwritten signature in cursive script that reads "James R. Satterfield, Jr." The signature is written in dark ink and is positioned above the typed name.

James R. Satterfield Jr., Ph.D.
Regional Supervisor

/ni

Enclosure

c: *Governor's Office, Attn: Sheena Wilson, PO Box 200801, Helena, MT 59620-0801

*Environmental Quality Council, Capitol Building, Helena, MT 59620-1704

*Dept. of Environmental Quality, Planning, Prevention & Assistance, PO Box 200901, Helena, MT 59620-0901

*Dept. of Environmental Quality, Permitting Compliance, PO Box 200901, Helena, MT 59620
*Montana Fish, Wildlife & Parks: Director's Office, Legal Unit, & Fisheries
*MT Historical Society, State Historic Preservation Office, 225 North Roberts, Veteran's Memorial Bldg., Helena, MT 59620
Jennifer Porter, Tribal Chairwoman, Kootenai Tribe of Idaho, P O Box 1269, Bonners Ferry, ID 85805
*Scott Soultz, Kootenai Tribe of Idaho, P O Box 1269, Bonners Ferry, ID 85805
*CSKT, PO Box 278, Pablo, MT 59855
*Montana State Library, 1515 East Sixth Ave., Helena, MT 59620-1800
*Montana State Parks Association, PO Box 699, Billings, MT 59103
*DNRC, PO Box 201601, Helena, MT 59620-1601
*DNRC, Steve Frye
*Adam McLane, Montana Environmental Information Center, PO Box 1184, Helena, MT 59624
George Ochenski, PO Box 689, Helena, MT 59624
*Wayne Hirst, Montana State Parks Foundation, PO Box 728, Libby, MT 59923
*Joe Gutkoski, President, Montana River Action Network, 304 N 18th, Bozeman, MT 59715
*Senator Chas Vincent
*Representatives Gerald Bennett & Mike Cuffe
Lincoln County Commissioners, 512 California Avenue, Libby, MT 59923
Interested parties

**Region 1
490 N. Meridian Road
Kalispell, MT 59901**

**DECISION NOTICE
and
Finding of No Significant Impact
for the
KOOTENAI VALLEYS CONSERVATION PROJECT**

September 13, 2012

Description of the Proposed Action

Montana Fish, Wildlife & Parks (FWP) proposes to purchase one or more conservation easements, referred to as the Kootenai Valleys Conservation Easement project, to protect about 28,000 acres of highly productive timberland and important fish and wildlife habitat in the far northwest corner of Montana near the city of Troy, Montana. The property is owned and managed by Stimson Lumber Company (Stimson). The conservation easement(s) to be held by FWP were appraised at about \$17.6 million in total, but would be purchased at a below market value from Stimson for a total cost of about \$13.2 million. Funding for this acquisition would come from several sources as follows: \$6.5 million from the U.S. Dept. of Agriculture's Forest Legacy Program for the purpose of conserving working forest landscapes, \$4.0 million from the U.S. Dept. of Interior Fish & Wildlife Service Habitat Conservation Plan Land Acquisition Program for the purpose of permanent protection of habitats important for threatened and endangered species (bull trout, grizzly bears, and other important wildlife species), and about \$2.7 million from the Bonneville Power Administration for the purpose of protecting resident fish habitat as mitigation for Libby Dam. Separate conservation easements would occur if the agencies are unable to combine their program requirements into one conservation easement. The Trust for Public Land, a national land conservation nonprofit organization, is assisting in the project.

Public Involvement – Scoping

FWP conducted preliminary outreach during late summer and fall 2011. FWP and Trust for Public Land staff met with the Lincoln County Commission and Planning Board in August/September 2011, held two public meetings/open houses, one on October 3 in Libby and a second on October 4 in Troy. FWP and Trust for Public Land staff also met with the City of Troy and Libby City Councils later in October 2011. Most attendees were in favor of the project. The public did have questions about the project that primarily centered on what type(s) of public access and uses would be allowed, what commercial uses would be retained, and what effects the conservation easement would have on adjoining landowners (e.g., access roads, utilities, parcel sales). FWP and Stimson addressed these issues through subsequent crafting of the conservation easement terms and associated management plan. Both the draft conservation easement and management plan were included with the draft environmental assessment (EA).

Draft Environmental Assessment and Public Comments

FWP released the draft environmental analysis for public review on August 2, 2012, and asked for public comments through August 31. FWP scheduled our public hearing in Troy for August 22, 2012, at 6:30 p.m., and agreed to be on the meeting agenda for the regular Lincoln County Planning Board meeting that is open to the public on August 21, 2012. FWP sent postcards announcing the public comment period and public meetings to approximately 70 individuals and organizations, including all of the individuals/organizations that had commented during, or attended, the public scoping meetings, agencies, tribes, and other interested parties. FWP ran legal ads that described the proposed project, the availability of the draft EA, and the public meeting information in three regional and two local newspapers. The draft EA was posted on FWP's official web site. FWP also issued a press release that described the project, availability of the draft EA and the public comment timeline, and dates and locations of the public meetings in Libby and Troy. During the week of the public meeting in Troy, FWP posted ¼ page ads in three regional newspapers (Missoulian, Daily Inter Lake, Flathead Beacon) and in the local newspapers (Western News, Montanian) and in the Eureka newspaper (Tobacco Valley News) the week after the public meeting. The draft EA document was also available at public libraries in Troy and Libby, and at Region One headquarters in Kalispell.

FWP staff members along with Stimson Lumber Company representatives attended the Lincoln County Planning Board meeting in Libby on August 21 and answered many questions from the Planning Board members that are summarized below. Although the Lincoln County Planning Board meeting was publicly noticed by the county and in FWP public release materials, no members of the general public attended. FWP held the official public hearing at the Troy High School auditorium on August 22. Eight members of the public attended, and one individual provided public comment in support of the project.

FWP also received letters of support prior to the formal public review period from the Lincoln County Planning Board in April 2012, Lincoln Conservation District in January 2011, and Kootenai Tribe of Idaho in August 2010. The Lincoln County Planning Board encouraged FWP to negotiate for greater motorized access with Stimson.

Summary of Public Comments and Public Meetings (August 2-31, 2012)

Overall, FWP received 15 submitted public comments on the project during the draft EA public comment period – one from the public meeting in Troy and 14 submitted in writing or email. All but one were strongly in favor of the proposed action because this would maintain working forests, provide public recreational access, benefit fish and wildlife habitat, and protect wildlife corridors. Several members mentioned that the proposed action would also benefit water quality and communities. The one concern letter we received focused on how FWP inadequately disclosed or addressed the existing rights of third parties that have or may have mineral rights under the conservation easement lands.

FWP discussed the proposed project, draft EA, and the implications of this conservation easement with members of the Lincoln County Planning Board on August 21. A summary of that discussion is included below. Most members supported the project, but raised some concern about the limits this project may have on future growth in the Troy area.

Summary of Lincoln County Planning Board Discussion (August 21, 2012)

Attendees:

Kristin Smith, Lincoln County Planning Consultant, and seven members of the County Planning Board. FWP Staff included Alan Wood, Candace Durran, Gael Bissell, Tonya Chilton-Radandt, Mike Hensler, and Jim Dunnigan. Stimson representatives included Ray Jones, Barry Dexter, Frank Torresy, Darryl Pfeiffer, and Bruce Rowland.

Background

Lincoln County Planning Consultant suggested earlier this summer that FWP could meet with the County Planning Board during their regularly scheduled meeting on August 21. Because FWP would be announcing the meeting through our press releases and legal notices, we changed the venue to the Ponderosa Room, Libby City Hall, in anticipation that members of the public may want to attend. No one from the public attended.

Discussion

1. The Lincoln County AICP consultant asked FWP if the conservation easement and Management Plan documents, mailed to the planning board earlier that summer to meet the 90-day review, had changed.

FWP responded by saying we have added one recital to the conservation easement in response to comments about third-party rights. Recital L acknowledges the rights held by other entities (including mineral rights) at the time the conservation easement is established.

2. One of the planning board members noticed that we stated that camping was allowed in one section of the draft EA, but not in the Management Plan.

FWP noted that this was an error and clarified that camping is not currently allowed by Stimson and that is correctly reflected in the agreed upon Management Plan.

Stimson addressed the reason camping is not allowed is because it is a liability issue and cited a case in northern California where a wild fire related to camping went from private to public timber land. The timber company was later sued by federal prosecutors for fire-related damages and burned federal timber. The timber company had to pay \$55 million in damages. Such a case could bankrupt Stimson and they are not willing to take on that liability.

3. A Planning Board member noted that access to the recently opened Ruby Road loops is not signed. Was Stimson or FWP going to sign areas that are open? Are all the parcels accessible from a public road?

Stimson said they have not specifically signed all the access in the past. FWP said that under the Block Management Program, FWP could put up signs since the Stimson property is enrolled with the program. FWP can't guarantee signs will stay up as the public may take them down. Also, Block Management information on the area can indicate where road access is allowed. Darryl Pfeifer, from Stimson, mentioned that all

the Stimson parcels can be accessed by a road, either public or a Stimson access road. Most Stimson roads are gated, but walk-in is allowed and would be continued as part of the conservation easement. Many parcels, such as in Lake Creek, are accessible from the county roads.

4. A Planning Board member noted that continued public access to easement lands is the single biggest issue or concern. When the former Plum Creek land was sold to Stimson, the community feared that the land would be subdivided and sold.
5. A Planning Board member noted that the draft EA was not clear on snowmobile use. Will more land be opened for snowmobile use or not?

Stimson staff noted that currently snowmobile use (any motorized use) is not allowed behind their gates or on closed roads, but something like the Ruby-Brush opening could be looked at in the future. Tonya Chilton-Radandt with FWP noted that some of the Ruby-Brush Creek area, for example, includes winter range with good cover/snow intercept and is important for big game.

6. A Planning Board Member asked about handicapped access.

Stimson noted that this was one of the reasons the Ruby Creek drainage opened during hunting season.

7. Discussion then focused on the implications of the removal of this private land in Lincoln County from future development.

FWP staff explained how we developed and used a GIS model to estimate how much of the private, developable land in the Kootenai Valleys project area the conservation easement would affect. FWP analysis indicated that the proposed conservation easement would remove about 50% of the most developable land within the project area, but would leave about 23 mi² of similar land available for future development.

8. The Lincoln County Planning consultant noted that the Growth Policy indicates that slope limitation to residential is 30%, not 15%. How did we come up with parameters for building analysis?

FWP staff explained we used <15% for highly developable land based on previous analyses but also recognized that limited development would occur on slopes between 15% and 30% slope. We also accounted for that additional development of steeper ground by looking at the current level of development on private land >15% slope. We used the statewide Digital Elevation Models and state cadastral data to conduct this analysis.

The Lincoln County Planning consultant also responded to some of the Planning Board member concerns about limiting developable land in the future for this part of Lincoln County.

She explained that it costs more to service development (police, fire, road maintenance, schools, etc.), particularly in outlying development, than taxes provide. Construction jobs are short term, while the required services are a long-term responsibility for the county.

Lincoln County previously had the second highest second home development/building rate in the state. The county now incurs the expense of maintaining services for all these new landowners who spend a small amount of time in the state each year. The recent downturn is an example of how fleeting the home development market and associated jobs can be. Construction industry associated with this type of growth does not provide sustainable economic growth.

9. Other board member comments:

- a. Why hasn't the public brought up the question of removing parcels for the development from the CE before now?
- b. Member stated that they would hate residents to decide which parcels to include and which not to include.
- c. I am a member that owns land that backs up to proposed CE land; want to have land remain undeveloped.
- d. Having less land available for development makes remaining land more valuable.
- e. One member likes the proposed CE, thinks it will help tourism, and wants to move ahead and see easement completed.

Stimson and FWP responses to above comments:

Stimson said it was very important to them that they keep some of the higher dollar-value lands included in the easement to add value to the easement. If the conservation easement just included the steeper and less accessible lands, the values would not be compelling for company to want to do the easement.

Stimson: Stimson provides about 25 jobs each year to this part of Montana. These jobs will be assured by keeping the land in timber production. Otherwise, Stimson might sell it for other uses and those jobs would be lost. It is the intention of the CE to provide public access and hunting. FWP will work with Stimson to allow hunting access. Other access will be controlled by Stimson through the Management Plan.

FWP staff also reminded the board that the annual meeting of the Liaison Team (landowners and FWP) will also provide a public forum for input on how the terms of the Management Plan are administered on the land, including hunting access.

FWP mentioned that FWP, Trust for Public Land, and Stimson have met with the Planning Board and County Commissioners numerous times and asked that same question about what concerns they would have about future development limitations. We would welcome that feedback.

10. Member from Eureka area asked that we advertise the project and public comment in the Tobacco Valley News.

FWP agreed that we would put an ad in the Tobacco Valley News the last week of the public comment period.

FWP Responses to Public Comments

1. **Comment received about third-party mineral rights.** This individual has provided input to FWP staff during prior meetings about how this proposed conservation easement could affect existing third-party existing mineral rights (or any other third-party rights). The commenter was not satisfied with language about this issue in the draft EA and did not see any changes in the conservation easement language that helped address this issue. Specifically, their concerns and FWP responses are as follows:

- a. **Why does FWP not complete an exhaustive title analysis to determine mineral ownership?**

We agree with the commenter that searching for third-party mineral rights under the proposed conservation easement lands is an important step in the due diligence process, particularly when a mineral remoteness test does not clearly indicate “mineral development potential to be so remote as to be negligible.” We appreciate the copy of the mineral patent provided by the commenter that shows the federal government holds the mineral rights to the Ruby Creek portion of the proposed project area. The reason that this mineral patent was not noted in the Legal Description of the conservation easement parcels (Exhibit A of the conservation easement, pps. A-23 to A34 of draft EA) is that those listed legal tracts refer only to surface ownership. We recognized that mineral or other rights under or over the land may preexist, and so we added Recital L to Section I of the conservation easement (page A-3 of Appendix A in the draft EA). This recital states: “The Landowner and Department acknowledge all rights, including mineral interests on or under the land, held by other entities at the time this easement was established (the “Preexisting Rights”).” Further, Recital L states: “...nothing in this Easement limits, diminishes, authorizes, or expands any Preexisting Rights...”

Because mineral development can compromise the Conservation Values that a conservation easement is designed to protect, FWP and other conservation organizations typically assess the risk for potential mineral development by obtaining a mineral evaluation of potential mineral development from a professional geologist for all of our proposed conservation easements. For the Kootenai Valleys Conservation Easement(s), Trust for Public Land (TPL) ordered a mineral remoteness test or report for the entire proposed conservation easement area from Whitehall Geogroup, Inc. As we stated in the draft EA (pps. 26-27), this consultant reported that the mineral development potential under the bulk of the project lands (about 26,000 acres) “was so remote as to be negligible” at the time they completed their report in 2010. While FWP acknowledges that there is some continued risk that future mineral development could adversely impact the conservation values of this project on this 26,000 acres, we are comfortable accepting that risk because the mineral evaluation and conclusions of Whitehall Geogroup are the standard by which FWP, land trusts, and the Internal Revenue Service all agree is an acceptable level of risk.

For the remaining parcels that total about 2000 acres located in Stanley and Callahan drainages, the consultants concluded that “the mineral development potential was not determinable” without extensive test drilling, core sampling, and other tests. FWP and TPL decided not to ask the consultants to determine the mineral potential for these parcels by one of those methods. Rather, FWP asked TPL to undertake a detailed mineral chain of title research of every deed to these lands in the Lincoln County courthouse and online to determine if any mineral rights for these 2000 acres had been leased or severed. TPL found no evidence of mineral rights being severed or held by third parties and concluded that the mineral rights are still held by the surface landowner (Stimson). The conservation easement silences all mineral development rights that are held by the surface landowner.

Based on all the above information, FWP believes there is an acceptable and low risk of mineral development occurring on the proposed conservation easement lands through exercise of third-party rights and that there is an equally low and acceptable level of risk to the Conservation Values.

- b. How do we know that there is a low probability that the Conservation Values the easement is designed to protect will ever be compromised by any future third-party mining rights?**

Based on the reports and evidence gathered and described in response to ‘a.’ above, we feel there is a very low probability that the Conservation Values will be compromised by future mineral development. Where the mineral rights are held by Stimson, the conservation easement will extinguish those rights. Where the rights are held by the federal government or third parties, the mineral remoteness report says that the potential for mineral development is “so remote as to be negligible” as of 2010 when the report was completed.

- c. We state Landowner is the sole owner of certain real property in the first part of the draft EA.**

This should be clarified to mean that this landowner is the owner of certain property rights (surface and some subsurface) in the project area. Based on this comment, FWP will remove the word “sole” in I. Recital B. The rights of third parties, such as for road access, utilities, or minerals, are not considered the rights of the landowner if they have been severed or legally obtained by other entities prior to the recording of the conservation easement. In response to third-party concerns raised earlier by this commenter, FWP has already inserted a Recital L in Section I of the conservation easement that acknowledges preexistence of third-party rights as described in ‘a.’ above.

- d. Exhibit A (Legal Description) of the draft conservation easement gives exceptions, but does not include any of the mineral reservations listed on the mineral patent (copy provided).**

The legal descriptions of the conservation easement parcels (Exhibit A of the conservation easement, pps. A-23 to A34 of draft EA) refer only to surface ownership. We recognize that mineral or other rights under or over the land may preexist, and

we added Recital L to Section I of the conservation easement (page A-3 of Appendix A) in the draft EA. This recital acknowledges that third-party rights may exist at the time of the establishment of the conservation easement and that “nothing in this conservation easement limits, diminishes, authorizes, or expands any Preexisting Rights.”

**FWP RECOMMENDED ALTERNATIVE
AND FINAL DECISION RECOMMENDATION**

In reviewing all the public comment and other relevant information, and evaluating the environmental effects, I recommend that FWP pursue the completion of the Kootenai Valleys Conservation Easement Project and recommend that the FWP Commission approve the proposed action. This action will also require the approval of the Montana Land Board at an upcoming meeting.

Through the MEPA process, FWP found no significant impacts on the human or physical environments associated with this proposal. Therefore, the EA is the appropriate level of analysis, and an environmental impact statement is not required.

Noting and including the minor changes to the draft EA and associated documents stated above, the draft EA will become the Final EA. FWP believes the completion of this project is in the best interests of working forested landscapes, fish and wildlife, and public recreation.

James R. Satterfield, Jr.

James R. Satterfield Jr., Ph.D.
Regional Supervisor

9/13/2012
Date
