

DRAFT Checklist Environmental Assessment

Grey Bear and Springdale Bridge Fishing Access Sites Fiber Optic Easement Request by Triangle Telephone Cooperative Association, Inc.

FWP-CEA-Lands-R8-24-001

April 11, 2024



Table of Contents

Table of Contents.....	2
I. Compliance with the Montana Environmental Policy Act	2
II. Background and Description of Proposed Project.....	4
III. Purpose and Need.....	7
IV. Other Agency Regulatory Responsibilities	7
V. List of Mitigations, Stipulations	7
VI. Alternatives Considered.....	8
VII. Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population	8
VIII. Private Property Impact Analysis (Takings)	25
IX. Public Participation	17
X. Recommendation for Further Environmental Analysis	17
XI. EA Preparation and Review	17
XII. Attachment A	18
XIII. Supplemental Information.....	18

I. Compliance with the Montana Environmental Policy Act

MEPA is procedural; its intent is to ensure that impacts to the environment associated with a proposed project are fully considered and the public is informed of potential impacts resulting from the project.

Before a proposed project may be approved FWP must conduct an environmental review to identify and consider potential impacts of the proposed project on the human and physical environment. The Montana Environmental Policy Act (MEPA) and its implementing rules and regulations require different levels of environmental review depending on the nature of the proposed project, the significance of potential impacts, and the review timeline. Mont. Code Ann. § 75-1-201. Admin. R. Mont. 12.2.430.

FWP must prepare an EA when:

- FWP is considering a “state-proposed project,” which is defined in § 75-1-220(8)(a) as:
 - (i) a project, program, or activity initiated and directly undertaken by a state agency;
 - (ii) ... a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or
 - (iii) ... a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.
- An EA is required to determine whether the proposed project is a major one significantly affecting the quality of the human environment. ARM 12.2.430(3)(a);

- FWP has not otherwise implemented the interdisciplinary analysis and public review purposes listed in ARM 12.2.430(2) (a) and (d) through a similar planning and decision-making process (ARM 12.2.430(3)(b));
- Statutory requirements do not allow sufficient time for the FWP to prepare an EIS (ARM 12.2.430(3)(c));
- The project is not specifically excluded from MEPA review according to § 75-1-220(8)(b) or Admin. R. Mont. 12.2.430(5); or
- The project is one that might normally require an EIS (Environmental Impact Statement), but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, enforceable controls, or stipulations (or a combination thereof) imposed by FWP or other government agencies. For an EA to suffice in this circumstance the agency must determine (1) that all the impacts of the proposed project have been accurately identified, (2) that any identified impacts will be mitigated below the level of significance, and (3) that no significant impact is likely to occur. FWP may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance. ARM 12.2.430(4).

Adoption of Related Environmental Review:

According to the applicable requirements of ARM 12.2.441(1), “[t]he agency shall adopt as part of a Draft [EA] all or any part of the information, conclusions, comments, and responses to comments contained in an existing [EA] that has been previously or is being concurrently prepared pursuant to MEPA” if the agency determines all the following criteria are met:

- The existing EA covers an action paralleling or closely related to the action proposed by the agency or the applicant.
- Based on the agency’s own independent evaluation, the information contained in the existing EA has been accurately presented.
- The information contained in the existing EA is applicable to the action currently being considered (i.e., proposed project analyzed by FWP’s Draft EA).

FWP determined the proposed action meets all the criteria identified above for adopting the following environmental review documents and associated agency decisions for the purposes of the proposed action:

- DNRC EA posted June 2023
- US Army Corps of Engineers Permit NOW-2023-00920
- Montana Sage Grouse Habitat – Project 4967
- 310 Permit
- DEQ SWPPP Authorization – MTR109945_16406
- MT SHPO

Therefore, with this Draft EA, FWP adopts the applicable environmental review documents cited above without further detailed environmental review.

Further, and as required by MEPA, because FWP is adopting and tiering to the relevant information contained in Triangle Telephone Cooperative Association Inc.’s (TTCA) related environmental review and FWP’s own related environmental review prepared for this fiber optics rural upgrade, these documents are available for reference concurrent with the Draft EA prepared by FWP for the proposed project.

If FWP prepared a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it. ARM 12.2.432(3)(b). No cost/benefit analysis was prepared prior to completion of this EA.

II. Background and Description of Proposed Project

This section includes a short description of the proposed project including the project sponsor/applicant/responsible party, the type of proposed action, and the anticipated schedule of the proposed project.

Name of Project: Grey Bear FAS and Springdale Bridge Fiber Optic Easement request by TTCA, Inc.

Description of Proposed Project: The Proponent, Triangle Communications, is requesting the following easements through FWP fishing access sites (FAS) on the Yellowstone River for the purpose of installing high-speed fiberoptic telecommunications lines:

Section 15, Township 1 South, Range 12 East: A 20 foot wide, approximately 1,270 linear feet long buried communications easement encompassing approximately 0.68 acres (see Exhibit A).

Section 35, Township 1 North, Range 13 East: A 20 foot wide, approximately 429 linear feet long buried communications easement encompassing approximately 0.20 acres (see Exhibit B).

The new easements are part of a larger project. TTCA is installing, upgrading, and replacing portions of their telecommunications lines in rural Sweet Grass and Park Counties. The proposed project will utilize both directional bore and low-impact cable burying techniques. The project includes construction of small vaults at points of river-bore intersection.

The combined easements will encumber approximately 0.88 acres.

Location Maps:

Figure 1. Project Location

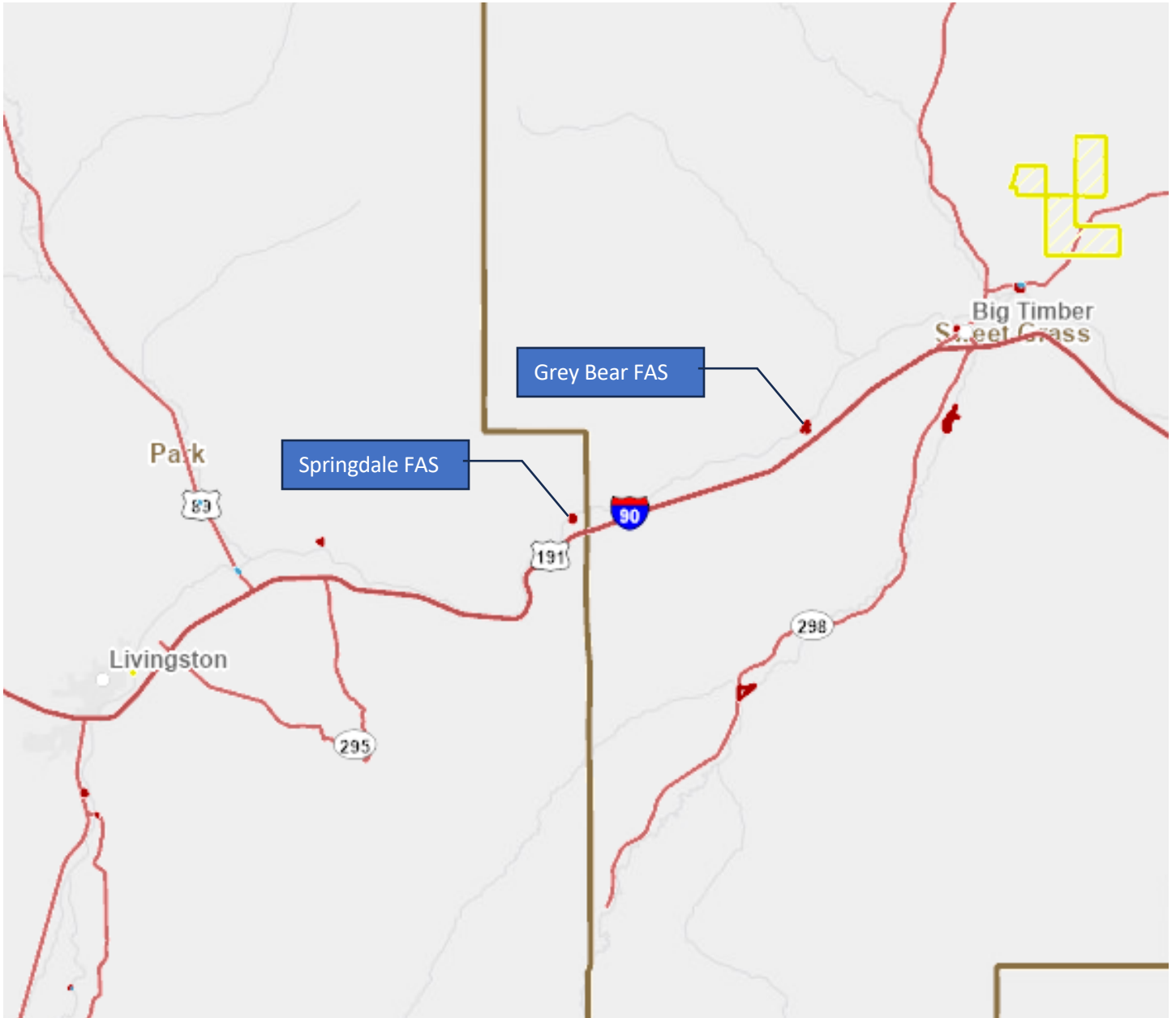


Figure 2. Project Layouts

Grey Bear FAS



Springdale FAS



III. Purpose and Need

The EA must include a description of the benefits and purpose of the proposed project. ARM 12.2.432(3)(b). Benefits of the proposed project include benefits to the public, department, state, and other identified beneficiaries.

TTCA is proposing to replace existing telecommunications facilities with fiber optic cables in parts of the Big Timber exchange area. The current copper facilities in the area are reaching capacity to serve the area due to growth and aging facilities in and around Big Timber. These improvements will provide state-of-the-art telecommunications capacity, as well as future growth capabilities.

The proposed route was determined by field review as the most direct route between terminus locations while also providing access to for future network considerations and providing for possible future expansion of FWP facilities. The proposed route will provide accessibility for construction and the proposed location is primarily along existing roadways. The proposed route will maintain a safe distance from local bridges in the event they need to be replaced.

There is overwhelming community support for the project as it is expected to provide improved telecommunications capacity for state and local residents.

IV. Other Agency Regulatory Responsibilities

FWP must list any federal, state, and/or local agencies that have overlapping or additional jurisdiction, or environmental review responsibility for the proposed project, as well as permits, licenses, and other required authorizations. ARM 12.2.432(3)(c).

A list of other required local, state, and federal approvals, such as permits, certificates, and/or licenses from affected agencies is included in **Table 1** below. **Table 1** provides a summary of state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. Rather, **Table 1** lists the primary state agencies with regulatory responsibilities, the applicable regulation(s) and the purpose of the regulation(s). Agency decision-making is governed by state and federal laws, including statutes, rules, and regulations, that form the legal basis for the conditions the proposed project must meet to obtain necessary permits, certificates, licenses, or other approvals. Further, these laws set forth the conditions under which each agency could deny the necessary approvals.

Table 1: Federal, State, and/or Local Regulatory Responsibilities

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
US Army Corps of Engineers	Section 10 Permit	River crossing
DEQ	NOI & SWPPP	Construction
DNRC	MSGHCP	Sage Grouse Habitat

V. List of Mitigations, Stipulations

Mitigations, stipulations, and other *enforceable* controls required by FWP, or another agency, may be relied upon to limit potential impacts associated with a proposed Project. The table below lists and evaluates enforceable conditions FWP may rely on to limit potential impacts associated with the proposed Project. ARM 12.2.432(3)(g).

Table 2: Listing and Evaluation of Enforceable Mitigations Limiting Impacts

Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Enforceable Control	Responsible Agency	Authority (Rule, Permit, Stipulation, Other)	Effect of Enforceable Control on Proposed Project

VI. Alternatives Considered

In addition to the proposed Project, and as required by MEPA, FWP analyzes the "no action" alternative in this EA. Under the no action alternative, FWP would not proceed with the proposed project. The no action alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

Under the no action alternative, FWP would not grant the easement and new fiber optic cable would be placed in existing easement area. The existing attachment of the cable under the bridge renders the cable more vulnerable to hazards and communication outages. Thus, the no action alternative would result in a less safe and reliable telecommunication connection.

	Yes*	No
Were any additional alternatives considered?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review is included below

VII. Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population

The impacts analysis identifies and evaluates **direct impacts**, **secondary impacts**, and **cumulative impacts**.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the effect.
- **Secondary impacts** "are further impacts to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action." ARM 12.2.429(18).
- **Cumulative impacts** "means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures." ARM 12.2.429(7).

Where impacts are expected to occur, the impact analysis estimates the **extent**, **duration**, **frequency**, and **severity** of the impact.

The duration of an impact is quantified as follows:

- **Short-Term:** impacts that would not last longer than the proposed project.
- **Long-Term:** impacts that would remain or occur following the proposed project.

The severity of an impact is measured using the following:

- **No Impact:** there would be no change from current conditions.
- **Negligible:** an adverse or beneficial effect would occur but would be at the lowest levels of detection.
- **Minor:** the effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate:** the effect would be easily identifiable and would change the function or integrity of the resource.
- **Major:** the effect would irretrievably alter the resource.

Some impacts may require mitigation. As defined in ARM 12.2.429, mitigation means:

- Avoiding an impact by not taking a certain action or parts of a project;
- Minimizing impacts by limiting the degree or magnitude of a project and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or
Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project or the time period thereafter that an impact continues.

A list of any mitigation strategies including, but not limited to, design, enforceable controls or stipulations, or both (as applicable to the proposed project) is included in **Section VI** above.

FWP must analyze impacts to the physical and human environment for each alternative considered. The proposed project considered the following alternatives:

- Alternative 1: No Action; and
- Alternative 2: Proposed Project

Table 4: Impacts to the Physical Environment – Alternative 2: Proposed Project

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Resource									
Terrestrial, avian, and aquatic life and habitats	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Water quality, quantity, and distribution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant adverse impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Geology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Soil quality, stability, and moisture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Vegetation cover, quantity, and quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Aesthetics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review

									has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Air quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Unique, endangered, fragile, or limited environmental resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Demands on environmental resources of land, water, air, and energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.

Table 5: Impacts to the Human Population

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Social structures and mores	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Cultural uniqueness and diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Access to and quality of recreational and wilderness activities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Local and state tax base and tax revenues	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
Agricultural or Industrial production	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.

Human health and safety	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action. Beneficial impacts to human health and safety would be expected because of the proposed project.
Quantity and distribution of employment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Distribution and density of population and housing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Demands for government services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Industrial, agricultural, and commercial activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.

Locally adopted environmental plans and goals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.
Other appropriate social and economic circumstances	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to this resource category would occur as a result of the proposed action. Environmental review has already occurred for the overall project and no significant impacts were identified for any of the resources analyzed through prior environmental review, including all physical changes accommodated by the proposed action.

Table 6: Determining the Significance of Impacts on the Quality of the Human Environment

<p>If the EA identifies impacts associated with the proposed project, FWP must determine the significance of those impacts. ARM 12.2.431. This determination forms the basis for FWP's decision as to whether it is necessary to prepare an environmental impact statement.</p> <p>According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.</p>	
Criteria Used to Determine Significance	
1	<p>The severity, duration, geographic extent, and frequency of the occurrence of the impact</p> <p>“Severity” describes the density of the potential impact, while “extent” describes the area where the impact will likely occur, e.g., a project may propagate ten noxious weeds on a surface area of 1 square foot. Here, the impact may be high in severity, but over a low extent. In contrast, if ten noxious weeds were distributed over ten acres, there may be low severity over a larger extent.</p> <p>“Duration” describes the time period during which an impact may occur, while “frequency” describes how often the impact may occur, e.g., an operation that uses lights to mine at night may have frequent lighting impacts during one season (duration).</p>
2	The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur
3	Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts
4	The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values

5	The importance to the state and to society of each environmental resource or value that would be affected
6	Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions
7	Potential conflict with local, state, or federal laws, requirements, or formal plans

VIII. Private Property Impact Analysis (Takings)

The 54th Montana Legislature enacted the Private Property Assessment Act, now found at §§ 2-10-101, et seq. The purpose was to establish an orderly and consistent process by which state agencies evaluate their proposed projects under the "Takings" clauses of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency projects pertaining to land or water management or to some other environmental matter that, if adopted and enforced without due process of law and just compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agencies to assess the impact of a proposed agency project on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency project has taking implications, the agency must prepare an impact assessment in accordance with § 2-10-205.

Table 7: Private Property Assessment (Takings)

PRIVATE PROPERTY ASSESMENT ACT (PPAA) CHECKLIST			
Does the Proposed Action Have Takings Implications under the PPAA?	Question #	Yes	No
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action deprive the owner of all economically viable uses of the property?	3	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 4a and 4b and continue with question 5.)	4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input type="checkbox"/>
Does the action deny a fundamental attribute of ownership?	5	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action have a severe impact of the value of the property?	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the impact of government action direct, peculiar, and significant?	7a	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	<input type="checkbox"/>	<input type="checkbox"/>
Does the proposed action result in taking or damaging implications?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Taking or damaging implications exist if YES is checked in response to Question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to question 5a or 5b.			

If taking or damaging implications exist, the agency must comply with MCA § 2-10-105 of the PPAA, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

Alternatives:

The analysis under the Private Property Assessment Act, §§ 2-10-101 through -112, MCA, indicates no impact. FWP does not plan to impose conditions that would restrict the regulated person’s use of private property to constitute a taking.

IX. Public Participation

The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. FWP is responsible for adjusting public review to match these factors (ARM 12.2.433(1)). Because FWP determines the proposed action will result in limited environmental impact, and little public interest has been expressed, FWP determines the following public notice strategy will provide an appropriate level of public review:

- An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to FWP. If the document is out-of-print, a copying charge may be levied (ARM 12.2.433(2)).
- Public notice will be served on the Montana Fish, Wildlife and Parks website: <https://fwp.mt.gov/news/public-notices>.
 - **Duration of Public Comment Period:** The public comment period begins on the date of publication of legal notice on the website above. Comments will be accepted until 5:00 p.m., MST, on the last day of public comment, as listed below:
 - Length of Public Comment Period: 15 days
 - Public Comment Period Begins: **April 11, 2024**
 - Public Comment Period Ends: **April 25, 2024, at 5 p.m.**
 - Email comments to: **kent.peterson2@mt.gov**
 - Mail comments to:

Montana Fish, Wildlife & Parks
Attn: Kent Peterson
PO Box 200701
Helena MT 59620

X. Recommendation for Further Environmental Analysis

NO further analysis is needed for the proposed action	<input checked="" type="checkbox"/>
FWP must conduct EIS level review for the proposed action	<input type="checkbox"/>

XI. EA Preparation and Review

	Name	Title
EA prepared by:	Kent Peterson	FWP Land Agent
EA reviewed by:	Eric Merchant	MEPA Coordinator, FWP
EA Legal Review:	Alan Zachheim	FWP Lands Legal

XII. Attachment A

XIII. Supplemental Information

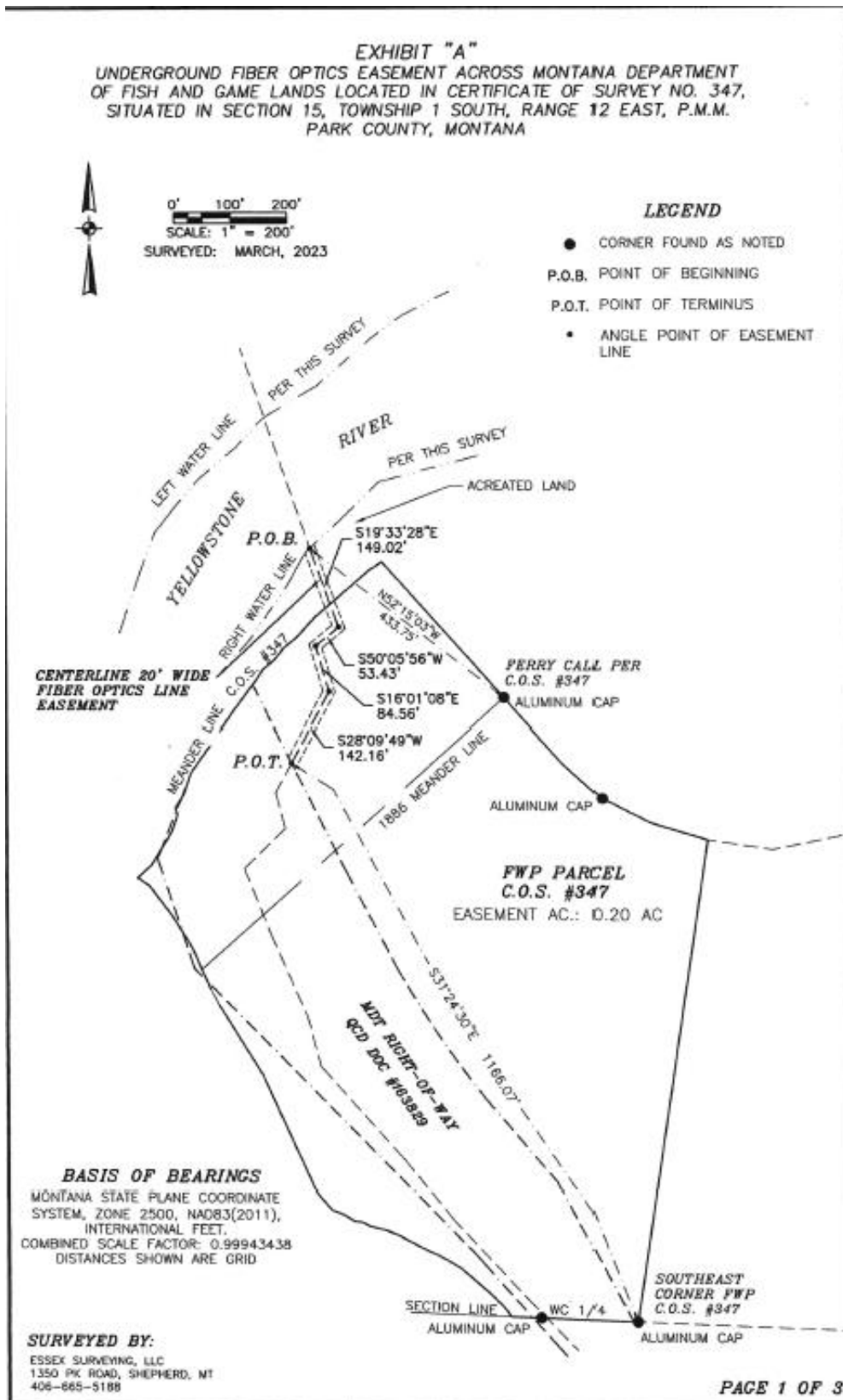



EXHIBIT "A"

UNDERGROUND FIBER OPTICS EASEMENT ACROSS MONTANA DEPARTMENT OF FISH AND GAME LANDS LOCATED IN TRACT 1 AND TRACT 2 OF CERTIFICATE OF SURVEY NO. 124105, SITUATED IN SECTION 35, TOWNSHIP 1 NORTH, RANGE 13 EAST, P.M.M. SWEET GRASS COUNTY, MONTANA

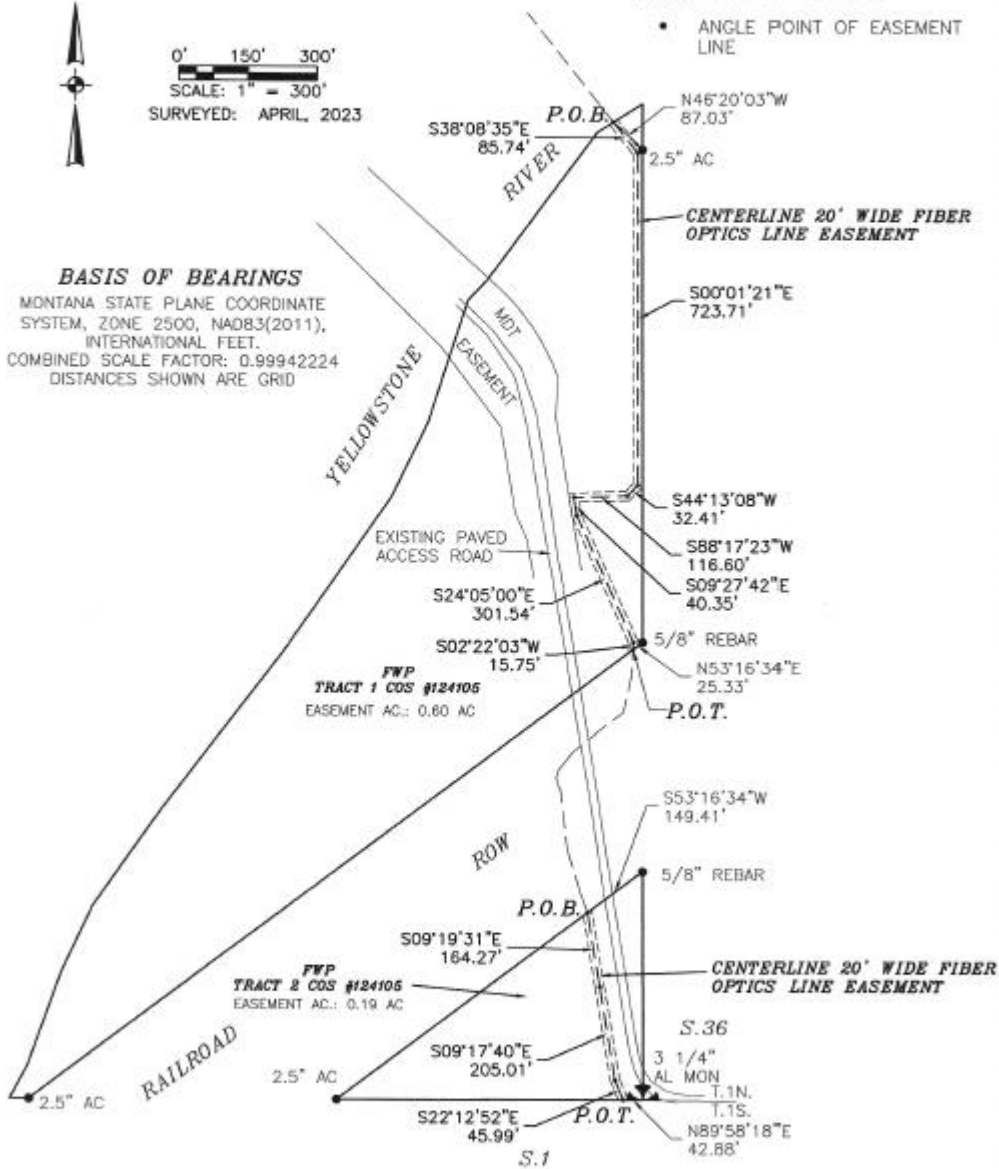
LEGEND

-  CORNER FOUND AS NOTED
- P.O.B. POINT OF BEGINNING
- P.O.T. POINT OF TERMINUS
- ANGLE POINT OF EASEMENT LINE



0' 150' 300'
SCALE: 1" = 300'
SURVEYED: APRIL, 2023

BASIS OF BEARINGS
MONTANA STATE PLANE COORDINATE SYSTEM, ZONE 2500, NAD83(2011), INTERNATIONAL FEET.
COMBINED SCALE FACTOR: 0.99942224
DISTANCES SHOWN ARE GRID



SURVEYED BY:
ESSEX SURVEYING, LLC
1350 PK ROAD, SHEPHERD, MT
406-665-5188