



# United States Department of the Interior

## Fish and Wildlife Service

Ecological Services

Montana Field Office

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M.29 Public (I)  
06E11000-2015-TA-0371

August 20, 2015

Cassie Riggin  
Great West Engineering  
2501 Belt View Drive  
Helena, Montana 59601

Dear Ms. Riggin:

This responds to a letter dated August 13, 2015, from the Stillwater County Board of Commissioners requesting U.S. Fish and Wildlife Service (Service) comment on a proposed rock fall hazard mitigation project in Stillwater County, Montana. The proposed project is approximately 0.8 acres in size, and is located 12.3 miles west of Absarokee, Montana on County Road 420. The Service received the letter and a project location map on August 17, 2015.

We offer the following comments under the authority of, and in accordance with, the Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. 668-668d, 54 Stat. 250), as amended, and the Endangered Species Act (ESA; 16 U.S.C. 1531 et seq.), as amended.

The federally-listed threatened and endangered species that may occur in Stillwater County are the endangered black-footed ferret (*Mustela nigripes*), the threatened grizzly bear (*Ursus arctos horribilis*), Canada lynx (*Lynx canadensis*), and Canada lynx critical habitat. Also found in Stillwater County are the candidate species Sprague's pipit (*Anthus spragueii*), greater sage-grouse (*Centrocercus urophasianus*), and whitebark pine (*Pinus albicaulis*). However, due to the scope and location of this proposed project, the Service believes it would be unlikely for project-related adverse effects to occur to these species as a result of implementation of this project.

### **Bald and Golden Eagles**

The BGEPA prohibits anyone, without a permit issued by the Secretary of the Interior, from taking bald or golden eagles, including their parts, nests, or eggs. The BGEPA provides criminal and civil penalties for persons who take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof. The BGEPA defines "take" as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available: 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by

substantially interfering with normal breeding, feeding, or sheltering behavior. In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagles return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

In 2009, the Service published a final rule (50 C.F.R. §§ 22.26 and 22.27) ([http://www.fws.gov/alaska/eaglepermit/pdf/Final\\_Disturbance\\_Rule.pdf](http://www.fws.gov/alaska/eaglepermit/pdf/Final_Disturbance_Rule.pdf)) authorizing limited issuance of permits to take bald and golden eagles “for the protection of . . . other interests in any particular locality” where the take is compatible with the preservation of the bald eagle and the golden eagle, is associated with and not the purpose of an otherwise lawful activity, and cannot practicably be avoided. The decision about whether to pursue a take permit to achieve compliance with BGEPA is a risk-based decision resting solely at the discretion of the developer/operator.

The Montana Natural Heritage Program database indicates that there are several observations of golden eagle nests in the general vicinity of the proposed project area. We strongly recommend coordination with Montana Fish, Wildlife and Parks at 1420 East Sixth Ave., P.O. Box 200701, Helena, Montana 59620-0701, (406) 444-2535 and the Montana Natural Heritage Program, 1515 East 6<sup>th</sup> Avenue, Box 201800, Helena, Montana 59620-1800, (406) 444-5354. Both of these agencies may be able to provide updated, site-specific information regarding threatened, endangered, and sensitive species, eagle and other raptor nest locations; and other fish and wildlife resources occurring in the proposed project area. Should occupied eagle nests occur within 0.5 mile of the proposed site, we recommend that you comply with the recommended temporary seasonal and distance construction buffers stipulated in the *2010 Montana Bald Eagle Management Guidelines: An Addendum to Montana Bald Eagle Management Plan (1994)*.

If wetlands are impacted by this proposal, U.S. Army Corps of Engineers Section 404 permits may be required. The Service suggests any proposed or future project be designed to avoid and minimize impacts to wetland areas, stream channels and surrounding vegetation to the greatest extent possible. Direct, indirect and cumulative impacts, along with future activities required to maintain these improvements, should be analyzed.

The Service appreciates your efforts to incorporate fish and wildlife resource concerns, including threatened and endangered species, into your project planning.

Sincerely,



for Jodi L. Bush  
Field Supervisor