

## MEMORANDUM

**DATE:** February 1, 2018

**TO:** Jen Kreiner, Executive Director  
Sanders County Community Development Corporation

**FROM:** Stephanie Reynolds, P.E.

**RE:** Summary of Preliminary Planning Evaluation for the Eastward Extension Community Trail, Thompson Falls, Sanders County, Montana

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This preliminary planning evaluation for the proposed Eastward Extension Community Trail was used to help determine the feasibility of permitting this project through the different regulatory agencies involved and meeting their specific regulatory requirements. This preliminary planning evaluation focused only on the 0.5-mile section of proposed trail immediately adjacent to the Thompson Falls Reservoir/Clark Fork River. This evaluation included determining which permits are needed to allow construction of the proposed project, and initial contact with agencies and regulators was made to identify concerns and determine a path to successful permitting, if possible.

Drone imagery and topographic information was obtained for use in a base map to provide a conceptual layout for the proposed trail project. This mapping effort helped identify the location of the full pool elevation in relation to the paved edge of the highway. Multiple cross-sections were also generated to identify the potential extent of fill material into the waterbody. Several options were identified for placing a trail along the south side of Highway 200, as follows:

1. Option 1: Use fill material to extend a 10 ft. wide paved trail 5 ft. south of the edge of the highway's white fog line. This fill material would be placed at a 3:1 slope and would extend into the water in certain locations.
2. Option 2: Construct a 10 ft. wide pile-driven boardwalk structure 5 ft. south of the edge of the highway's white fog line. This option may allow more flexibility in placing the path further south of the highway. Railings on each side of the boardwalk would help ensure pedestrian safety and prevent vehicles from driving or parking on the boardwalk structure.
3. Option 3: Use a combination of fill material where existing topography allows a paved pathway to be placed without adding fill material to the water body, and transition to a boardwalk structure in the narrow sections of the project area to avoid placing fill in the water body.

Each agency likely to be involved in the regulatory approval process for this project was contacted and was sent an email with background information about the project and exhibits showing the proposed trail location and design options (see enclosed maps and

email to MDT as an example). A summary of discussions with the following agencies involved in this project are presented below along with the anticipated regulatory feasibility and recommended next steps.

### **Montana Fish, Wildlife, and Parks (FWP) - Stream Protection Act (SPA) 124 Permit**

The SPA 124 permit applies to any government agency proposing a project that may affect the bed or banks of a stream in Montana. I contacted Ryan Kreiner (phone: 406-827-9320, email: [rkreiner@mt.gov](mailto:rkreiner@mt.gov)) in the Thompson Falls FWP office, who had the following comments:

- This section is already an altered portion of the waterway and the proposed project is unlikely to affect the river.
- The locations where rip rap or fill material would be placed is not in the historic river channel anyway.
- Impacts to fish, wildlife and parks as a result of this project are not anticipated since this section of the river is already degraded with past impacts from the dam operation and proximity of Highway 200.
- Having a trail with a fishing pier for improved fishing access would be beneficial because people frequently fish this narrow section along the reservoir.
- A 124 SPA permit application can be sent to Ryan and he can send it along to Jonathan Furi in Helena who handles permitting.
- Any impacts to wetlands falls under USACE jurisdiction.

*Anticipated Regulatory Feasibility: Very feasible.*

*Next Steps: Submit an SPA 124 permit application during the design process.*

### **Sanders County Floodplain Administrator (Local Floodplain Permit)**

A floodplain permit would be needed when a project has the potential to impact floodplain boundaries or elevations. I contacted Katherine Maudrone, the Director of Land Services/Floodplain Manager for Sanders County (phone: 406-827-6965, email: [kmaudrone@co.sanders.mt.us](mailto:kmaudrone@co.sanders.mt.us)). Katherine did not believe any other City or County permits would be needed for this project other than a local floodplain permit. Her comments related to this project are as follows:

- In addition to a floodplain permit, a 310 permit from Green Mountain Conservation District, and possibly a permit from the Army Corps would be needed if fill is placed.
  - *Clarification note: a 310 permit is required for stream impacts by private landowners through the local conservation district, but in this case, the impacts would be by a government organization, which is regulated through FWP.*
- There are no zoning or shoreline protection requirements in Sanders County.
- For placement of fill, total cubic yards/linear foot and size and type of fill is needed for their review. Since it is a reservoir displacement impact, no-rise calculations based on comparison of fill volume added to total water volume will suffice.
- The base flood elevation for the reservoir is 2400.8 NAVD88.

- The floodplain permitting process should be straightforward. Once a complete application has been received, the county has 60 days for review, places a notice in the local paper, and notifies adjacent landowners for comment.

*Anticipated Regulatory Feasibility: Very feasible.*

*Next Steps: Submit a no-rise certification and calculations during the design process.*

### **US Army Corps of Engineers (USACE) - Section 404 Permit**

Section 404 permitting through the USACE would be needed if fill material is placed in a water of the US, such as a river or a wetland. There are several mapped wetlands within or near this project reach (see attached Montana Wetlands Map). I discussed this project with Nathan Green out of the USACE's Missoula District Office (phone: 406-541-4845 ext. 322, email: [nathan.j.green@usace.army.mil](mailto:nathan.j.green@usace.army.mil)), and the following items were identified:

- A 404 permit would be needed for placing fill material below the ordinary high water mark (OHWM) of the reservoir. Minimizing the fill footprint is recommended.
- Wetlands require delineation to determine exactly where the wetland boundary is located. Permitting is only required if fill material is added to 0.1 acres or greater of delineated wetland area.
- The 2008 Mitigation Rule Criteria would need to be followed for mitigating wetland impacts in addition to the Montana-specific mitigation guidance (refer to *33 CFR Part 332 Compensatory Mitigation for Losses of Aquatic Resources*).
- For unavoidable wetland impacts, the applicant would be required to replace the lost function of the wetland. Several options existing for doing this.
  - Option 1: Purchase wetland mitigation bank credits available through the state. A rough cost estimate for these credits is \$50k to \$60k per acre.
  - Option 2: Enhance an existing wetland, which likely requires long-term monitoring to ensure plant survival.
  - Option 3: Create a new wetland. This typically requires more area of new wetland to be created than the size of the original damaged area and an easement must be maintained in perpetuity. A new wetland also needs to meet success criteria and perform monitoring for a five-year period.
- The order of preference for wetland mitigation, as follows:
  1. Always show that you're avoiding impacts to the maximum extent possible.
  2. If there is a mitigation bank in the area, then that's the preferred route over having the permittee be responsible for enhancing existing wetlands or creating new wetlands.
  3. There is an in-lieu fee program through Montana Aquatic Resources (MARS) that can be used where mitigation bank credits are not available.
  4. As a last resort, the permittee can develop their own mitigation plan.
- FERC would be the lead federal agency in terms of ensuring federal regulatory compliance. The USACE would make sure FERC completes their compliance review before they issue a 404 permit. The addition of fill to the waterbody would be within the regulated FERC boundary and FERC would be required to ensure compliance of the project within the following federal regulations:
  - Threatened or Endangered Species Act (ESA) consultation

- National Historic Preservation Act (NHPA) Section 106 consultation / issues
- In the USACE application, show that FERC has fulfilled these federal compliance criteria.

*Anticipated Regulatory Feasibility: Feasible, but likely expensive and time-consuming. Avoidance of fill impacts to the waterbody and the associated 404 permitting requirements by using a boardwalk structure would be preferable.*

*Next Steps: Determine if fill material is absolutely necessary. If so, delineate wetlands in the area and identify anticipated impacts. Also identify how much fill would be added below the OHWM of the reservoir. Initiate pre-application consultations with USACE, then complete the 404 permitting application to initiate regulatory review during the design process.*

### **Northwestern Energy (NWE) – Reservoir Owner Easements and FERC Regulations**

Since the Thompson Falls reservoir water level is controlled by the dam and operated by NWE under FERC regulations, both agencies would be involved if fill material is placed in the water body to determine the extent of impacts. I discussed this project with both Kim Bergstrom of Pinnacle Research, a Recreation Planning Consultant on contract with NWE for the Sanders County area (phone: 406-546-2447, email: [pinnacle@blackfoot.net](mailto:pinnacle@blackfoot.net)) and Andy Welch, NWE's leader for hydropower license compliance (phone: 406-444-8115, email: [Andrew.Welch@NorthWestern.com](mailto:Andrew.Welch@NorthWestern.com)). The following items were identified:

#### Kim's Comments:

- FERC regulates anything within the FERC boundary and typically complies with what the public stakeholders support.
- FERC review includes cultural and resource issue reviews. NWE typically heads up the consultation process with other involved agencies (FWP, Nation Park Service, and USFS).
- It is recommended to involve FERC after a design is determined and most of the questions have already been answered.
- The FERC review timeframe can range from months to years. Because of this variable timeframe, it is recommended that the project goes through the FERC review process before applying for construction funding.

#### Andy's Comments:

- Email from 1/30/18:  
*“When this issue came up a few years back, NorthWestern supported the trail project as proposed on the upland area and it continues to support it. NorthWestern has the jurisdiction to grant an easement on company-owned lands within and adjacent to the FERC boundary – although discerning what is or isn't company owned land might be a challenge in this area. Beyond that, NorthWestern's shoreline standards, would allow a trail to be constructed on existing terrain, but do not support placing fill along the shoreline. If fill is needed, NorthWestern would need to consider the location and extent of the fill on our operations, and if it wouldn't negatively affect operations, we would*

- then likely need to solicit stakeholder (e.g., MT FWP, US FWS, etc.) and FERC approval for such activity.”*
- NWE would need to review the impact of fill material on their operations. Placement of any fill material in the waterbody triggers the need for FERC review and approval.
    - Typical review time ranges from six to nine months for going through the FERC process.
    - Provide them with engineered drawings, fill material type and quantities, and its impact to reservoir operations (similar to 404 permits).
  - Even for standard cut/fill projects on land above the normal full pool level, but within the FERC boundary, they would need to see plans to determine if FERC review would be necessary.
  - They could approve a cantilevered (or pile supported) boardwalk without going through the full FERC review process. A boardwalk would need to be ADA compliant.
  - NWE does not have good survey information in this area. Their actual easement location would require further research; however, the permittee could simply request a quit claim easement to generally cover any lands that may be owned by NWE. This is appropriate for when unknowns exist in ownership.

*Anticipated Regulatory Feasibility: Feasible, but potentially time-consuming if FERC review is needed.*

*Next Steps: Develop design plans and submit to NWE for review. NWE will involve FERC to evaluate impacts to dam operation. Request a quit claim easement for the portions of the project that are on land owned by NWE to release any potential NWE ownership.*

### **Burlington Northern Santa Fe (BNSF) Railroad - Original Right-of-Way Owner**

BNSF's Corporate Real Estate Department's Assistant Manager, Sandra Green (817-352-3447) recommended that I contact Don Bratton (phone: 817-230-2622), who is with Jones, Lang, Lasalle, a property management company that contracts with BNSF for property evaluations. Don then had Loren Matlick (email: [loren.matlick@am.jll.com](mailto:loren.matlick@am.jll.com)), also with Jones, Lang, Lasalle, contact me to discuss BNSF's jurisdiction in the Thompson Falls area. Loren said that if Montana Rail Link (MRL) controls the rail in this area, then BNSF would not need to be involved. Loren checked on jurisdiction and found that this section of rail is under MRL control and they would be the agency to grant access within their right-of-way for a trail (see enclosed MRL map). This project may still circle back to BNSF if MRL needs approval oversight.

*Anticipated Regulatory Feasibility: Feasible, appears BNSF is generally not involved.*

*Next Steps: None - MRL would contact BNSF if needed during their own review.*

### **Montana Rail Link (MRL) – Jurisdictional Right-of-Way Easement/Permit**

The proposed trail extends into the waterbody in certain locations along its proposed alignment. Based on preliminary easement research, it appears that the MDT easement extends to the water's edge and that the rail right-of-way extends further into the waterbody (since the right-of-way was obtained in 1935 prior to construction of the dam). Therefore, areas outside of the MDT easement that would be impacted by the proposed trail would require MRL approval. I discussed this project with Theresa Beckwith in the MRL Real Estate Department (phone: 406-523-1314), and the following items were identified:

- If the project falls within the MDT easement then a permit from MRL is not needed.
- Otherwise, apply for a pedestrian trail or bike path permit and MRL would need to review the design plans. The review packet should include:
  - Comprehensive design plans that identify the distance of the proposed trail alignment from the railroad track and its location within the highway easement from centerline of the highway.
  - Alternative routes considered and justification for choosing or not choosing each alternative route.
    - Theresa confirmed that the road north of the railroad is their fire access road and MRL would not support it as a trail.
  - Identify if there are any other agencies with similar plans.
- MRL has no specific design standards.
- MRL reviews plans and determines if they are in agreement with what is proposed.
- There is a \$100 application fee for MRL review. There is also an annual permit fee that is determined after review.

*Anticipated Regulatory Feasibility: Feasible.*

*Next Steps: MRL recommends the applicant fill out a standard land lease application on the website and submit the \$100 review fee. Include design plans with the surveyed location of the highway easement and the distance of the proposed trail to the railroad tracks.*

### **Montana Department of Transportation (MDT) – Highway Easement/Permit**

Most of the proposed trail would fall within MDT's easement originally granted by Northern Pacific Railroad in 1935 and again in the early 1990's when the highway was widened. I discussed this project with Glen Cameron with MDT (phone: 406-523-5869, email: [gcameron@mt.gov](mailto:gcameron@mt.gov)), who provided the comments listed below. Jon Burnett with MDT's Planning Department (phone: 406-444-4262, email: [jburnett@mt.gov](mailto:jburnett@mt.gov)) is also involved in this review, and said he is still waiting to hear back from MDT's Legal Services Department to determine if the MDT easement would allow for a trail to be installed within the easement.

- The MDT easement is likely worded "for highway purposes only." Legal Services will need to evaluate this further in order to determine what the options are for this project.

- There is a new Highway States Special Revenue Account (HSSRA) policy for amenities within right-of-way that adds another level of complexity to this project.
- Glen routed our request for comments through MDT's Systems Impact process, which contacts different MDT departments for comments. As of the date of this memorandum, MDT has garnered many comments from the different departments and is currently waiting on Legal Services regarding easement information. They will provide all comments in one package.

*Anticipated Regulatory Feasibility: Unknown until all comments are provided by MDT.*

*Next Steps: Wait to receive all comments from MDT and provide those comments to SCCDC via an addendum to this memorandum along with recommended next steps.*

### Conclusions and Recommendations

Overall, the comments generated thus far from the regulatory agencies contacted (excluding MDT) indicate that the project is feasible. It appears the most feasible alternative from a permitting standpoint is a boardwalk design, which would need to be ADA compliant. We recommend further evaluating the boardwalk option to help determine its cost feasibility by preparing a planning-level construction cost estimate for installing a boardwalk along the full length of this 0.5-mile trail segment adjacent to the reservoir. Understanding the costs involved would be the next step in determining project feasibility from a funding standpoint.

Since there is a mapped wetland along a portion of the proposed trail, the USACE noted that a wetland delineation would be needed. Wetland mitigation requirements would be required if fill impacts an area greater than 0.1 acres within a delineated wetland. If this project moves forward, a wetland delineation is recommended prior to commencing engineering design work. Once design work is underway, the regulatory agencies would be contacted to initiate the permitting process through each agency.

Additional research into the recorded property boundaries is needed to specifically delineate jurisdictional boundaries in relation to the proposed trail alignment, but this work can be done along with other topography and boundary survey work once the project moves into the design process.

Please keep in mind that we are still waiting on the preliminary comments packet from MDT, which will be provided upon receipt via an addendum to this memorandum. If MDT comments are not in alignment with these recommendations, we will evaluate alternative recommendations once we receive their comments.

**EXAMPLE OF EMAIL AND ATTACHMENTS SENT TO REGULATORY AGENCIES**



## Stephanie Reynolds

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**From:** Stephanie Reynolds  
**Sent:** Friday, January 12, 2018 5:05 PM  
**To:** 'gcameron@mt.gov'  
**Cc:** EMAIL FILE BASKET  
**Subject:** Eastward Extension Trails Project in Thompson Falls  
**Attachments:** TA2015 Exhibits.pdf; MDT Plan Sheet.pdf; Trail Options Feasibility Evaluation Exhibit.pdf

Hi Glen,

As we discussed last week, I have attached several exhibits showing where the proposed Eastward Extension Community Trail would be located along Highway 200 in Thompson Falls. Sanders County submitted this project as a TA application in 2015 (see attached maps), but found additional information was needed. We are currently taking a preliminary look into the feasibility of installing a 10 ft. wide trail pathway between Highway 200 and the Thompson Falls reservoir/Clark Fork River just before entering downtown Thompson Falls. The project would start at the Wild Goose Landing City Park and extend east to the Harvest Foods Grocery Store.

Midway through the proposed trail, the space available becomes very narrow since the full pool level of the reservoir comes to within about 15 feet of the edge line along the highway. This makes it very difficult to fit in a trail, but several alternatives may exist, such as installing fill to extend the available space for a paved or gravel trail, or installing a pile-supported boardwalk structure. From an environmental standpoint, a boardwalk may be more advantageous since it avoids placing fill material in the waterway, but would likely depend on MDT support for that type of design and ADA compliance. These options can be seen in the attached exhibit.

Based on a preliminary review of property ownership in this area, it appears the BNSF right-of-way extends into the water, with an easement granted to MDT for Highway 200. It appears the MDT easement extends to the water's edge (see attached MDT plan sheet). It would be good to know if the MDT easement would allow for a trail, or if that access would be controlled by BNSF.

Please provide feedback as to what is feasible from MDT's perspective for this project, both from an MDT standards perspective and an easement/ownership perspective. Please let me know what kind of regulatory compliance issues would be involved in this project. Any other comments, concerns, or helpful information would be very much appreciated.

Thanks,



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Stephanie Reynolds, P.E.

Project Engineer

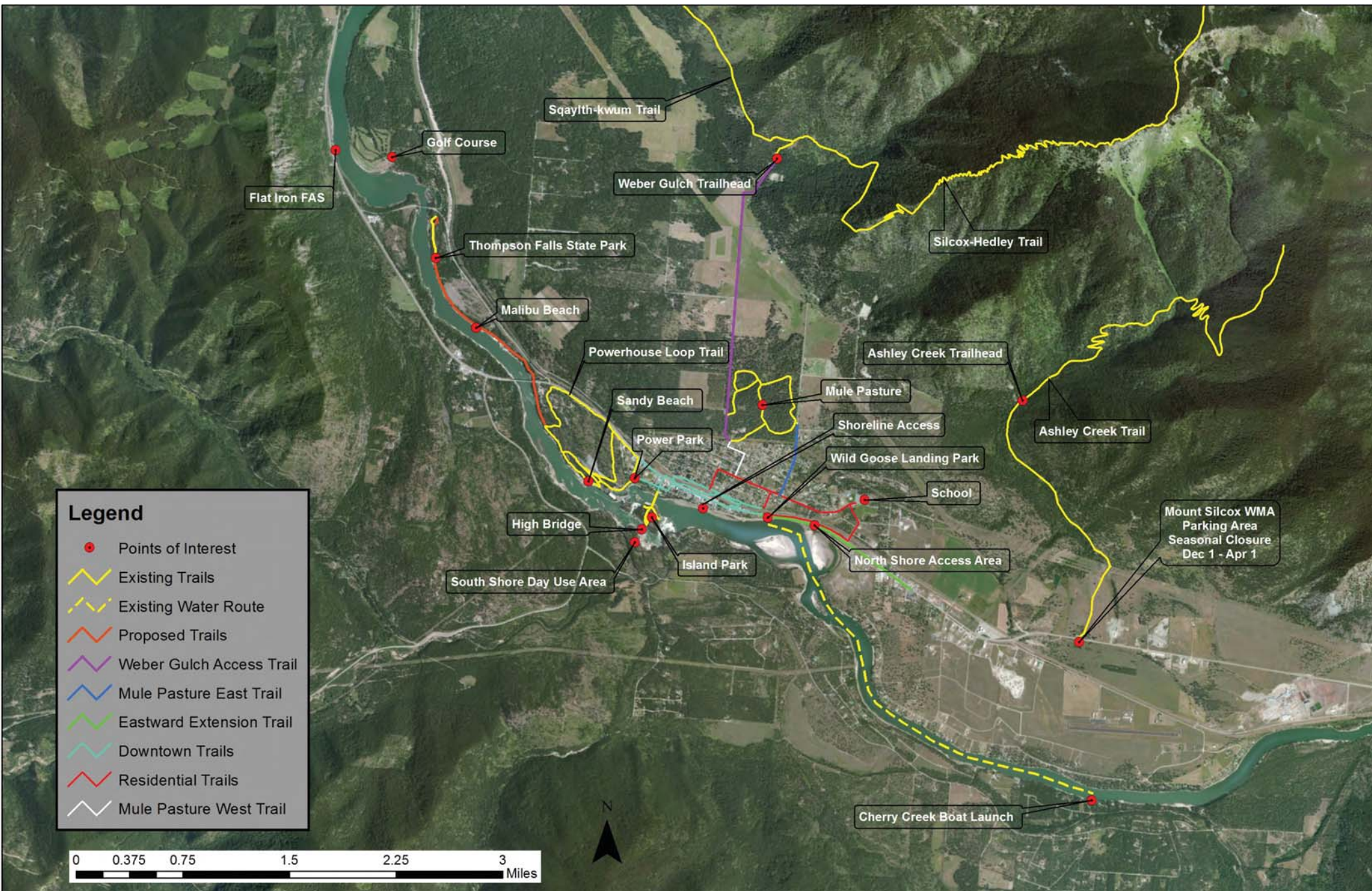
OFFICE: 406-756-4848  
CELL: 406-241-7712  
EMAIL: sreynolds@wmggroup.com  
ADDRESS: 431 1st Avenue West, Kalispell, MT 59901

171042.1

## ATTACHMENTS

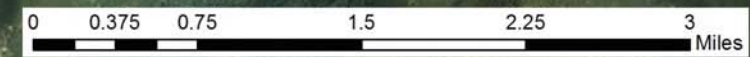
**Photos:** Narrow section along reservoir, heavy recreation-use (fishing/biking/walking.)



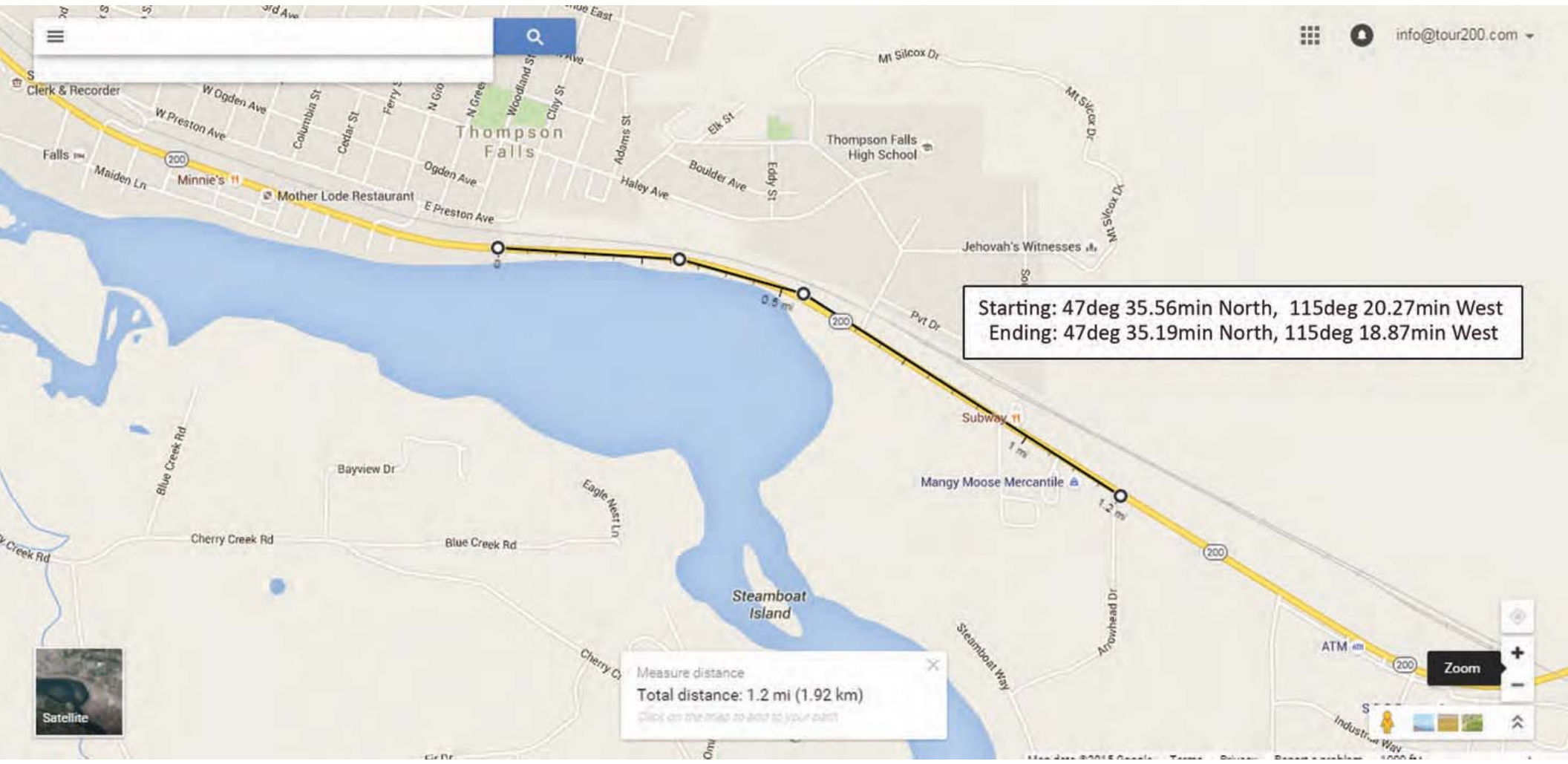


**Legend**

- Points of Interest
- Existing Trails
- Existing Water Route
- Proposed Trails
- Weber Gulch Access Trail
- Mule Pasture East Trail
- Eastward Extension Trail
- Downtown Trails
- Residential Trails
- Mule Pasture West Trail



Mount Silcox WMA  
 Parking Area  
 Seasonal Closure  
 Dec 1 - Apr 1



Starting: 47deg 35.56min North, 115deg 20.27min West  
Ending: 47deg 35.19min North, 115deg 18.87min West

Measure distance  
Total distance: 1.2 mi (1.92 km)  
Click on the map to add to your path



Zoom

**Thompson Falls Community Trails proposed future trail segment:**

**Wild Goose Landing to Harvest Foods**

**FERC boundary and  
proposed trail  
alignment,  
Thompson Falls,  
Montana**

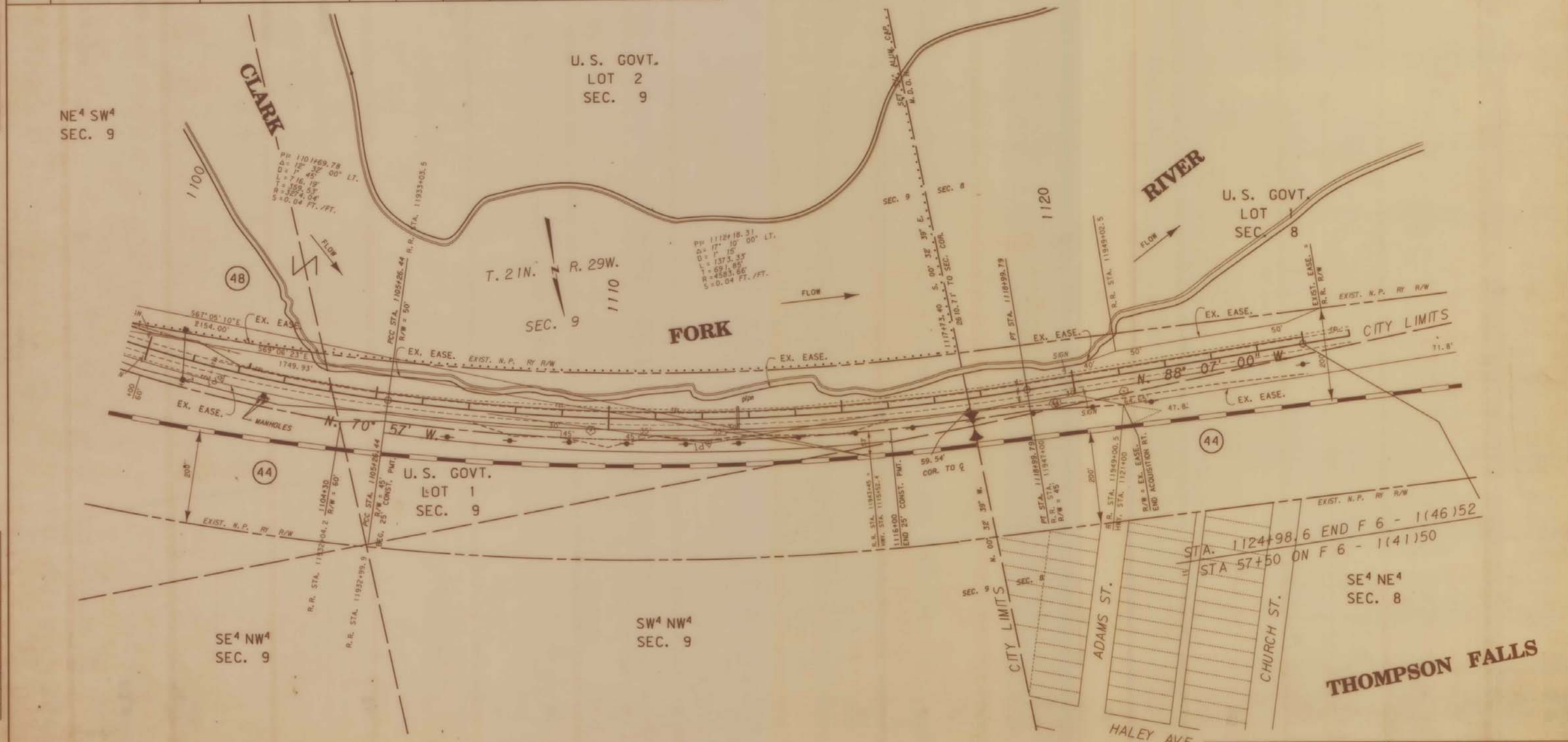
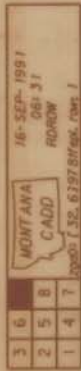
- FERC boundary
- Proposed future trail
- Area proposed for shoreline improvement



STATE	PROJECT NUMBER	SHEET	TOTAL
MONTANA	F 6-1146152	10	10

THOMPSON FALLS - EAST

PARCEL	NAME	ADDRESS	TOTAL AREA	GROSS R/W AREA	EX. EASE. AREA	NET AREA	REMAINDER		CONST. PMT. AREA	EASE. AREA
							LEFT	RIGHT		
44	NORTHERN PACIFIC RAILROAD				8.19 AC.				0.88 AC.	1.57 AC.
48	W-1 FOREST PRODUCTS	4000 KRUSE WAY BLDG. 2 STE. 355							1500 SF	
	Q LIMITED PARTNERSHIP	LAKE OSWEGO, ORE. 97034-2549								



BACKSLOPE LIMITS INCLUDE ROUNDING  
 CONSTRUCTION LIMITS: CUT SECTION, TOE OF FILL  
 FHWA/DOH APPROVAL: 6-7-91  
 MAP REVISED: 9-16-91, 12-1-91

STATE OF MONTANA  
 DEPARTMENT OF HIGHWAYS  
 RIGHT OF WAY PLAN  
 SANDERS COUNTY  
 SCALE: 1" = 100' 0" 50' 100' 200'

ZGA0132.619787FEPL. ROW

F 6-1146152 SHT 10 OF 10



WGM GROUP  
WWW.WGMGROUP.COM

PRELIMINARY

PLOTTED: 1/12/18  
SAVED: 1/12/18

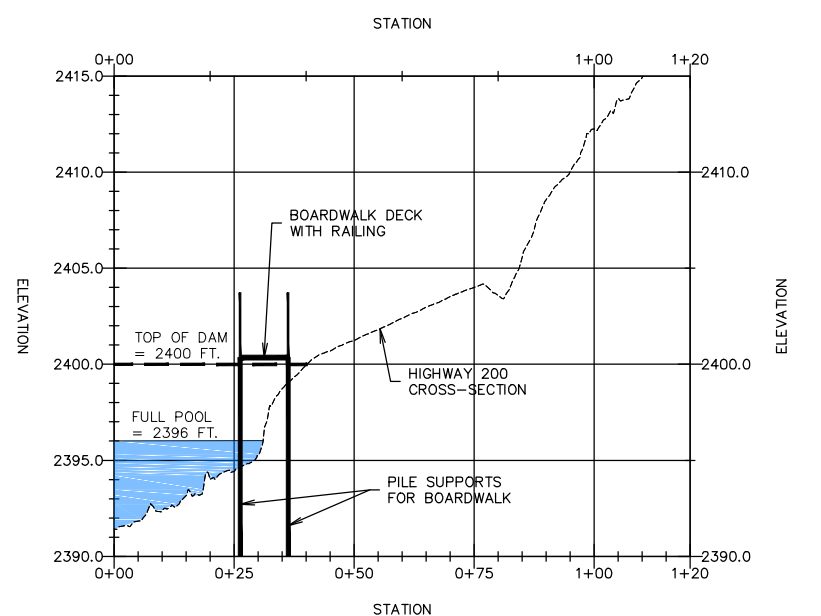
TRAIL OPTIONS FEASIBILITY EVALUATION  
EASTWARD EXTENTION COMMUNITY TRAIL  
THOMPSON FALLS, MT



SITE PLAN STA 0+00 TO STA 13+00

BOARDWALK OPTION

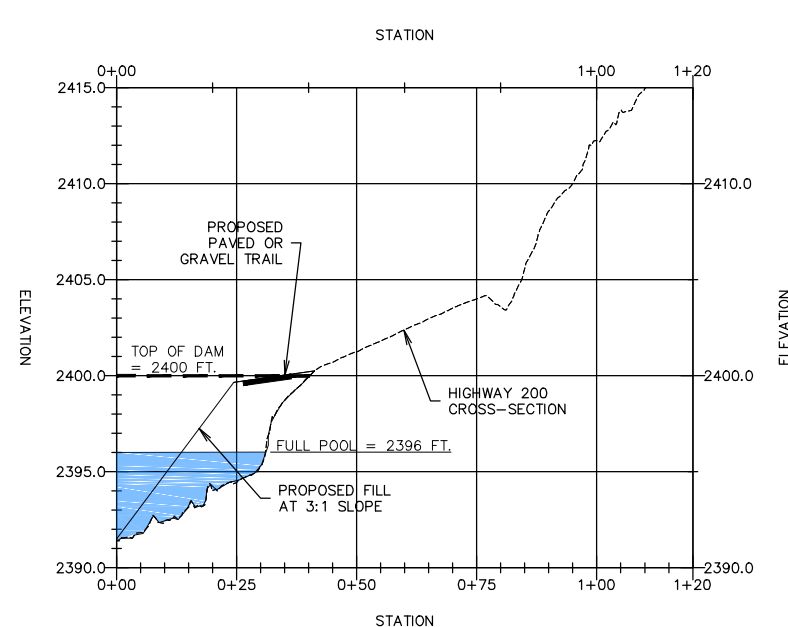
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STATION RANGE: 1+20.00 DATUM: 2390.00



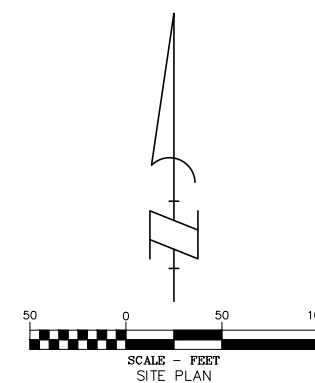
SECTION PROFILE AT HWY STA 12+98.55

GRAVEL OR PAVED FILL OPTION

PROFILE VIEW: ALIGNMENT - (2) (1) SCALE: 5  
STATION RANGE: 1+20.00 DATUM: 2390.00



SECTION PROFILE AT HWY STA 12+98.55



REVISIONS:

NO.	DESCRIPTION	DATE

PROJECT: 17-10-42  
LAYOUT: D-SIZE-2  
SURVEYED: -  
DESIGN: SR  
DRAFT: KLM  
APPROVE: -  
DATE: -

JANUARY 12, 2018

SHEET 1 OF 2

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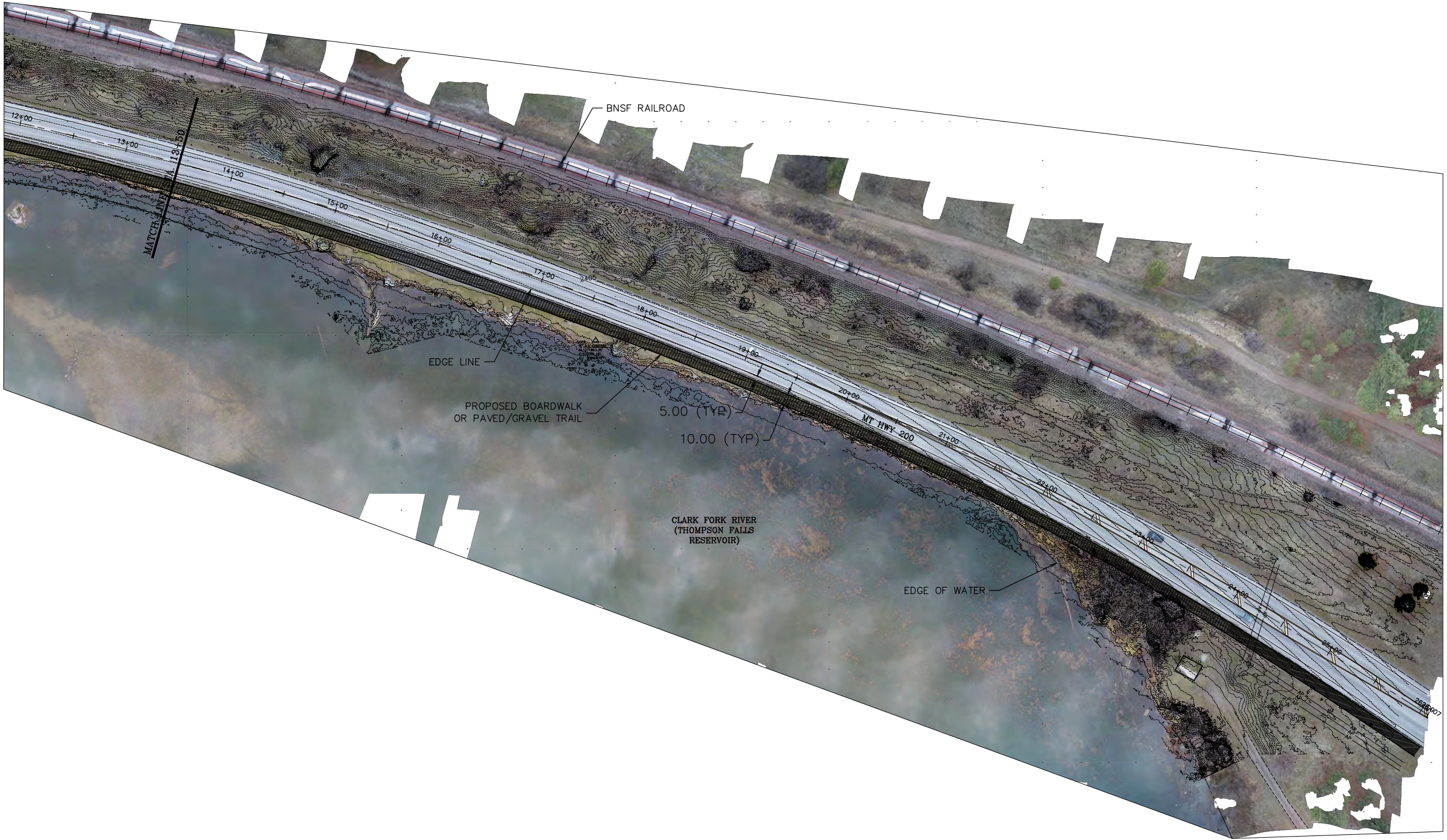


WGM GROUP  
WWW.WGMGROUP.COM

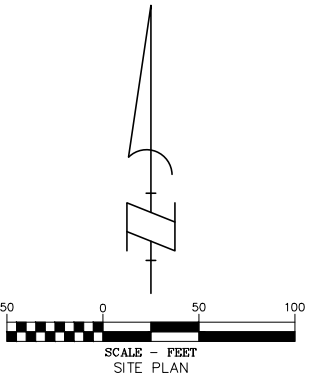
PRELIMINARY

PLOTTED: 1/12/18  
SAVED: 1/12/18

TRAIL OPTIONS FEASIBILITY EVALUATION  
EASTWARD EXTENSION COMMUNITY TRAIL  
THOMPSON FALLS, MT



SITE PLAN STA 13+00 TO 25+00



REVISIONS:  
NO. DESCRIPTION DATE

NO.	DESCRIPTION	DATE

PROJECT: 17-10-42  
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DESIGN: SR  
DRAFT: KLM  
APPROVE: -  
DATE: -

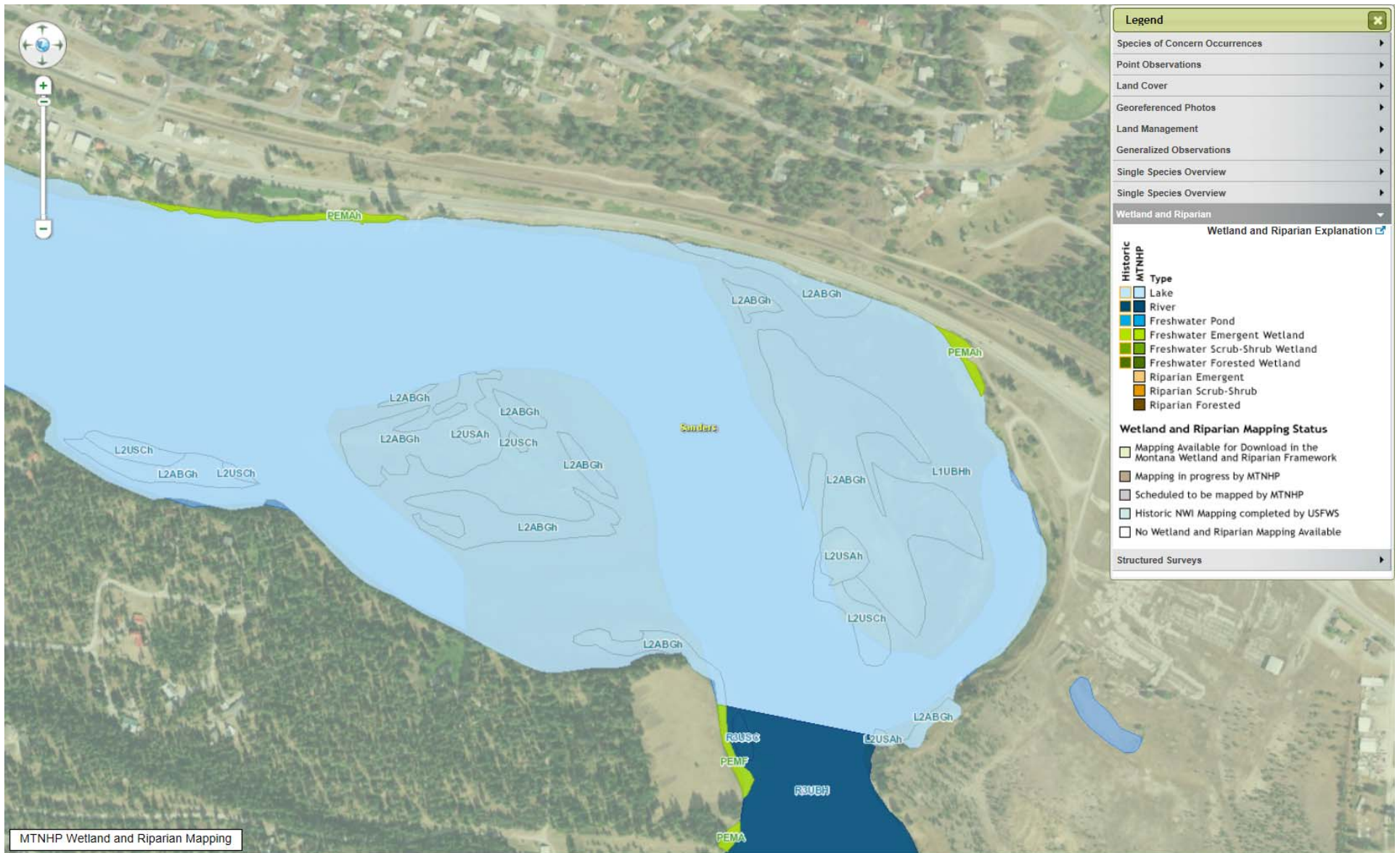
JANUARY 12, 2018

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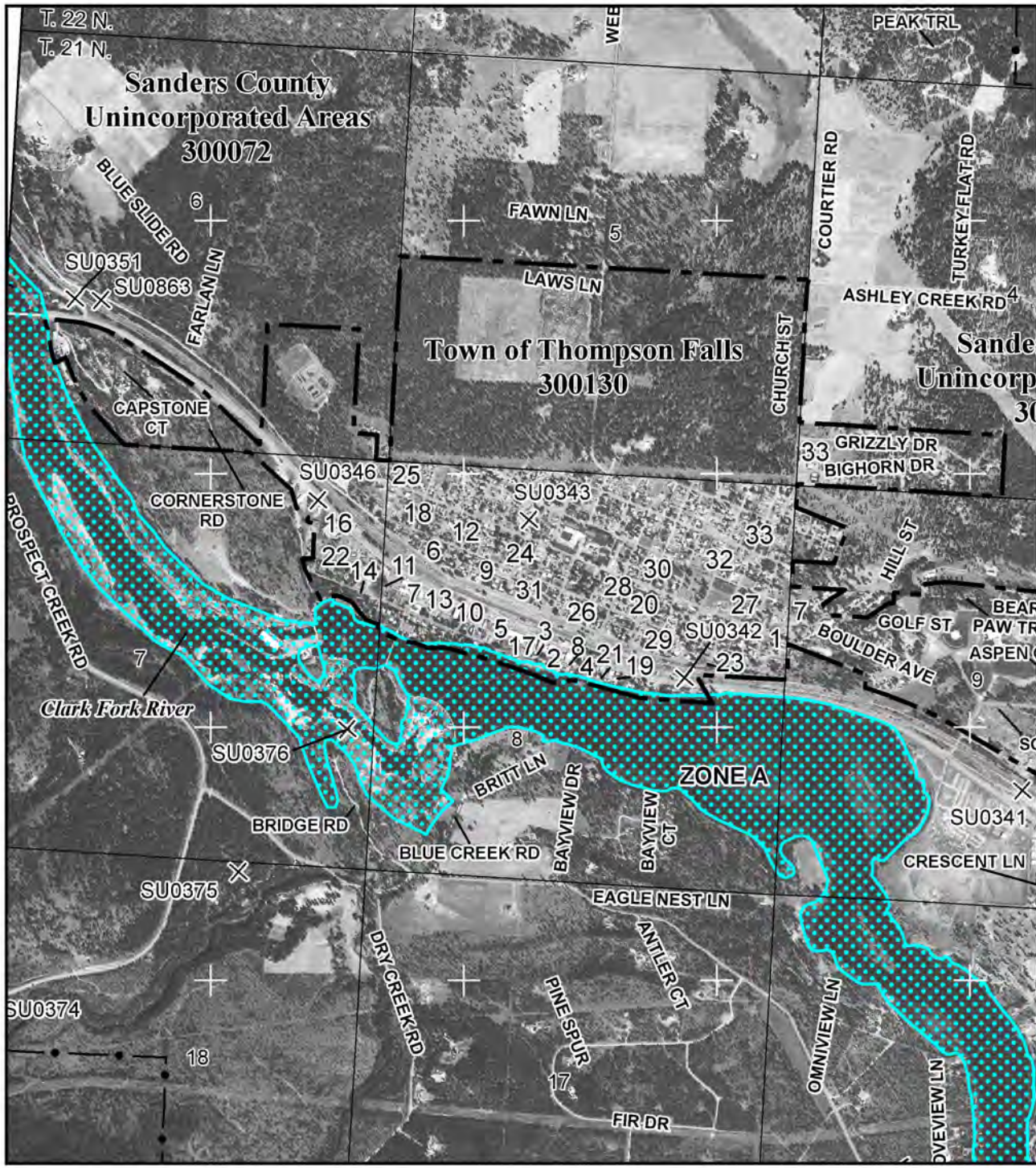


**OTHER EXHIBITS:**

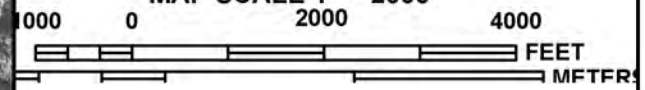
**MONTANA WETLANDS MAP  
FEMA FLOODPLAIN MAP  
MONTANA RAIL LINK MAP**



Montana Natural Heritage Program Wetland and Riparian Map Viewer – Thompson Falls Reservoir along MT Hwy 200



MAP SCALE 1" = 2000'



NATIONAL FLOOD INSURANCE PROGRAM

PANEL 1375D

**FIRM**  
**FLOOD INSURANCE RATE MAP**  
**SANDERS COUNTY,**  
**MONTANA**  
 (AND INCORPORATED AREAS)

PANEL 1375 OF 2200  
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
SANDERS COUNTY, Unincorporated Areas	300072	1375	D
THOMPSON FALLS, TOWN OF	300130	1375	D

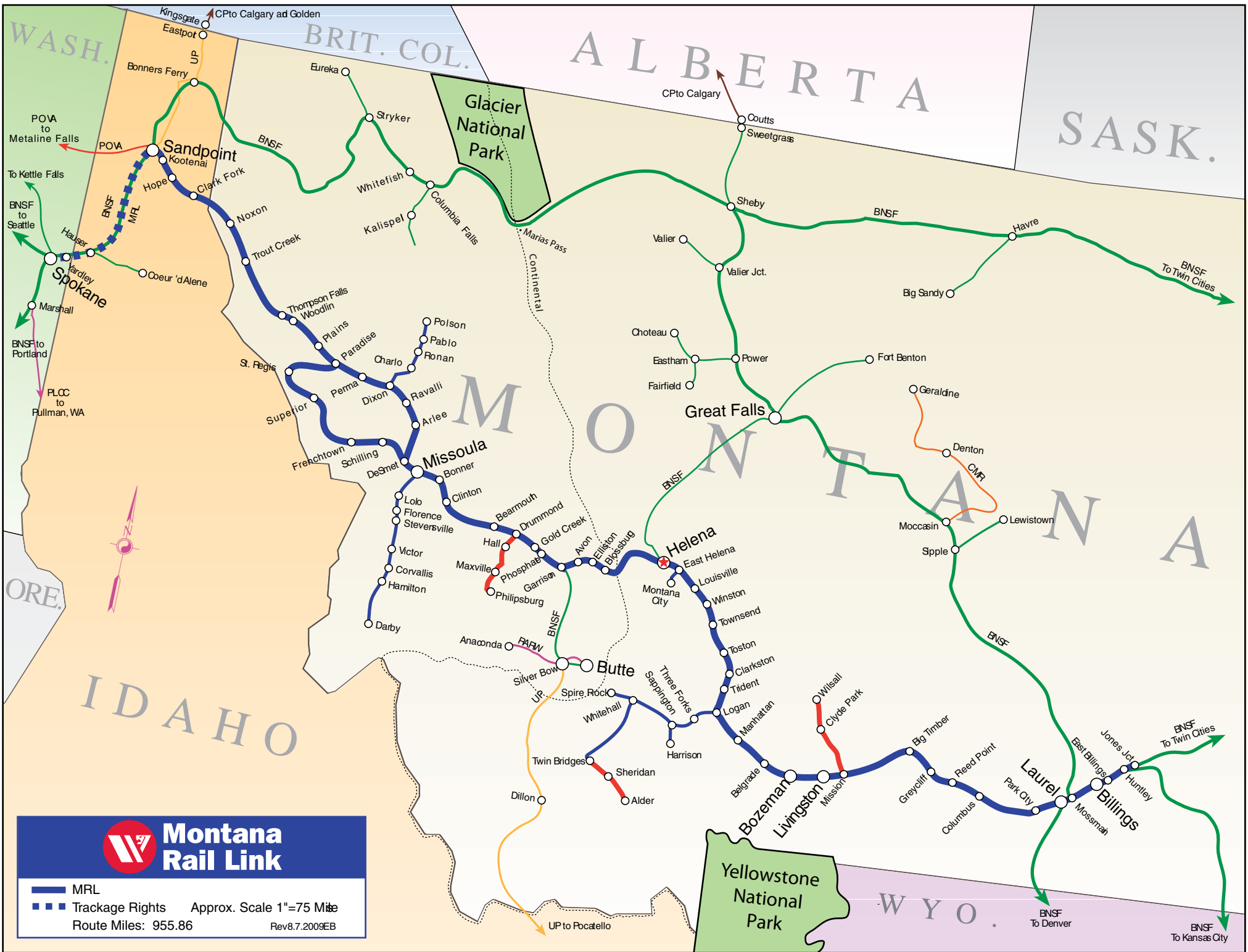
Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.



**MAP NUMBER**  
**30089C1375D**  
**EFFECTIVE DATE**  
**JUNE 5, 2012**

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at [www.msc.fema.gov](http://www.msc.fema.gov)



**7 Montana Rail Link**

- MRL
- Trackage Rights

Approx. Scale 1"=75 Miles  
Route Miles: 955.86 Rev. 8.7.2009EB