



Regional Forester Leanne Marten
Objection Reviewing Officer
USDA Forest Service Northern Region
Via CARA Objection Webform:

<https://cara.ecosystem-management.org/Public/CommentInput?project=44589>.

Subject: Helena - Lewis and Clark Forest Plan Objection

July 20, 2020

Dear Regional Forester Marten:

Thank you for the opportunities to engage in the Helena Lewis & Clark (the Forest) Forest Planning process. The Responsible Official for the HLC Forest Plan Revision is William “Bill” Avey, the HLC Forest Supervisory. While we appreciate the amount of time and detail that went into the forest planning process, and given that we participated throughout the public process, we are now writing to formally object to certain provisions in the Draft Record of Decision (DROD), Final Forest Plan (Plan) and the Final Environmental Impact Statement (FEIS).

Formed in 1919, the National Parks Conservation Association (NPCA) has been working to protect and enhance our national parks for over a century. We continue that mission today by working to connect parks to the broader landscape that surrounds them and protecting and connecting the wide-ranging wildlife species that call the parks and the greater ecosystem home. It is on behalf of our 1.3 million members and supporters that we submit the following objections.

While we commented on many issues of concern during the public engagement process that affect both the forest as a whole and specific geographic areas, we focus our objections on the management of the Badger Two-Medicine (BTM) area on the Rocky Mountain Geographic Area and the designated Traditional Cultural District (TCD). We will detail our objections in greater detail and address them as follows:

1. The removal of STD 02 (RM-BTM-STD-02) from the final forest plan
2. The lack of a non-suitability finding for the BTM regarding *motorized* travel within the BTM and the TCD
3. The lack of a non-suitability finding for the BTM regarding *mechanized* travel within the BTM and the TCD
4. Monitoring questions and indicators for the BTM

Before laying out our objections, we'd note that the Forest got a lot right within the Revised Forest Plan for the BTM, we appreciate and agree with Forest's recognition of the area's significance to the Blackfeet Nation, the articulation of a role for the Blackfeet in future decisions, the emphasis on maintaining the undeveloped character of the area and managing for naturalness and ecological processes, the classification of the area as Primitive under the Recreation Opportunity Spectrum, the determination that the area is unsuitable for timber harvest, and the determination that over 60 miles of streams are eligible for protection in a free-flowing state under the Wild and Scenic Rivers Act.

Objection #1 – The removal of STD 2 (RM-BTM-STD-02) from the final forest plan

The draft Revised Forest Plan (June 2018) included the following standard:

Management activities within the Badger-Two Medicine area shall not pose adverse effects to the Badger-Two Medicine Traditional Cultural District. Management activities shall consider scientific research and ethnographic research as they relate to Blackfeet cultural and land-use identities when analyzing project effects. (RM-BTM-STD 02 – p.172, emphasis added)

NPCA supported the inclusion of this standard in our comments on the draft Revised Forest Plan because it will help protect the integrity of the TCD.

Ultimately, the standard was stripped from the final plan without any explanation. There is neither mention nor explanation for its removal in either the DROD or the FEIS. In fact, the DROD states only "minor changes" were made to the plan components for the BTM special emphasis area between the DEIS and FEIS. This is wrong as several plan components, in addition to the removal of Standard 02, changed.

The lack of acknowledgement and justification for the change clearly violates the Forest Service's 2012 Planning Rule which obligates the Forest to be transparent and to provide a documented rationale for its decisions.

In addition, we support and would cite the more detailed explanation included in the Glacier Two-Medicine Alliance's objection letter (attachment A), as justification why STD 02 should be added back into the final forest plan.

Remedy:

- Re-insert Standard 02 (RM-BTM-STD 02) from the draft Revised Forest Plan verbatim into the final Revised Forest Plan.
- Provide legally sufficient justification for the changes to the Badger-Two Medicine plan components in the FEIS and forthcoming Record of Decision.

Objection #2 – The lack of a non-suitability finding for the BTM regarding motorized travel in the BTM and the TCD*

Under the 2009 Travel Management Plan for the Badger-Two Medicine, motorized recreation is currently prohibited year-round except on approximately nine miles of roads open during the summer season. The draft forest plan rightly reflected and affirmed these existing prohibitions by including in its

first Desired Condition statement the phrase: “The Badger-Two Medicine is a large, undeveloped landscape that is open to nonmotorized recreation...”

However, this statement was stripped out of the final plan without any explanation or justification in either the DROD or FEIS. Consequently, the Revised Forest Plan components for the BTM are now entirely silent on travel management. This is an error given the significance of modes of travel to the integrity of the TCD as well as the wildland and ecological values of the area which NPCA identified in our comments. It is also inconsistent with other areas of the revised forest plan where existing travel management direction is repeated in the Revised Forest Plan components.

While the Recreation Opportunity Spectrum (ROS) identifies the majority of the BTM as “primitive” and therefore closed to motorized recreation, there is several thousand acres that are not identified with the primitive designation. The entirety of the BTM and TCD should be found to be non-suitable for motorized recreation, except for the nine (9) open miles of road currently identified in the travel plan. This will prevent future changes to motorized travel in the BTM and TCD if the Forest chooses to undergo a new round of travel planning. See the Glacier Two-Medicine Alliance objection letter (attachment A) for greater justification and rationale for inclusion of a non-suitability standard.

Remedy:

- Include RM-BTM-SUIT-03: Motorized recreation is not suitable in the Badger Two Medicine area, except on those routes identified in the 2009 travel management plan

Objection #3 – The lack of a non-suitability finding for the BTM regarding mechanized travel in the BTM and the TCD*

Despite the repeated request of NPCA, the Blackfeet Nation, Blackfeet traditionalists, and other organizations and individuals, the Forest decided not to address the suitability of mechanized transport, including mountain bikes, in the Badger-Two Medicine. While we acknowledge the Forest has some discretion under the 2012 Planning Rule whether or not to make this determination, a non-suitability determination was warranted because mechanized travel/transport is not compatible with desired conditions for those lands. At the very least the Forest should have done an analysis of the effects of mechanized transport in the BTM to determine the level of adverse effects on the TCD. This is necessary to justify the Forest’s decision to allow continued mechanized travel in the BTM and the TCD.

There are many reasons why the Forest should have found the BTM and TCD non-suitable for mechanized travel, the most compelling of which is that the Blackfeet Tribe has requested it because it is inconsistent with their ability to exercise treaty rights, practice their traditions and maintain the wild character of the BTM.

As laid out by the Glacier Two-Medicine Alliance in their objection letter, which we here again support and cite (attachment A), the lack of a non-suitability finding should be remedied for the following reasons (see attachment A for the full rationale).

1. The Forest Supervisors rationale is unsubstantiated by the administrative record and should be overturned

2. The Forest Supervisors decision to allow continued mechanized use in the BTM fails to account for adverse impacts to the TCD
3. The decision not to address mechanized travel fails to comply with the planning rule for Areas of Tribal Importance
4. Refusal to make a non-suitability determination is inconsistent with the Forest's analysis of wildland characteristics of the BTM
5. The forest plan revision is the proper time to make this suitability determination

Remedy:

- Include RM-BTM-SUIT-04: The entire BTM area and TCD are not-suitable for mechanized recreation or travel, except on those roads and routes identified in the 2009 Travel Management Plan open to summer motorized travel

***In our comments on the Draft Plan and DEIS (dated/submitted October 2018), we included both motorized and mechanized travel in the same "non-suitability" request, we've broken them out here due to different rationale for inclusion.**

Objection #4 - Monitoring questions and indicators for BTM

In the event the Forest Service does not remedy Objection #3, as requested, then NPCA asks the Forest Service to adjust their monitoring questions and indicators for the BTM that were added to the final plan after the last comment period closed. Currently, Appendix B Table 17 lists only one monitoring question and one indicator for the BTM. However, compare this to the monitoring components for the Grandview Recreation Area (GVRA) – another site on the forest classified as primitive under the ROS yet left open to mountain bikes. The forest proposed two monitoring questions and two indicators for the GVRA.

The monitoring components for GVRA should be replicated for the BTM. The planning rule clearly explains the purpose of monitoring components:

"Monitoring questions and associated indicators must be designed to inform the management of resources on the Revised Forest Plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the Revised Forest Plan's desired conditions or objectives." (36 CFR 219.12).

The modifications suggested in the remedy will allow the Forest Service to better track changes in the social and ecological conditions that contribute to the primitive ROS desired conditions. The current monitoring question and indicator only tracks social conditions. Moreover, given the nearly non-existent mountain bike use in the BTM at present, this recommended change will allow the USFS to accumulate important baseline data by which the agency can evaluate management effectiveness or use to inform future decisions.

Similarly, the current indicator for the BTM should be reworded. The phrase "core area" is unclear. Nowhere does the forest plan identify a "core area" for the Badger-Two Medicine. The whole area should be monitored, not just some undefined portion of it. Furthermore, as in the GVRA the monitoring indicator should measure both social conflicts – to account for impacts on solitude – and resource damage. It should also monitor explicitly for conflicts between mountain bikes and wildlife in

order to account for potential adverse effects on secure core habitat for grizzly bears. The suggested changes will improve monitoring of potential mountain bike impacts on the scenic integrity, natural vegetation, and ecological integrity that are hall marks of primitive settings. Suggested wording is provided in the remedy.

Remedy:

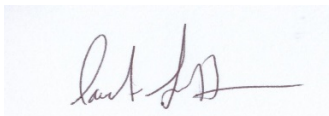
- Add a monitoring question under MON-BTM-01: “Are unauthorized trails created by mechanical means of transportation (mountain bike) present within the BTM?”
- Add an indicator under MON-BTM-01: “Number, mileage and extent of unauthorized trails created for mountain bike trails within the BTM.”
- Adjust the current indicator under MON-BTM-01 to read: “Number and kind of social conflict incidents, wildlife conflict incidents, and resource damage incidents reported in the Badger-Two Medicine area.”

Interested Party Request

In addition to the above objections, NPCA would also like to be included as an “interested party” on any objections that would affect Endangered Species Act listed or candidate species, including but not limited to, Grizzly Bears, Bull Trout, Wolverines and Lynx. Those objections could be to forest-wide, management area, geographic area or other desired conditions, objectives, standards, and/or guidelines.

Thank you for the opportunity to continue to work through forest planning and these important issues. This has been a long process and we appreciate the time and dedication of the Forest Service staff that has been working on this throughout. We look forward to participating in the objection process.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Sarah Lundstrum', is displayed on a light blue rectangular background.

Sarah Lundstrum
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Attachment A



GLACIER- TWO MEDICINE ALLIANCE

July 17, 2020

Regional Forester Leanne Marten
Objection Reviewing Officer
USDA Forest Service Northern Region

Submitted electronically via CARA Objection Webform:
<https://cara.ecosystem-management.org/Public/CommentInput?project=44589>.

Subject: Helena - Lewis and Clark Forest Plan Objection

Dear Regional Forester Marten:

Greetings from the spectacular Badger Two Medicine country! On behalf of our hundreds of members and supporters, Glacier-Two Medicine Alliance (GTMA) writes pursuant to 36 CFR Part 219 Subpart B to offer formal objections to the 2020 Land Management Plan (Revised Forest Plan) for the Helena-Lewis and Clark National Forest (HLCNF), the accompanying Draft Record of Decision (DROD), as well as the Final Environmental Impact Statement (FEIS) for the Revised Forest Plan. The Responsible Official for the HLCNF Revised Forest Plan is William “Bill” Avey, the HLCNF Forest Supervisor.

Formed in 1985, GTMA is grassroots conservation organization whose mission is “Dedicated to the protection, stewardship, and shared enjoyment of the culturally- and ecologically- irreplaceable wildlands of the Badger Two Medicine and its interconnected ecosystem.”

We commend the HLCNF for their hard work revising the existing forest plans. We particularly appreciate the many opportunities the HLCNF provided for public participation throughout the multi-year planning process and for the effort the HLCNF has made to listen and respond to public concerns throughout this process.

GTMA has standing to file this objection. GTMA participated extensively in the Revised Forest Plan revision process, including:

- Attended public listening sessions.
- Submitted comments on Desired Future Conditions on January 15, 2016.
- Submitted comments on Wilderness Evaluation Inventory and Timber Suitability on March 9, 2016.
- Submitted comments on Sept. 28, 2016 on the Grizzly Bear Habitat Amendments developed for the Flathead National Forest and subsequently incorporated into HLCNF’s current and Revised Forest Plans.
- Submitted comments on the Proposed Action on March 17, 2017.
- Submitted comments on the Draft Forest Plan and Draft Environmental Impact Statement on Oct. 5, 2018.

Our objections are directly tied to these comments. We object to four aspects of the plan for the Badger Two Medicine Special Emphasis Area:

- 1) The removal of RM-BTM-STD-02 from the Revised Forest Plan;
- 2) The lack of a non-suitability determination for motorized travel in the Badger Two Medicine;
- 3) The lack of a non-suitability determination for mechanized travel in the Badger Two Medicine;
- 4) Monitoring questions and indicators for the Badger Two Medicine.

We also object to two Forest Wide issues:

- 1) The faulty assumption that mechanized use is, by default, suitable in “primitive” Recreation Opportunity Spectrum settings;
- 2) Inadequate Wilderness recommendations. Specific remedies to improve the Revised Forest Plan are provided.

Pursuant to 36 C.F.R. 218.11(a) we request to meet with the Reviewing Officer to discuss and resolve these objections.

Before laying out our objections in detail, let me first say that the Forest got a lot right with the Revised Forest Plan. For the Badger Two Medicine, we appreciate and agree with Forest’s recognition of the area’s significance to the Blackfeet Nation, the articulation of a role for the Blackfeet in future decisions, the emphasis on maintaining the undeveloped character of the area and managing for naturalness and ecological processes, the classification of the area as Primitive under the Recreation Opportunity Spectrum, the determination that the area is unsuitable for timber harvest, and the determination that over 60 miles of streams are eligible for protection in a free-flowing state under the Wild and Scenic Rivers Act.

Objections related to the Badger Two Medicine Special Emphasis Area

Objection #1 – The Forest Service should not have removed of Standard 02 for the Badger Two Medicine (RM-BTM-STD 02) from the Revised Forest Plan.

The Draft Revised Forest Plan (June 2018) included the following standard:

Management activities within the Badger Two Medicine area shall not pose adverse effects to the Badger Two Medicine Traditional Cultural District. Management activities shall consider scientific research and ethnographic research as they relate to Blackfeet cultural and land-use identities when analyzing project effects. (RM-BADGER TWO MEDICINE-STD 02 – p.172, emphasis added)

GTMA supported the inclusion of this standard in our comments because it will help protect the integrity of the Badger Two Medicine Traditional Cultural District (TCD).

Disconcertingly, the standard was stripped from the final plan without any explanation. There is neither mention nor explanation for its removal in either the DROD or the FEIS. None. The DROD states only “minor changes” were made to the plan components for the Badger Two Medicine special emphasis area between the DEIS and FEIS.¹ This is wrong. Several plan components changed from the draft to the final plan in addition to the removal of Standard 02.²

¹ DROD p. 36.

² Besides the removal of Standard 02, the Forest replaced Desired Condition Statement 01 and added a new suitability provision (RM-BADGER TWO MEDICINE-SUIT 02), neither of which were acknowledged or explained. The Forest’s rationale is further obscured by the fact that the FEIS continues to list the plan components from the Draft Revised Forest Plan (2018) in Table 211 (FEIS, Chapter 3 Part 2, p. 119). Glacier-Two Medicine Alliance supported the

The lack of acknowledgement and justification for the change clearly violates the Forest Service's 2012 Planning Rule which obligates the HLCNF to be transparent and to provide a documented rationale for its decisions.³ Furthermore, the failure to justify almost certainly qualifies the removal of Standard 02 as arbitrary and capricious in violation of the National Environmental Policy Act and Administrative Procedures Act.

In personal communications, the forest plan revision team leader and other planning staff indicated the HLCNF removed Standard 02 to comply with US Forest Service (USFS) planning directives in the Forest Service Handbook (FSH) on writing plan components.⁴ The directives state that plan components: "May be used to carry out laws, regulations, or policies **but should not merely repeat existing direction from laws, regulations, or directives.**"⁵ However, forest plans do this all the time, even this one. The new Standard 02 for the Badger-Two Medicine, for example, essentially repeats Executive Order 13007 "Indian Sacred Sites."⁶ In the very next section of the plan – Rocky Mountain Front Conservation Management Area – the standards repeat almost verbatim the statutory language of the Rocky Mountain Front Heritage Act.⁷

Even if the removal was truly a good faith attempt to apply the planning team's interpretation of this directive, the application of that directive to Standard 02 is misplaced. The relevant legal context here is Section 106 of the National Historic Preservation Act (NHPA), which authorizes the TCD. Section 106 states:

The head of any Federal agency having direct or indirect jurisdiction over a *proposed Federal or federally assisted undertaking* in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, *take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.* The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking. (16 USC 470f, emphasis added)

The implementing regulations underscore the *procedural* nature of Section 106:

Section 106 of the National Historic Preservation Act requires Federal agencies to *take into account* the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The *procedures* in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through *consultation* among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties

inclusion of DC 01 and SUIT 02 in our comments and commends the Forest for these additions. However, these substantive changes still need to be documented in the FEIS and/or DROD as appropriate. In personal communications with Forest Plan Revision Team Leader Deborah Entwistle following the plan's release, Ms. Entwistle acknowledged the lack of documentation as a clerical error and stated the Forest would correct this error before issuing the final Record of Decision. We raise the issue here for the administrative record so that the necessary documentation does indeed occur.

³ 77 Fed. Reg. 21,184 (Apr. 9, 2012); 36 C.F.R. 219.14 and 36 C.F.R. 219.13

⁴ See Attachment A – "Follow-up to Today's Call" June 1, 2020

⁵ Forest Service Handbook 1909.12, 22.1 emphasis added.

⁶ 61 Fed. Reg. 26771-26772 (1996)

⁷ See 16 USC 539r(b)(3)(B)(ii)(II)

potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties. (36 C.F.R 800.1., emphasis added)

In sum, Section 106 ensures preservation values are factored into agency decision making and it establishes an important *procedural and consultation framework* for doing so. Under this framework, a federal agency must *consider* the potential adverse effects of a proposed action on the TCD and seek to mitigate if practicable; but it *does not have to mitigate* so long as the agency provides a rational explanation for not doing so.

Standard 02 does not merely repeat Sec. 106's procedural obligations. It adds a substantive and enforceable constraint on future site-specific undertakings in the Badger Two Medicine TCD. The USFS' Planning Regulations and Directives explain how standards should be written:

Standards. A standard is a *mandatory constraint* on project and activity decision making, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements. (36 CFR 219.7(e)(1)(iii), emphasis added)

Elsewhere the directives explain:

Standards are used when the requirement is absolute such as to ensure projects will not prevent achievement of a desired condition, or to ensure compliance with laws..." [and] "are stated in a precise manner, and with mandatory or prohibitive wording, such as "must," "shall," "must not," "may not," "shall not," of XX is not allowed to be authorized" [and] "Are written clearly and without ambiguity so that consistency of a project or activity with a standard can be easily determined. (For definition of consistency, see 36 CFR 219.15)"⁸

Standard 02's use of the phrase "shall not" strengthens the procedural requirements of Section 106 and clarifies how site-specific projects and activities should be conducted to achieve the desired conditions. In no way does Standard 02 merely repeat law, policy, or regulation. It is substantive, not procedural, and would be applied in different decision-making contexts.⁹

The importance of including Standard 02 should be further considered in light of the recent Advisory Council on Historic Preservation commendations of Blackfoot-Forest Service relations and their combined effort to protect the TCD from negative effects posed by potential oil and gas development.¹⁰ The return of Standard 02 demonstrates a clear commitment by the Forest to actually protect the integrity of the TCD, not just consider the potential adverse effects in its decision making.

Remedy:

- Re-insert Standard 02 (RM-BTM-STD 02) from the draft Revised Forest Plan verbatim into the final Revised Forest Plan.

⁸ FSH 22.13

⁹ Internally, the Forest appears to have recognized this difference when it decided to remove Standard 02. In the same personal communication with the planning team, Deputy Archeologist Arian Randall, who was the forest plan team member responsible for matters pertaining to the TCD, elaborated on the Forest's rationale, stating the Forest removed the standard in order to retain greater flexibility when making future decisions about activities within the TCD. See Attachment A.

¹⁰ Advisory Council on Historic Preservation (Sept. 21, 2015). Comments on Historic Preservation Regarding the Release From Suspension of the Permit to Drill by Solenex LLC in Lewis and Clark National Forest, Montana. p. 8

- Provide legally sufficient justification for the changes to the Badger Two Medicine plan components in the FEIS and forthcoming Record of Decision.

Objection #2 – The Revised Forest Plan should include a non-suitability component for motorized vehicles in the Badger Two Medicine.

Under the 2009 Travel Management Plan for the Badger Two Medicine, motorized recreation is currently prohibited year-round except on approximately nine miles of roads open during the summer season.¹¹ The draft forest plan rightly reflected and affirmed these existing prohibitions by including in its first Desired Condition statement the phrase: “The Badger Two Medicine is a large, undeveloped landscape that is open to nonmotorized recreation...”¹²

However, this statement was stripped out of the final plan without any explanation or justification in either the DROD or FEIS. Consequently, the Revised Forest Plan components for the Badger Two Medicine are now entirely silent on travel management. This is an error given the significance of modes of travel to the integrity of the Traditional Cultural District as well as the wildland and ecological values of the area that GTMA repeatedly identified in our comments. It is also inconsistent with other areas of the revised forest plan where existing travel management direction is repeated in the Revised Forest Plan components.¹³

Admittedly, to its credit the Forest correctly listened to our recommendations and upgraded the Recreation Opportunity Spectrum classification for most of the area from semi-primitive non-motorized to primitive. The primitive classification includes two forest-wide suitability components that limit summer and winter motorized recreation in the Badger Two Medicine.¹⁴ However, the primitive classification does not apply to all the lands in the Badger Two Medicine, leaving open the possibility of expanding motorized use in the future. We think a non-suitability component is needed to reinforce the current travel plan and ensure future decisions achieve desired conditions.

Remedy:

- Include a non-suitability component that reads: “Motorized recreation is not suitable in the Badger Two Medicine area except on USFS routes authorized by the 2009 Travel Management Plan.”

Objection #3 – The Responsible Official erred in its rationale when deciding not to determine the suitability of mechanized transport in the Badger Two Medicine.

Despite the repeated request of GTMA,¹⁵ the Blackfeet Nation,¹⁶ Blackfeet traditionalists,¹⁷ and other organizations and individuals, the HLCNF decided not to address the suitability of

¹¹ Travel Plan, 2009

¹² Draft Forest Plan, p. 172

¹³ See for example the Rocky Mountain Front Conservation Management Area; Grandview Recreation Area and snowmobiles (SN-GVRA-SUIT 03)

¹⁴ See FW-ROS-SUIT 03, FW-ROS-SUIT 05

¹⁵ See comments submitted on March 31st, 2017 in response to the Proposed Action and on Oct. 5th 2018 in response to the draft Revised Forest Plan and DEIS.

¹⁶ On Feb. 20, 2020, the Blackfeet Tribal Business Council submitted a letter to Forest Supervisor Bill Avey stating that “mechanized uses are not compatible with the Blackfeet cultural values in the Badger Two Medicine area.” A copy of the letter was provided to GTMA, see Attachment B.

¹⁷ On Feb. 23, 2020, the Pikuni Traditionalists Association submitted a letter to Forest Supervisor Bill Avey which stated that bikes posed an “adverse effect” to Historic Trails within the Badger Two Medicine. A copy of the letter was provided to GTMA, see Attachment C.

mechanized transport, including mountain bikes, in the Badger Two Medicine. While we acknowledge the Forest has some discretion under the 2012 Planning Rule whether or not to make this determination,¹⁸ a non-suitability determination was warranted because mechanized travel/transport is “not compatible with desired conditions for those lands.”¹⁹ The HLCNF failed to provide any rational justification whatsoever for its decision not to address mountain bikes, as it is obligated to do here.²⁰ At the very least, the HLCNF should have analyzed whether mechanized travel posed an adverse effect to the TCD and documented their determination as part of their decision to permit mechanized travel to continue. In sum, the absence of a non-suitability determination for the Badger Two Medicine is an arbitrary and capricious decision that should be remedied for the following five reasons.

1. The Forest Supervisor’s rationale is unsubstantiated by the administrative record and should be overturned

In the DROD, the Responsible Official offered the following explanation for the HLCNF decision not to address the suitability of mountain bikes:

Another exception was the desire from the Blackfeet Nation to make the Badger Two Medicine area unsuitable for mountain bikes. I decided against this because the issue was already addressed in the travel plan decision for that area. Travel management was not identified as an area needing change because it was recently decided through a thorough public engagement process.²¹

The Responsible Official’s statement is inaccurate. The HLCNF has never made a travel planning decision to allow mountain biking in the Badger Two Medicine. The recent travel management planning process to which the Responsible Official refers focused entirely on *motorized recreation* and did not explicitly analyze the suitability of *mechanized* travel in the Badger Two Medicine in any way whatsoever.²²

On this matter, the travel planning record is clear. Travel planning was initiated solely to improve regulation of the rapidly expanding use of off-highway motor vehicles, particularly by all-terrain-vehicles (ATVs) in the summer. The Purpose and Need for Action states:

Due to the increased popularity and use of ATVs since 1988, there is a need to address the effects of this type of vehicle on various resources and the suitability of trails to accommodate them.²³

The FEIS further identifies a need to assess expanding snowmobile use on the district:

With the advent of more powerful snowmobiles there is an increasing risk of snowmobiles reaching designated Wilderness areas, disturbing sensitive habitats in the high country, or disrupting winter ranges at the lower elevations. There is a need to assess the effects of snowmobiling and identify suitable opportunity for this activity.²⁴

Nowhere in the travel management planning documents did the then Lewis and Clark National Forest (LCNF) identify a need to assess mechanized travel. This is not surprising.

¹⁸ 36 C.F.R. 219.7(e)(1)(v)

¹⁹ Ibid

²⁰ 36 C.F.R. 219.14

²¹ Helena-Lewis and Clark National Forest, (May 2020), Draft Record of Decision 2020 Land Management Plan, p. 12

²² Lewis and Clark National Forest (March, 2009) Rocky Mountain Ranger District Travel Management Plan Record of Decision for Badger Two Medicine.

²³ Lewis and Clark National Forest, Final Environmental Impact Statement for the Rocky Mountain Ranger District Travel Management Plan, Oct. 1, 2007, p. 3, emphasis added

²⁴ Ibid, p. 4, emphasis added

Travel planning on the Helena and the Lewis and Clark National Forests was motivated and guided by a recent statewide directive limiting off-highway vehicles²⁵ and the 2005 travel planning rule, which applies *only* to motorized vehicles, not to non-motorized forms of transportation like mountain bikes.²⁶ In promulgating the planning rule, the USFS made it abundantly clear that “bicycles are distinct from motor vehicles and should be managed separately from them”²⁷ and that “this rule governs designation of routes and areas for motor vehicle use and does not apply to nonmotorized uses, such as bicycles.”²⁸ Furthermore, while “local Forest Service officials retain authority to regulate bicycles according to their local situation and needs,”²⁹ there was little need to exercise this authority fifteen years ago when travel planning was initiated, because mountain biking was just emerging as a use on the district,³⁰ similar to ATVs back in 1988 when the former travel plan was written, whereas motorized use was exploding.

Consequently, when conducting travel management the LCNF simply lumped mechanized travel in with foot and horse travel as a general non-motorized category that it then juxtaposed against various combinations of motorized use for the purpose of conducting analysis of significant issues and drafting alternatives.³¹ In fact, the only alternative that may have taken a more granular look at mountain biking was eliminated from consideration early in the planning process.³² Not surprisingly then, public comments, as well as the recommendations submitted by the Blackfeet Nation (which predominantly became the preferred plan alternative), hued closely to the Forest’s non-motorized/motorized division.³³ Likewise, the Record of Decision for the Travel Management Plan focuses entirely on explaining which routes/areas/seasons would be open or closed to motorized use.³⁴ In fact, the only sentence in the whole 84 page decision pertaining to mountain bikes simply acknowledged that potential safety conflicts involving bicycles may need to be addressed in the future.³⁵

In sum, while the travel plan did leave the Badger Two Medicine open to mountain biking, it did so by default, not as the result of careful analysis and thorough public input.³⁶ To decide that the suitability of mountain bikes does not need to be addressed in the revised forest planning process because this mode of recreation was addressed in a recent travel management process is completely arbitrary and capricious and not in accordance with the administrative record. Furthermore, the Responsible Official’s rationale is clearly arbitrary when considered in

²⁵ FEIS 2007, p. 9

²⁶ 36 CFR 212.50

²⁷ 70 Federal Register 68,284

²⁸ 70 Federal Register 68,272

²⁹ 70 Federal Register, 68,284

³⁰ At the time, only 0.9% of forest visitors listed bicycling as their primary use of the forest. *See* Kocis et al., August 2002, “National Forest Visitor Use Monitoring Results”, cited in 13 *supra*, on Chapter III, p. 126

³¹ FEIS 2007

³² *Ibid*, p. 24

³³ Public comments summarized in the FEIS Chapter IV strongly indicate the comments focused almost entirely on motorized travel, although the USFS acknowledge some public comments raised concerns that mountain bikes would be allowed in recommended wilderness or safety concerns between mountain bikes and horses. This summary is supported by personal communication with Glacier-Two Medicine Alliance members as well as Blackfeet tribal members who were involved in travel planning. All recall that mountain bikes were not even on their radar back then because of the infrequency of mountain bike use at that time as well as the scope of the Forest Services’ analysis.

³⁴ Lewis and Clark National Forest (March, 2009) Rocky Mountain Ranger District Travel Management Plan Record of Decision for Badger Two Medicine.

³⁵ *Ibid*, p. 16

³⁶ *Ibid*

the context of the entire Revised Forest Plan, which made modifications affecting mechanized travel to at least five existing travel plans, including plans issued more recently than 2009.³⁷

2. The Responsible Official's decision to allow continued mechanized use in the Badger Two Medicine fails to account for adverse effects to the TCD.

Throughout the forest plan revision process, the Blackfeet Tribe repeatedly stated that mechanized travel is an unsuitable mode of modern transportation that would have adverse effects on the integrity of the Traditional Cultural District and asked the HLCNF to prohibit its continued use. In comments on the draft forest plan, the Blackfeet Tribal Business Council provided the following suitability language:

“Travel in the Badger Two Medicine by horse, mule or on foot is suitable. Mechanized travel/transport in the Badger Two Medicine is an unsuitable modern development and intrusion upon the integrity of the premier importance sustaining the religious and cultural traditions of the Blackfeet Tribe.”³⁸ (emphasis added)

GTMA referenced these 2018 Blackfeet comments in our comments on the draft plan when we wrote “GTMA fully concurs with this Blackfeet viewpoint” and that “mountain biking, in the Badger Two Medicine TCD fails to acknowledge or promote respect for the religious and cultural significance of this wild, sacred landscape.” Likewise, we recommended the Forest make a non-suitability determination for mechanized transport in the Badger Two Medicine. We continue to support the Blackfeet’s position on the matter now.

The HLCNF has an obligation during a “federal undertaking” like the forest plan revision process to analyze the plan components would cause an adverse effect on the TCD, including the affects of continued mountain bike use.³⁹ The implementing regulations for the National Historic Preservation Act state:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register.⁴⁰

From the planning documents, it is entirely unclear whether the HLCNF completed the required NHPA Sec. 106 consultation and analysis as no documentation was provided in the FEIS, DROD, or elsewhere as required per 36 C.F.R. § 800.5. When asked, the HLCNF said that they did not conduct any adverse effects analysis – either of continued bicycle use specifically or the plan components generally – for possible adverse effects to the TCD.⁴¹ This almost certainly violates the NHPA.

Despite this failure, the HLCNF could have considered the suitability of mountain bikes in light of its previous adverse effects analysis related to potential oil and gas development. The then Lewis and Clark National Forest recognized:

³⁷ See FEIS Appendix K, which documents ~150 miles of mechanized trail closures in areas recommended for wilderness designation.

³⁸ For examples of comments submitted after 2018, see *supra* note 16 and note 17 *supra*.

³⁹ See the NHPA’s Criteria for Adverse Effects Analysis (36 C.F.R. 880.5)

⁴⁰ 36 C.F.R. 800.1

⁴¹ See Attachment D

The TCD is associated with Blackfeet hunting, Blackfeet stories, Blackfeet power, and Blackfeet prayers/fasting/vision questing; anything that disrupts the visual natural setting, interrupts meditation, or affects the feeling of power in the area will affect the associated current traditional uses of the area by the Blackfeet. This decreased ability for the Blackfeet to use this area for traditional cultural practices would also indirectly reduce the Blackfeet's ability to identify themselves as Blackfeet. It would make the associated power of the area less suitable by decreasing its effectiveness and accessibility to traditional practitioners. Further, any negative effects to the associated power in this portion of the district would also indirectly affect the power of the entire district since it is all interconnected in the Blackfeet worldview.⁴²

The Advisory Council on Historic Preservation underscored this finding in 2015 and stated the “TCD retains integrity and is a landscape virtually unmarred by modern development.”⁴³

Mechanized use is clearly incompatible with the values and attributes of the TCD documented by the Keeper of the National Register in 2002 and 2014 (as well as the USFS own analysis), including the significance of the place as a “region of refuge” for many Blackfeet tribal members. Again, it appears the HLCNF didn't even consider potential adverse effects to the integrity of the TCD in making its decision to permit continued motorized travel.

The forest plan revision process, conducted in accordance with NEPA, is the most appropriate place to coordinate and integrate NHPA Section 106 duties related to consultation and the management of traditional cultural properties. As stated in NHPA regulations:

Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a “major Federal action significantly affecting the quality of the human environment,” and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties.⁴⁴

Like NEPA, the NHPA regulations require public involvement and lay out a structured process for approving the undertaking, and in assessing possible adverse effects found during preparation of the EIS—and then developing measures in the EIS to avoid, minimize, or mitigate such effects.⁴⁵ Resolution of any adverse effects likewise includes a public participation provision,

⁴² Cited in Advisory Council on Historic Preservation (Sept. 21, 2015). Comments on Historic Preservation Regarding the Release From Suspension of the Permit to Drill by Solenex LLC in Lewis and Clark National Forest, Montana, p. 5-6.

⁴³ Ibid, at 5.

⁴⁴ 36 C.F.R. 800.8. NHPA's Section 106 regulations already call for consultation to be “coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency specific legislation.” 36 C.F.R. 800.2 (a)(4). The Council on Environmental Quality and the Advisory Council on Historic Preservation provides detailed guidance on how best to integrate and coordinate Section 106 and NEPA planning, including the use of “NEPA documents to facilitate Section 106 consultation,” and using “Section 106 to inform the development and selection of alternatives in NEPA documents.” COUNCIL ON ENVIRONMENTAL QUALITY, EXECUTIVE OFFICE OF THE PRESIDENT AND ADVISORY COUNCIL ON HISTORIC PRESERVATION, NEPA AND NHPA: A HANDBOOK FOR INTEGRATING NEPA AND SECTION 106 (Mar. 2013)

⁴⁵ 36 C.F.R. 800.8.

with the agency providing “an opportunity for members of the public to express their views on resolving adverse effects of the undertaking.”⁴⁶

While we acknowledge the HLCNF is not statutorily bound to honor the Blackfeet’s determination of adverse effects, nor GTMA’s recommendations, the HLCNF must provide some basis to justify its decision not to do so.⁴⁷ However, the HLCNF doesn’t identify or cite any evidence, nor social, economic, or other factors to support its decision.⁴⁸ Given the importance of the Traditional Cultural District to the Blackfeet Nation, a significance the forest itself extols at length, its unjustified decision to allow continued mountain bike use is clearly arbitrary and capricious.

Furthermore, the Reviewing Officer and HLCNF should consider the request to add a non-suitability determination for mountain bikes due to adverse effects to the TCD in light of the recently proposed Badger-Two Medicine Act. The Blackfeet Tribal Business Council passed Resolution #190-2020⁴⁹ in support of the proposed Badger-Two Medicine Protection Act⁵⁰ which would protect the integrity of the Traditional Cultural District. Section 5(f)(2) of the Act specifically prohibits “The use of motorized or mechanized vehicles, except for administrative purposes, or to respond to an emergency.” GTMA supports the proposed Act and believes the HLCNF should adhere to management objectives consistent with the language of the proposed Act.

3. The decision not to address mechanized travel fails to comply with the planning rule for Areas of Tribal Importance.

The 2012 Planning Rule obligates the Forest Service to give special recognition to the rights and views of federally recognized tribes like the Blackfeet Tribe:

“Consultation with federally recognized Indian Tribes and Alaska Native Corporations.

The Department recognizes the Federal Government has certain trust responsibilities and a unique legal relationship with federally recognized Indian Tribes. The responsible official shall honor the government-to-government relationship between federally recognized Indian Tribes and the Federal government. The responsible official shall provide to federally recognized Indian Tribes and Alaska Native Corporations the opportunity to undertake consultation” 36 CFR 219.4(a)(2) (emphasis added).

More specifically, the Rule requires forest plans to provide appropriate management direction for national forest areas that are particularly important to tribes, such as the Badger Two Medicine. The Rule states that plans “must include plan components, including standards and guidelines, to provide for ... [m]anagement of areas of tribal importance.”⁵¹ According to the Forest Service Handbook, these components “place limits or conditions on projects or activities that *may adversely affect* areas of tribal importance.”⁵²

As we have already established, mechanized travel “may adversely affect” the Badger Two Medicine TCD, an area of tribal importance in this plan. Absent a compelling, documented reason to allow mountain bikes – such as a significant benefit to the social or economic

⁴⁶ 36 C.F.R. 800.6.

⁴⁷ 36 C.F.R. 219.14

⁴⁸ See FSH 1909.12, 23.23a for direction to Forest on how to consider recreation’s contribution to social, economic, and ecological sustainability when considering plan components.

⁴⁹ See Attachment E

⁵⁰ See Attachment F

⁵¹ 36 C.F.R. 219.10(b)(1)(iii), emphasis added.

⁵² FSH 1909.12, 23.23h, 2(b)

sustainability of the Blackfeet or local communities⁵³ -- the Forest has an obligation to honor its federal trust responsibility and limit adverse effects to the TCD by including a non-suitability component for mechanized travel in the Badger Two Medicine. The Forest provided no compelling reason to keep the area open to mechanized travel (or any reason for that matter). Nor did the public. GTMA reviewed public comments submitted on the HLCNF draft plan and was unable to find any comment letter that specifically spoke in favor of retaining mountain bike use (e.g. mechanical transport) in the Badger Two Medicine. The preponderance of evidence on the benefits vs. effects of mountain bike use in the Badger Two Medicine, along with the 2012 Planning Rule direction related both to areas of tribal importance and to recreation, clearly support closing this culturally important area to mechanized travel.

4. Refusal to make a non-suitability determination is inconsistent with HLCNF's own analysis of wildland characteristics in the Badger Two Medicine area

Throughout its planning documents, the HLCNF clearly recognizes the outstanding ecological values and wild, undeveloped characteristics of the Badger Two Medicine landscape that GTMA emphasized in our comments. Most notably, the Wilderness Evaluation inventory determined that nearly 126,000 acres Badger Two Medicine, almost the entire area, exhibited substantial Wilderness character and could be eligible for inclusion in the National Wilderness Preservation System.⁵⁴ The Wilderness character of the area was further articulated when the Forest properly re-classified the entire area as primitive under the Recreation Opportunity Spectrum (ROS) as GTMA recommended in our comments, a classification commonly reserved for designated and recommended Wilderness areas.⁵⁵

Despite these findings, the HLCNF ultimately decided not to recommend the area for Wilderness designation based on direction from the Blackfeet Nation.⁵⁶ The HLCNF's decision respectfully, and rightly in our view, honored the Blackfeet Nation's request.⁵⁷ However, this decision renders the HLCNF's corresponding decision not to limit mountain biking in the Badger Two Medicine—despite the Blackfeet Nation's request they do so—all the more puzzling. Had the HLCNF recommended the Badger Two Medicine for wilderness, which all indications are it would have had the Blackfeet not opposed it, mechanized transportation would have been prohibited in the area under the Revised Forest Plan by the following Forest-Wide suitability statement:

“Motorized and mechanized means of transportation are not suitable in recommended wilderness areas.” (FW-RECWILD-SUIT 01)

Even though Badger Two Medicine is not being recommended for wilderness designation, the agency still has authority under the 2012 Planning Rule to make a similar non-

⁵³ FSH 1909.12, 23.23a

⁵⁴ FEIS (2020) Appendix E, pp. 186 - 191

⁵⁵ FSM 2310.5; Forest Plan p. 65; We applaud the Forest Service for making this adjustment in response to our comments on the draft plan as well as for not limiting the application of primitive to Wilderness and recommended wilderness.

⁵⁶ See Appendix G, p. 115, and Appendix E, p. 315. Some additional context may be helpful - the Blackfeet Nation has repeatedly opposed Wilderness-designation due to concerns the designation may restrict their ability to exercise treaty rights and because they view the designation's Western-worldview (e.g. “man is a visitor who does not remain”) as incompatible with their cultural relationship to this place.

⁵⁷ Glacier-Two Medicine Alliance formerly advocated for Wilderness designation for the Badger Two Medicine but like the Forest here, has changed course out of respect for the Blackfeet. Hence our comments throughout the revision process emphasized protecting the wildland qualities and specific Wilderness characteristics like solitude and naturalness (e.g. ecological processes), but stop short of asking the Forest to recommend the area for Wilderness designation.

suitability determination for this area because mechanized travel is “not compatible with desired conditions for those lands.”⁵⁸ The Forest Service Manual’s guidance on primitive ROS settings reinforces this discretion:

“Many primitive settings coincide with designated wilderness areas in which mechanized equipment is not present. Additional primitive settings may also occur outside of wilderness areas. Mechanized travel and motorized equipment may occur in non-wilderness primitive settings.”⁵⁹

The key word here is “may.” The HLCNF clearly has the discretion to prohibit mountain biking in the Badger Two Medicine on a site-specific basis even though the area is neither designated nor recommended as wilderness. As discussed further in Objection #5 below, the HLCNF failed to recognize its discretion when it wrongly deferred to the National Recreation Opportunity Spectrum Inventory Mapping Protocol as establishing national direction that precluded it from closing the area to mechanized travel. The HLCNF should exercise its authority now and make a non-suitability determination.

5. The forest plan revision is the proper time to make this suitability determination

The Responsible Official’s decision to defer to the current travel management plan rather than decide the suitability of mechanized travel in the Badger Two Medicine potentially violates the National Forest Management Act and its implementing regulations which clearly states that forest plans establish the overarching framework to guide resource management on the forest.⁶⁰ In turn, resource and site-specific plans, like travel management plans, must be consistent with the forest plan, or in Forest Service lingo, tier off the forest plan.⁶¹ To defer to a travel management plan promulgated under the old forest plan is to inappropriately invert this legally-established relationship.

Even if the HLCNF was in compliance when it chose to set aside travel management determinations as part of the forest plan revision process—which it was not—it still should take up the question. According to the Forest Service Handbook’s planning directives, which uses warrant suitability determinations “may arise from issues raised in public participation” (FSH 1909.12, 22.15). As documented above, this is clearly the case here. Mountain bike use has exploded on national forest lands in Montana in recent years. This has raised both the public and the Blackfeet Tribe’s⁶² awareness and concern about mountain bike suitability to levels far beyond what it was when the travel planning process was initiated in 2005 or in 2015 when Supervisor Avey indicated the forest plan revision process would not examine travel management.

While mountain bike use in the Badger-Two Medicine remains relatively low at the moment, its increasing popularity and changing technology both suggest that allowing its continuation in the Badger-Two Medicine will ultimately result in unacceptable impacts to the integrity of the TCD. The HLCNF should get ahead of this foreseeable outcome, honor Blackfeet requests, and protect the integrity of the TCD by making a mechanized transport suitability determination in the Revised Forest Plan. The suggested remedy will also facilitate the HLCNF

⁵⁸ 36 C.F.R. 219.7(e)(1)(v)

⁵⁹ FSM 2310.5

⁶⁰ 36 C.F.R. 219.2(b)(1)

⁶¹ 16 U.S.C. 1604(i)

⁶² See Attachment B

required evaluation of the current travel management plan for consistency with the Revised Forest Plan and its desired conditions.⁶³

Remedy:

1. The HLCNF should either immediately produce documentation of its adverse effects analysis and determinations, or complete its analysis for how plan components for the Badger Two Medicine as well as mechanized travel affect the TCD and document its determination prior to signing the final Record of Decision for the Revised Forest Plan.
2. The HLCNF should subsequently make a consecutive plan and project decision⁶⁴ to address mechanized transport/travel as follows:
 - a. Add a non-suitability component to the Revised Forest Plan that reads“

03 Within the entire Badger Two Medicine Area, mechanized recreation or travel is not suitable except on FS roads and routes open to summer motorized travel under the 2009 Travel Management Plan. Exceptions may be made for administrative purpose or in emergencies involving public health and safety as determined on a case by case basis.
 - b. In concurrence with the final Record of Decision, issue a temporary closure order (see Forest Service Handbook 1920, 21.8) that reads:

The possession or use of a bicycle or other mechanized travel/transport (e.g. drones) within the Badger Two Medicine area of the Helena-Lewis and Clark National Forest is prohibited except on forest roads open to highway legal vehicles, developed recreation areas, and trailheads (36 CFR 261.55(c).

The order should stay in effect until travel plan amendments are completed as recommended next.
 - c. Provide a written commitment in the final Record of Decision that within 1 year the HLCNF will initiate a site-specific travel plan amendment process for the Badger Two Medicine to ensure travel plan consistency with the land management plan’s suitability direction.⁶⁵

Objection #4 – Monitoring questions and indicators for Badger Two Medicine

If in the event the Forest Service does not remedy Objection #3, as requested, then GTMA asks the Forest Service to adjust their monitoring questions and indicators for the Badger Two Medicine that were added to the final plan after the last comment period closed. Currently, Appendix B Table 17 lists only one monitoring question and one indicator for the Badger Two Medicine. However, compare this to the monitoring components for the Grandview Recreation Area (GVRA) – another site on the forest classified as primitive under the ROS yet left open to mountain bikes. The forest proposed two monitoring questions and two indicators for the GVRA.

The monitoring components for GVRA should be replicated for the Badger Two Medicine. The planning rule clearly explains the purpose of monitoring components:

“Monitoring questions and associated indicators must be designed to inform the management of resources on the Revised Forest Plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and

⁶³ 36 C.F.R. 219.15(e)

⁶⁴ See FSH 1909.12, Chapter 20, Sec. 21.8 for more explanation

⁶⁵ Flathead National Forest (Dec. 2018) Record of Decision for the Land Management Plan, p. 21

progress toward achieving or maintaining the Revised Forest Plan’s desired conditions or objectives.” (36 CFR 219.12).

The modifications suggested in the remedy will allow the USFS to better track changes in the social and ecological conditions that contribute to the primitive ROS desired conditions. The current monitoring question and indicator only tracks social conditions. Moreover, given the nearly non-existent mountain bike use in the Badger Two Medicine at present, this recommended change will allow the USFS to accumulate important baseline data by which the agency can evaluate management effectiveness or use to inform future decisions.

Similarly, the current indicator for the Badger Two Medicine should be reworded. The phrase “core area” is unclear. Nowhere does the forest plan identify a “core area” for the Badger Two Medicine. The whole area should be monitored, not just some undefined portion of it. Furthermore, as in the Grandview Recreation Area, the monitoring indicator should measure both social conflicts – to account for impacts on solitude – and resource damage. It should also monitor explicitly for conflicts between mountain bikes and wildlife in order to account for potential adverse effects on secure core habitat for grizzly bears. The suggested changes will improve monitoring of potential mountain bike impacts on the scenic integrity, natural vegetation, and ecological integrity that are hall marks of primitive settings. Suggested wording is provided in the remedy.

Remedy:

- Add a monitoring question under MON-BTM-01: “Are unauthorized trails created by mechanical means of transportation (mountain bike) present within the Badger Two Medicine?”
- Add an indicator under MON-BTM-01: “Number, mileage and extent of unauthorized trails created for mountain bike trails within the Badger Two Medicine.”
- Adjust the current indicator under MON-BTM-01 to read: “Number and kind of social conflict incidents, wildlife conflict incidents, and resource damage incidents reported in the Badger Two Medicine area.”

Objections to Forest-Wide Issues

Objection #5 – Mountain biking should not be identified as universally suitable in primitive Recreation Opportunity Spectrum settings

As reflected in our comments on the draft plan, the HLCNF was correct to classify certain “large, wild, and predominantly unmodified landscapes”⁶⁶ like the Badger Two Medicine as primitive even though such areas may not be recommended for wilderness designation. However, the HLCNF erred when it determined that mountain bikes would automatically be suitable in primitive settings outside of designated or recommended Wilderness. Such determination should be made on a site-specific, case-by-case basis rather than as a forest-wide plan component. The relative plan component reads:

Mechanized means of transportation and mechanized equipment are suitable on designated trails in desired primitive settings, unless prohibited by law, forest plan direction, or forest closure order. (FW-ROS-SUIT-02)

⁶⁶ FSM 2310

As noted previously, when setting this and other ROS plan components, the HLCNF relied on the National Recreation Opportunity Spectrum Mapping Protocol⁶⁷ which “provides guidance for not only how ROS settings are mapped but also what activities are appropriate in each ROS setting.”⁶⁸ The HLCNF further explains it included this plan component because “The 2020 Forest Plan would follow national direction and would allow all forms of nonmotorized recreation uses within Primitive ROS settings, including bicycles, unless specifically prohibited by Congressional law or forest closure order.”⁶⁹

However, the protocol the HLCNF cites as establishing a “national direction” to which it must adhere is not intended to set binding policy direction. Rather, “this protocol focuses on providing a product which informs existing conditions for the forest plan assessment phase of the three-phase planning framework,” and is only to be “used as a starting point for integrating with other resource values and deriving desired ROS settings.”⁷⁰

Nowhere in the protocol document does the Forest Service provide national policy direction that requires the HLCNF to automatically classify mountain biking as a suitable use within primitive ROS areas. Even assuming for a minute that the protocol does set a national policy direction (which it does not), it is not clear that the mapping protocol suggests allowing mountain bikes in primitive settings outside of wilderness as the national direction. The protocol explicitly mentions mountain bikes as a type of use in its description of semi-primitive nonmotorized settings.⁷¹ However, for primitive settings, the protocol states human locomotion simply as: “Travel on foot and horse, no motorized, no mechanized travel within designated wilderness.”⁷² If the protocol intended to set a national direction where mechanized travel was characteristic of primitive settings outside of wilderness, it could not have done so in a more opaque manner. But again, that was not its intent. And even if it was, this protocol has no binding legal authority and cannot supersede or limit the direction of the 2012 Planning Rule on Suitability determinations which clearly allows the HLCNF to reach a different conclusion.⁷³

Nor can the protocol supersede the direction provided for primitive settings in the Forest Service Manual. The FSM is clear that in primitive settings “motorized travel does not occur” whereas “mechanized travel and motorized equipment may occur in non-wilderness primitive settings” (emphasis added). Again, “may” is the operative word here, meaning such action is not required.

Thus the HLCNF erred when it claimed in the FEIS it had to follow the mapping protocol and declare mechanized use suitable in primitive settings outside of designated or recommended wilderness, including in the Badger Two Medicine.⁷⁴ The HLCNF can and should make this

⁶⁷ Nicole R. Hill. National Recreation Opportunity Spectrum (ROS) Inventory Mapping Protocol, Enterprise Program, Washington Office, USDA Forest Service, August 2019 (1st revision)

⁶⁸ FEIS, Chap. 3, Vol. 2, p. 5, emphasis added

⁶⁹ FEIS, Chapter 3, Part 2, p. 5; the Forest repeats this claim in Appendix G when it states “In accordance with this national protocol, mechanized means of transportation are suitable in all ROS settings, unless those areas are specifically closed due to legislative action, such as congressionally designated wilderness, or by closure order at the Forest or District levels” (p. 96).

⁷⁰ Nicole R. Hill. National Recreation Opportunity Spectrum (ROS) Inventory Mapping Protocol, Enterprise Program, Washington Office, USDA Forest Service, August 2019 (1st revision), p. 1, emphasis added.

⁷¹ Ibid, p. 52. In describing the six different settings of the Recreation Opportunity Spectrum, the Revised Forest Plan clearly describes bikes as a characteristic presence in semi-primitive nonmotorized settings, but makes no mention of such use in primitive settings (p. 230).

⁷² Ibid, p. 51, emphasis added.

⁷³ 36 C.F.R. (219.7(e)(1)(v))

⁷⁴ FW-ROS-SUIT-02

determination on a place-by-place basis. Ironically, the HLCNF acknowledges as much in the suitability components for ROS, which state that “forest plan direction, or forest closure order” can be used to limit mechanized uses in primitive ROS outside of wilderness.⁷⁵ The Badger Two Medicine is one of the places where forest plan direction should determine the suitability of mountain biking in a primitive ROS setting.

Remedy:

- The discussion of the ROS and travel planning in the DROD and FEIS should be corrected to clarify that neither national direction nor past HLCNF travel planning decisions compel a determination that mountain biking is a suitable use in all primitive ROS settings outside of designated wilderness.
- Remove FW-ROS-SUIT-02 from the final plan.
- As in Objection #3, the Revised Forest Plan should clearly identify that mechanized transport is non-suitable in the Badger Two Medicine area.
- Except for the Badger Two Medicine, ALL primitive ROS settings not recommended for wilderness should neither be identified as suitable nor not suitable for mechanized transport. Rather, the Revised Forest Plan and ROD should commit the Forest Service to undertake separate planning processes within three years to decide whether a particular area should be open or closed to mountain biking.

Objection #6 – The HLCNF recommended too little Wilderness in Alt. F, which fails to provide sufficient secure habitat to promote connectivity of grizzly

In our comments on the draft plan and DEIS, GTMA encouraged the HLCNF to select Alternative D because it identified the greatest number of areas—sixteen--and total acres—474,589—that would be recommended as wilderness. Selecting Alternative D was critical to protect the wilderness characteristics identified in the Wilderness inventory and evaluation. Furthermore, GTMA urged the selection of Alternative D because the number and size of the recommended wilderness areas identified in Alternative D in the island ranges south and east of Helena are necessary to provide grizzly bears secure habitat in an area of the HLC National Forest that does not otherwise contain ample suitable or low-conflict habitat. The protections provided by recommended wilderness would help to limit human-bear conflicts and to facilitate connectivity via the dispersal of bears between the Northern Continental Divide Ecosystem (NCDE) and Greater Yellowstone Ecosystem necessary to recover the species.

The FEIS notes the importance of RWAs to achieving connectivity:

The combined effect of designated wilderness, WSAs, IRAs, and RWAs would be to maintain those acreages as already secure habitat and **increase potential long-term security in areas designated as RWAs.** (FEIS 3-341, emphasis added)

The Forest Service is required under the 2012 Planning Rule (and other authorities) to promote the recovery of threatened and endangered species like grizzly bears. Recommended wilderness – with its management direction to maintain wilderness character – is the best way to ensure secure habitat for grizzly bears. It is well documented in the FEIS and scientific literature that roads and motorized access are one of the leading causes of grizzly bear mortality by humans as well as an obstacle to their movement. Greater recommended wilderness would reduce mortality and promote connectivity.

⁷⁵ FW-ROS-SUIT-02

The recommendations for wilderness identified in Alt. D of the Draft Plan are further critical to promoting connectivity because the Revised Forest Plan lacks components that would protect grizzly bear habitat or prevent conflicts between grizzly bears, livestock, and people in the Big Belts, Divide, Elkhorns, Little Belts, Crazies, Snowies, Castles, or Highwoods Geographic Areas (these correspond with Zone 2 and Zone 3 in the NCDE Grizzly Bear Conservation Strategy/Habitat Management Direction that was incorporated into the plan). The plan does not appear to even include a food/attractant storage order that applies to national forest lands in Zone 3 as the plan components related to food storage only apply to the Primary Conservation Area, Zone 1 and Zone 2.⁷⁶

However, despite the obligation to promote connectivity, the HLCNF chose instead to recommend only seven areas totaling 153,325 acres as wilderness. This is a whopping 46% less acres than in the Proposed Action (2016), and a stark 33% reduction from Alternatives B & C in the DEIS – which were developed to provide the greatest mix of timber production, motorized recreation, nonmotorized recreation and recommended wilderness preservation. Particularly unsettling, the HLCNF did away with almost all recommended wilderness designations in Zone 2 and Zone 3, the Geographic Areas of the forest where such designations are most critical to dispersing grizzly bears. This changes includes either total elimination of all recommended wilderness areas or steep reductions in the number and acreage in several plan Geographic Areas, including the Big Belts, Little Belts, Castles, Crazies, Snowies, and Divide. Expanding the number and size of recommended wilderness areas is critical to protect wilderness characteristics currently present on the forest, to provide opportunities for quiet recreation, and to protect wildlife habitat – especially secure habitat for grizzly bears.

Remedy:

- The HLCNF should include the entire forest in its food/attractant storage order (i.e. add Zone 3 to the current NCDE PCAZ1Z2 Plan Components)
- GTMA endorses the recommended wilderness designations in the objection filed by the Montana Wilderness Association.
- GTMA endorses the additional recommended wilderness designations in the objection filed by the Sierra Club.

Request to be an Interested Party

In addition to our objections identified in this letter, GTMA would like to be included as an “Interested Party” to any objections that affect the Badger Two Medicine special emphasis area whatsoever. At the forest wide scale, GTMA requests to be included as an “Interested Party” to any objection pertaining to Wilderness—either recommendations, Study Areas, or management—to grizzly bears, or to Wild and Scenic eligibility. In both cases, objections could be forest-wide, geographic area, special emphasis area or specific plan components that affect the resources of interest.

Closing Remarks

In closing, GTMA thanks the forest plan revision team for its hard work on this process. The team should be commended for its willingness throughout this years-long process to always

⁷⁶ see PCAZ1Z2-NCDE-STD 01 in the Revised Forest Plan

answer our questions or engage in conversation on aspects of the Revised Forest Plan in a friendly and professional manner.

Thank you for the opportunity to submit this objection. Please let me know if you have any questions or need additional information. GTMA looks forward to working with you to resolve our objections and produce a truly-sound land management plan for the publicly-important forestlands of the Helena-Lewis and Clark National Forest. Thank you for your time.

Sincerely,

A handwritten signature in blue ink that reads "Peter Metcalf". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Peter Metcalf
Executive Director
Glacier-Two Medicine Alliance
PO Box 181
East Glacier Park, MT 59434
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peter@glaciertwomedicine.org



Peter Metcalf <peter@gtma-mt.org>

Follow-up to today's call re: TCD

6 messages

Peter Metcalf <peter@glaciertwomedicine.org>
To: arian.randall@usda.gov, deb.entwistle@usda.gov

Mon, Jun 1, 2020 at 5:15 PM

Dear Deb and Arian,

Thank you so much for taking the time to talk with me and explain decisions that were made regarding aspects of the recently released forest plan. Obviously, my main concern is the removal of Badger Two Medicine Standard 2 (RM-BTM-STD 2) which says the management within the BTM "shall not pose adverse effects to the Badger Two Medicine Traditional Cultural District." I want to be sure I understand the forest's rationale for its removal correctly since no explanation was in the FEIS. This is what I captured in my notes from today's call Could you confirm if I understood the rationale for its removal correctly? Thanks!

Under the 2012 planning rule, forest plans focus on Desired Conditions. Any action the forest undertakes are thus intended to move the forest toward the Desired Conditions. Other plan components, like Standards and Guidelines are intended to help guide future forest projects and decisions toward achieving Desired Conditions. When compared to 1980s era plans, plans promulgated under the 2012 rule generally have fewer Standards. This change is by design in order to provide the Forest Service greater flexibility in how it will achieve Desired Conditions in the face of an uncertain future. Furthermore, the 2012 planning rule states that plan components shouldn't simply repeat law, regulation or policy. The planning team, in consultation with the forest supervisor and the regional office, determined Standard 2 simply repeats law, regulation and policy, in this case procedural requirements under Sec. 106 of the National Historic Preservation Act. At the project level, the FS is already required under Sec. 106 to consult with the Blackfeet about possible adverse effects of a proposed undertaking on the TCD and then to determine how to limit those effects. Standard 2 simply repeated this requirement and was therefore removed. Another concern was that the inclusion of Standard 2 could conceivably make it more difficult for the FS to respond to unforeseen circumstances in a manner the forest deemed best, such as a situation involving life and safety. This could be due to additional consultation steps the inclusion of the Standard might necessitate or because the Standard's language "shall pose no adverse effects" could limit what action the forest service could undertake as potential to mitigate adverse effects would be curtailed. The regional office didn't want the forest to pin itself in a corner and so directed Standard 2 be removed. However, the decision to remove Standard 2, and the rationale for the change from the Draft Plan to the Final Plan, were accidentally not documented in the FEIS. This will be corrected after the objections process along with any other such clerical errors identified as well as any changes that come through the objections process.

Did I miss anything?

Finally, I have a quick question regarding the scenario for addressing mountain bikes that we discussed. If I understood you correctly, Bill Avey suggested an effective way for the Blackfeet to address mountain bikes would be to wait until after the plan is finalized and then address bikes and compatibility with the TCD as a site specific project. Do you have an example of what this would look like? Wouldn't this require some sort of discrete agency action to trigger consultation about adverse effects? Would there need to be a trail project proposed, for example? Or is there a way for the Supervisor to simply direct the closure of the area? Would this option be available to citizen groups like ours or only to Tribal Nations on a government-to-government basis?

I can't thank you enough for wading through this with me and helping me to understand some of the nuances of forest planning as I try to decide what is the best way to proceed (e.g. object or not) without wasting anyone's time. Thanks again!

Sincerely,

Peter

--

Peter Metcalf
Executive Director
Glacier-Two Medicine Alliance

PO Box 181
East Glacier Park, MT 59434
peter@glaciertwomedicine.org
Phone: (406) 531 - 5098
<http://www.GlacierTwoMedicine.org>

"Glacier-Two Medicine Alliance is dedicated to the protection, stewardship, and shared enjoyment of the culturally- and ecologically-irreplaceable wild lands of the Badger-Two Medicine and its interconnected ecosystems."

Peter Metcalf <peter@glaciertwomedicine.org>
To: Deborah.entwistle@usda.gov, arian.randall@usda.gov

Mon, Jun 1, 2020 at 5:22 PM

Sorry Arian for the double email; I misentered Deb's address. Please see original message below. Thanks! - Peter
[Quoted text hidden]

Entwistle, Deborah C -FS <deborah.entwistle@usda.gov>
To: Peter Metcalf <peter@glaciertwomedicine.org>, "Randall, Arian -FS" <arian.randall@usda.gov>
Cc: "Smith, Elizabeth - FS" <elizabeth.smith1@usda.gov>

Tue, Jun 2, 2020 at 8:25 AM

Hello Peter, I think your summary is accurate from our discussion today, thank you for sharing it.

As to your question, I think there would be multiple different paths to getting to a site specific mtn bike closure in the Badger Two Medicine. The details are not available yet, but yes I think there would be possibility for the Glacier Two Medicine Alliance to be involved. I do not have any examples of similar projects at this time.

Thanks again, Deb



Deborah Entwistle
Forest Plan Revision Team Leader

Forest Service

**Helena - Lewis & Clark National
Forest**

p: 406-495-3774
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BLACKFEET NATION

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Roland Kennerly, Jr

February 20, 2020

Mr. Bill Avey, Supervisor
Helena-Lewis and Clark National Forest
2880 Skyway Drive
Helena, MT 59602

Dear Mr. Avey:

We write today to emphasize the Blackfeet Nation's position that mechanized uses are not compatible with the Blackfeet cultural values in the Badger Two Medicine area. Since time immemorial, the Badger Two Medicine area has been central to our people's cultural identity and religious practices. In fact, in 2002, a portion of the Badger Two Medicine was identified as eligible for designation as a Traditional Cultural District (TCD) under the National Historic Preservation Act. Subsequently, in 2004, the TCD boundary was expanded and now encompasses 165,588 acres. These expansions were the result of ethnographic studies that further documented past and present Blackfeet cultural practices in the Badger Two Medicine.

Recognition of the area's profound cultural significance has resulted in many measures to protect Blackfeet and community values in the area, including: the voluntary relinquishment of the majority of the oil and gas leases in the area, with the remainder cancelled by the Department of the Interior; permanent prohibition of any new federal energy leases; administrative prohibition of motorized uses; and special area consideration under the ongoing planning process. Since 2009, the Badger Two Medicine travel plan has prohibited motorized travel. However, mechanized use was permitted to continue under the plan. The issue of mountain bikes and other mechanized travel was largely overlooked at the time due to the almost non-existence of mountain bike use in the Badger Two Medicine. However, mechanized use has grown dramatically on other National Forest lands in our region as has our awareness of the potential impacts to Blackfeet sacred sites, cultural practices, land, water and wildlife.

Therefore our position, articulated on numerous occasions, is that compliance with the TCD requires that access to the area be limited to traditional modes of transportation. These include both foot and stock (e.g. horses and mules). Blackfeet tribal members practicing traditional culture and ceremony in

this region expect public foot and stock traffic; we do not, however, expect mountain bikes, e-bikes, drones and other mechanized intrusions.

The Blackfeet Nation has long labored under a cloud of uncertainty, due to illegal oil/gas leases issued by the federal government in our Badger Two Medicine homelands. We are nearing the end of that era and hope to soon retire the last of those leases. In order to end the threat of future uncertainty, we have a vision for permanent protection for the Badger Two Medicine that we intend to pursue.

You and your planning staff have a unique opportunity in this window of time to defend against future uncertainty in transportation technology, and to protect against incompatible incursions, by excluding mechanized uses from the Badger Two Medicine.

We do not know what the future will bring, but if the past is any guide, we can certainly expect increasing use by a growing number of user groups who rely on ever more intrusive technology. Drones multi-gearred machines, e-bikes and other equipment come to mind, none of which are consistent with the values recognized by and protected under the Traditional Cultural District (TCD) designation.

Academic and ethnographic studies have demonstrated clearly the impact of "industrial strength" recreation and tourism on Blackfeet cultural practices. The seasonal crowds that visit and recreate in Glacier National Park--immediately adjacent to the Badger Two Medicine--have areas and sites that have become unresponsive to Blackfeet cultural practices, or in other words "have become sterile". This simply should not be allowed to happen in the Badger Two Medicine.

There are many places on the Helena-Lewis and Clark National Forest, and through out Montana, where mechanized uses are allowed. In other words, these recreationists have options. The Blackfeet do not. The Badger Two Medicine is our last cultural refuge; we cannot move our homeland anywhere else.

We respectfully request that you act immediately in your capacity as the Forest Supervisor to prohibit mechanized use in the Badger Two Medicine through the forest revision plan process. These protections are critical for the current and future cultural integrity of the region, and for the living Blackfeet cultural practices of today.

We expect these and other matters will be central to our required government-to-government consultations as your planning process proceeds.

Sincerely yours, and thank you for your consideration,



Timothy Davis, Chairman
Blackfeet Tribal Business Council

PIKUNI TRADITIONALISTS ASSOCIATION

P.O. Box 1111

Browning, Montana 59417

February 23, 2020

Mr. Bill Avey, Supervisor
Helena-Lewis and Clark National Forest
2880 Skyway Dr.
Helena, MT 59602

Dear Mr. Avey:

We, The Pikuni Traditionalists Association, are respectfully submitting this correspondence to the U.S. Forest Service to state our opposition to mechanized uses in the Badger-Two Medicine: mainly, mountain bikes, e-bikes and cargo bikes. The Pikuni (Blackfeet) have been using the Badger-Two Medicine area for over 10,000 years. We know this scientifically from the ongoing research findings by the University of Arizona, and our own oral histories. In addition, we have modern ethnographies of the Badger-Two Medicine. Plus, we know when the other federally recognized tribes migrated into Montana, according to their own histories. Pikuni (Blackfeet) are the only Indians indigenous to this area. With that in mind, the Badger-Two Medicine going into the ownership of the U.S. Government 124 years ago is only the very recent past. Even more recently, in 1978, the Indian Religious Freedom Act was passed allowing us the freedom to practice what we have been doing for thousands of years: a spirituality as opposed to a religion. A little over 165 years ago, the greater part of Montana was still considered Aboriginal Blackfeet Territory. We sympathize with and understand the feelings of the mountain bike riders when they lose a certain amount of trails. Indeed, we Blackfeet have lost much in these past 165 years. Historic Trails in the Badger-Two Medicine, over time, were not mountain bike trails. They were Blackfeet trails.

We, The Pikuni Traditionalists Association, are of the firm belief that allowing mechanized uses, such as mountain bikes, e-bikes and cargo bikes, on the Historic Trails in the Badger-Two Medicine would be an "adverse effect," as per the National Historic Preservation Act implementing regulations, 36 CFR 800. (a) (1), (a) (2, i), (2, iv), (2.v). Considering, the Badger-Two Medicine was declared a Traditional Cultural District (TCD) by the Keeper of the National Register of Historic Places, authorized by the NHPA, 1966.

One of the concepts recently illustrated by our attorney to the three-Judge panel at the U.S. Court of Appeals, DC Circuit, in the Solenex lawsuit regarding the Badger-Two Medicine, he conveyed the situation facing the Blackfeet of having no alternative to the Badger-Two Medicine. We cannot move our homeland. The situation is different for mountain bike riders. They can occupy trails in other places without losing integrity to their recreation. Also, these machines make possible fast day-trips deep into the heart of the Badger-Two Medicine, into places that currently are accessible only by people

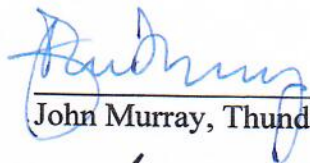
willing to travel overnight on multi-day horse or pack trips. This easy-access day-tripping will fundamentally change and degrade the way Blackfeet use and enjoy the Badger-Two Medicine backcountry, including our traditional practices and ceremonies that are protected under the TCD.

The Traditional Knowledge System of the Blackfeet is wholly intact, though in a fragile condition. In fact, a meeting was held in Toronto, Canada, a few months ago, where certain foundations have identified five (5) indigenous cultures around the world that are still surviving relatively undiminished. Blackfeet is one of those five (5) cultures, and the only one located in North America. It is from this worldview that Buster Yellow Kidney initially disagreed with the Lewis & Clark Forest Supervisor, Dale Gorman, in the 1980's, when Mr. Gorman politely said, 'Just tell us where your sacred sites are located and we'll protect them by building fences around them, and open the rest for oil & gas exploration.' Later in the conversation, Buster said to Mr. Gorman, "How would you feel if I drove a bulldozer through your church?" Those days are a few decades in the past and we have learned to (somewhat) better articulate our position. However, that discussion highlighted the disputes and misunderstandings of opposing cultures.

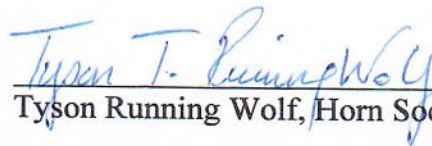
If we, The Pikuni Traditionalists Association, are asked to specifically identify the impacts mechanized uses (bikes) in the Badger-Two Medicine would have on our traditional practices, in specific sites and in specific instances, we can release parts of our Traditional Knowledge System through story without violating the actual tenets of our ways. This would have to be done orally in conjunction with a ceremony, and face-to-face meeting with no recordings. However, it brings us right back to the initial Gorman/Yellow Kidney discussion. If we were to talk about the Old Testament where Joshua led the Hebrews across the River Jordan (the foundation of three (3) world religions), we are still back to where Gorman and Yellow Kidney began this long dispute -- but it could bring some understanding about sacred sites. More generally, though, it is enough to say that the impacts of bicycles would be detrimental to our ongoing cultural practices due not only to the type and speed of recreation but also the access these machines provide for numerous day-trip riders deep into the heart of our homeland.

It has been said by many historians, trappers and adventurers, the Blackfeet are the most dangerous and feared people of the Plains. It was only because of our willingness to defend our land. A charge given to us by our Creator from some of our origin stories. However, we feel that in keeping with our traditions, we would be willing to meet the affected bike organizations to explain the profound importance of our position. It is imperative that they know and understand our views of the Badger-Two Medicine, and equally important that we know and understand their commitment to ride their bicycles in the Badger-Two Medicine. We, The Pikuni Traditionalists Association, hold that we have a paramount right to sustain the Traditional Cultural District (TCD) at the quality and state of being suitable to maintaining and enhancing the living Blackfeet Culture for today and into the future. For these reasons, we request that you use your authority to prohibit mechanized uses in the Badger-Two Medicine, where such uses are clearly in violation of traditional use, practice and access.

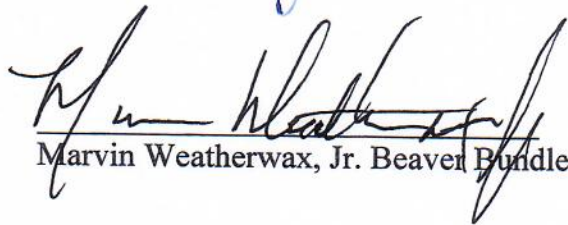
Sincerely,



John Murray, Thunder Medicine Pipe



Tyson Running Wolf, Horn Society



Marvin Weatherwax, Jr. Beaver Bundle



Darrell Hall, Brave Dog Society



Peter Metcalf <peter@gtma-mt.org>

Adverse Effects and Sec. 106

Randall, Arian -FS <arian.randall@usda.gov>

Mon, Jul 6, 2020 at 12:43 PM

To: Peter Metcalf <peter@glaciertwomedicine.org>

Cc: "Entwistle, Deborah C -FS" <deborah.entwistle@usda.gov>, "Bodily, Mark -FS" <mark.bodily@usda.gov>

Hi Peter,

The Forest did do NHPA Section 106 on the Badger Two Medicine Travel Plan which resulted in a No Effect to the Traditional Cultural District or other cultural resources in the project area. However, the Travel Plan was just about leaving trails opened or closed to motorized use and the decision was that all trails in the Badger-Two Medicine were closed to motorized use. Addressing bikes specifically was not part of the Travel Plan at that time. I attached our final consultation letters between us and the Blackfeet about this decision and meeting notes about the decision.

Since travel planning is not part of the Forest Plan and if it is now determined that mountain bikes are not wanted in the Badger Two Medicine, then a separate NEPA analysis and decision would be done and at that point NHPA Section 106 would be initiated to determine the effects of mountain bike use to the Badger Two Medicine Traditional Cultural District.

Hopefully this information helps.

Thanks,



Arian Randall, M.S.
Deputy Forest Archaeologist

Forest Service

Helena-Lewis & Clark National Forest

p: 406-495-3752
arian.randall@usda.gov

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Helena, MT 59602
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Caring for the land and serving people

From: Entwistle, Deborah C -FS <deborah.entwistle@usda.gov>
Sent: Thursday, July 2, 2020 2:28 PM
To: Randall, Arian -FS <arian.randall@usda.gov>; Bodily, Mark -FS <mark.bodily@usda.gov>
Subject: FW: Adverse Effects and Sec. 106

Hi! Can either of you answer this question?



Deborah Entwistle
Forest Plan Revision Team Leader

Forest Service

**Helena - Lewis & Clark National
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**Caring for the land and serving
people**

From: Peter Metcalf <peter@glaciertwomedicine.org>
Sent: Thursday, July 2, 2020 2:25 PM
To: Entwistle, Deborah C -FS <deborah.entwistle@usda.gov>
Subject: Adverse Effects and Sec. 106

Hi Deb,

[Quoted text hidden]

[Quoted text hidden]

2 attachments



R2009011500026_Consultation Letters for Travel Plan.pdf
155K



March16 2009 Meeting Notes on B2M Travel Plan.pdf

129K



EXECUTIVE COMMITTEE
Timothy Davis, Chairman
Ilf "Scott" Kipp, Vice-Chairman
Stacey Keller, Secretary
Tinsuwella Bird Rattler, Treasurer

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Roland Kennerly, Jr.

RESOLUTION

Endorsing Legislation Permanently Protecting the Badger Two Medicine from Oil and Gas Industrialization

Resolution No. 190-2020

- WHEREAS,** The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and
- WHEREAS,** The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources of the Blackfeet Indian Reservation, and
- WHEREAS,** The enumerated powers of the Blackfeet Tribal Business Council contained in Articles IV, section 1(a) of the Constitution include negotiations with the federal, state and local governments on behalf of the tribe and to advise and consult with representatives of the Interior Department on all activities of the Department that affect the Blackfeet Tribe, and
- WHEREAS,** The Blackfeet Tribal Business Council is desirous of permanently protecting The Badger Two Medicine, and
- WHEREAS,** The Blackfeet people have been in opposition to oil & gas development in the Badger Two Medicine since the early 1980's when the area was opened for industrial development, and
- WHEREAS,** The Blackfeet have been vigilant in safeguarding the Badger-Two Medicine, including its natural, cultural, and religious significance to the Blackfeet People as well as our Treaty Rights therein, and
- WHEREAS,** The Blackfeet Tribe has taken many steps to protect the Badger-Two Medicine including longstanding and steadfast opposition to oil and gas development, and support for the designation of the entire area as a Traditional Cultural District under the National Historic Preservation Act, and

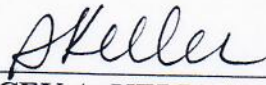
WHEREAS, The Blackfeet Tribe believes that if left unprotected, the Badger-Two Medicine and its life giving waters remain threatened by industrial development and exploitation that would significantly and negatively affect the cultural and religious properties and the Treaty Rights of the Blackfeet Nation, and

WHEREAS, The Blackfeet Tribe remains committed to ensuring that the Blackfeet People's interests in the Badger-Two Medicine are fully heard and represented and that the cultural, religious and other rights of the Blackfeet Tribe are fully and permanently protected, now

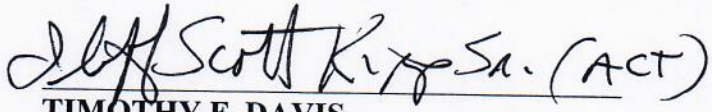
THEREFORE BE IT RESOLVED:

1. The Blackfeet Tribal Business Council fully endorses the attached draft legislation proposal that permanently protects the Badger Two Medicine and the interests of the Blackfeet people, and requests that the Montana Congressional Delegation and their colleagues advance and enact this legislation as soon as possible.
2. That the Chairman or Vice-Chairman in the Chairman's absence and the Secretary are hereby authorized to sign this Resolution and any other documents as may be necessary to effectuate the purposes of this Resolution.

ATTEST:


STACEY A. KELLER
Secretary

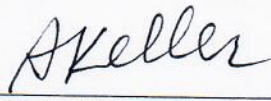
**THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION**


TIMOTHY F. DAVIS
Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called, noticed and convened Special session, assembled the 20th day of April, 2020, with six (6) members present to constitute a quorum and with a vote of Six (6) members FOR Zero (0) OPPOSED and Zero (0) ABSTAINING.

(SEAL)


STACEY A. KELLER, Secretary
Blackfeet Tribal Business Council

BADGER-TWO MEDICINE PROTECTION ACT

SEC. 1. SHORT TITLE.

This Act may be cited as the “Badger-Two Medicine Protection Act”.

SEC. 2. DEFINITIONS.

In this Act:

- (1) CULTURAL HERITAGE AREA—The term “Cultural Heritage Area” means the Badger-Two Medicine Cultural Heritage Area established by section 5(a).
- (2) EXISTING USE—The term “existing use” means a use that is occurring within the Cultural Heritage Area as of the date of enactment of this Act.
- (3) MANAGEMENT PLAN.—The term “management plan” means the management plan for the Cultural Heritage Area required by section 5(d)(1).
- (3) MAP—The term “map” means the map entitled ____ and dated ____.
- (4) NATIVE KNOWLEDGE.—The term “Native knowledge” has the meaning given the term in 36 C.F.R. 219.19 (as in effect on the date of enactment of this Act).
- (5) NEW USE—
 - (A) IN GENERAL—The term “new use” means—
 - (i) a use that involves surface disturbance and is not occurring within the Cultural Heritage Area as of the date of enactment of this Act; or
 - (ii) an existing use that is being modified so as to create a surface disturbance or to significantly expand or alter impacts on the land, water, air, fish, wildlife, or cultural resources of the Cultural Heritage Area.
 - (B) EXCLUSION—The term “new use” does not include a use that is—
 - (i) determined by the Secretary not to, individually or cumulatively, have a significant effect on the human environment;
 - (ii) necessary to maintain a road, trail, structure, or facility within the Cultural Heritage Area in existence as of the date of enactment of this Act; or
 - (iii) carried out to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (6) SECRETARY—The term “Secretary” means the Secretary of Agriculture.
- (7) STATE—The term “State” means the State of Montana.
- (8) TRIBAL BUSINESS COUNCIL.—The term “Tribal Business Council” means the Blackfeet Tribal Business Council.
- (9) TRIBE—The term “Tribe” means the Blackfeet Nation.

SEC.3. FINDINGS.

The Congress finds that:

- (1) the Badger-Two Medicine is sacred land, a living cultural landscape, a hunting ground, a refuge, a wildlife sanctuary, a place of refuge for wild nature, and an important part of both tribal and non-tribal community values;
- (2) the Badger-Two Medicine is a stronghold for wild nature, isolated from and unmarred by development, where natural processes continue to function, and relatively uncommon plant and animal communities continue to exist;

- (3) the Blackfeet Nation have been present in the Badger-Two Medicine area for time immemorial, utilizing its plant, mineral, and animal resources and landforms for sustenance as well as cultural, medicinal, and ceremonial activities, purposes for which the Blackfeet people continue to use the area today;
- (4) tribal and non-tribal people have utilized the Badger-Two Medicine for multiple generations for hunting, fishing, camping, horse packing and wilderness solitude, purposes for which the community continues to use the area today;
- (5) the Badger-Two Medicine contains several important headwater streams of the Missouri River basin, which provide critical clean water for ecological, agricultural and domestic purposes, as well as abundant fish and wildlife, spectacular natural scenery, and outstanding recreational opportunities;
- (6) the Badger-Two Medicine provides important ecological connectivity to Glacier National Park and the Bob Marshall Wilderness Complex, the Blackfeet Indian Reservation, and other public lands;
- (7) through treaties and agreements with the Federal government, the Blackfeet Nation retains rights to conduct various activities within the Badger-Two Medicine region;
- (8) the establishment of the Badger-Two Medicine Cultural Heritage Area is vital to the continuation and revitalization of the Blackfeet culture, while continuing to serve the heritage of the broader public as a place of recreation, traditional use, and sanctuary.

SEC. 4. PURPOSES.

The purposes of this Act are—

- (1) to protect the cultural, ecological, scenic, and recreational resources of the Badger-Two Medicine area for the benefit, use, and enjoyment of present and future generations;
- (2) to permanently protect the cultural values, attributes, and integrity of the Badger-Two Medicine Traditional Cultural District;
- (3) to protect the ability of the Blackfeet Nation to exercise their treaty rights and to enhance the opportunity for the Blackfeet people to continue to use the Badger-Two Medicine area, as they have since time immemorial;
- (4) to protect the ability of tribal and non-tribal people to use the area for traditional activities, including hunting, fishing, hiking, horse packing, and camping, as they have for generations;
- (5) to protect and enhance the ecological integrity of the Badger-Two Medicine, including fish and wildlife habitat, and to ensure that the area continues to serve as an ecological corridor connecting adjacent lands;
- (6) to maintain the water quality and free flowing character of the rivers and streams within the Badger-Two Medicine area; and
- (7) to establish a management framework for the Badger-Two Medicine area that recognizes the Blackfeet Nation's treaty rights and historical and contemporary connection to the natural and cultural world of the area.

SEC. 5. BADGER-TWO MEDICINE CULTURAL HERITAGE AREA.

(a) ESTABLISHMENT.—Subject to valid existing rights, there is established the Badger-Two Medicine Cultural Heritage Area in the State.

(b) AREA INCLUDED.—The Cultural Heritage Area shall consist of approximately ____ acres of Federal land managed by the Forest Service as generally depicted on the map.

(c) PURPOSES.—The purposes of the Cultural Heritage Area are to—

- (1) preserve for the benefit and enjoyment of present and future generations the cultural, ecological, scenic, and recreational values of the area; and
 - (2) enable the Blackfeet people to continue to undertake traditional cultural practices in the area.
- (d) **MANAGEMENT PLAN.**—
- (1) **IN GENERAL.**—Not later than 3 years after the date of enactment of this Act and in accordance with paragraph (2), the Secretary shall develop as an amendment to the land and resource management plan for the Helena-Lewis and Clark National Forest a comprehensive plan for the long-term protection and management of the Cultural Heritage Area.
 - (2) **REQUIREMENTS.**—In developing the management plan, the Secretary shall—
 - (A) consult with—
 - (i) appropriate State, tribal, and local governmental entities;
 - (ii) the Tribe;
 - (iii) the Badger-Two Medicine Advisory Council established by section 7(a); and
 - (iv) members of the public.
 - (B) at the request of the Tribe, include the Tribe as a cooperating agency in the development of the management plan;
 - (C) incorporate Native knowledge into the management plan to the maximum extent practicable;
 - (D) include public education and interpretation regarding the cultural significance of the Badger-Two Medicine region to the Blackfeet Nation as well as traditional uses and place names within the region; and
 - (E) provide for recreational opportunities to occur within the Cultural Heritage Area, including hiking, fishing, hunting, horseback riding, and camping.
 - (3) **INCORPORATION OF EXISTING PLAN.**—In developing the management plan, to the extent consistent with this section, the Secretary may incorporate any provision of the land and resource management plan for the Helena-Lewis and Clark National Forest.
- (e) **MANAGEMENT.**
- (1) **IN GENERAL.**—The Secretary shall manage the Cultural Heritage Area—
 - (A) in a manner that conserves, protects, and enhances the resources of the Cultural Heritage Area; and
 - (B) in accordance with—
 - (i) the laws (including regulations) and rules applicable to the National Forest System;
 - (ii) this Act; and
 - (iii) any other applicable law (including regulations).
 - (2) **USES.**—The Secretary shall only allow such uses of the Cultural Heritage Area that the Secretary determines, in consultation with the Tribe, would further the purposes described in subsection (c).
- (f) **PROHIBITIONS.**—Subject to valid existing rights, the following activities shall be prohibited on National Forest System land within the Cultural Heritage Area:
- (1) Construction of new or temporary roads, except temporary roads necessary to protect public health and safety.
 - (2) The use of motorized or mechanized vehicles, except for administrative purposes, or to respond to an emergency.
 - (3) Commercial timber harvest.

- (4) Construction of permanent structures, except as necessary to meet minimum requirements for the administration of the cultural heritage area (including grazing management).
- (g) **VEGETATION MANAGEMENT.**—Nothing in this section prevents the Secretary from conducting non-commercial vegetation management projects within the Cultural Heritage Area—
- (1) subject to—
 - (A) such reasonable regulations, policies, and practices as the Secretary determines appropriate; and
 - (B) all applicable laws (including regulations); and
 - (2) in a manner consistent with the purposes described in subsection (c).
- (h) **GRAZING.**—The Secretary shall permit grazing within the Cultural Heritage Area, if established on the date of enactment of this Act—
- (1) subject to—
 - (A) such reasonable regulations, policies, and practices as the Secretary determines appropriate; and
 - (B) all applicable laws; and
 - (2) in a manner consistent with the purposes described in subsection (c).
- (i) **WILDFIRE.**—Wildfire suppression within the Cultural Heritage Area shall be conducted—
- (1) in a manner consistent with the purposes of the Cultural Heritage Area, as described in subsection (c); and
 - (2) using such means as the Secretary determines to be appropriate.
- (j) **NATIVE AMERICAN CULTURAL AND RELIGIOUS USES.**—
- (1) **IN GENERAL.**—Nothing in this section diminishes any tribal rights regarding access to the Cultural Heritage Area for tribal activities, including spiritual, cultural, and traditional food-gathering activities.
 - (2) **NATIVE AMERICAN USES AND INTERESTS.**—
 - (A) **ACCESS AND USE.**—In accordance with applicable law, the Secretary shall ensure access to the Cultural Heritage Area by members of the Tribe for traditional cultural purposes.
 - (B) **TEMPORARY CLOSURE.**—In implementing this subparagraph (A), the Secretary, upon the request of the Tribe, may temporarily close to the general public use of one or more specific portions of the Cultural Heritage Area in order to protect the privacy of traditional cultural activities in such areas by members of the Tribe. Any such closure shall be made to affect the smallest practicable area for the minimum period of time necessary for such purposes. Such access shall be consistent with the purpose and intent of Public Law 95–341 (42 U.S.C. 1996), commonly referred to as the American Indian Religious Freedom Act and other applicable law.
- (k) **ADJACENT MANAGEMENT.**—
- (1) **IN GENERAL.**—The designation of the Cultural Heritage Area shall not create a protective perimeter or buffer zone around the Cultural Heritage Area.
 - (2) **EFFECT.**—The fact that activities or uses can be seen or heard from areas within the Cultural Heritage Area shall not preclude the conduct of the activities or uses outside the boundary of the Cultural Heritage Area.
- (l) **LAW ENFORCEMENT.**—The Secretary, in coordination with the Tribe, shall ensure adequate law enforcement presence to maintain the integrity of the Cultural Heritage Area.

(m) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the Tribe to further the protection, management, or public interpretation of the Cultural Heritage Area.

(n) WATER RESOURCE FACILITIES.—

(1) DEFINITIONS.—In this subsection:

(A) RESERVATION.—The term “reservation” means the Blackfeet Indian Reservation, located in the State.

(B) WATER RESOURCE FACILITY.—the term “water resource facility” means dams, irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures.

(2) PROHIBITION ON NEW WATER RESOURCE FACILITIES.—After the date of the enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the Cultural Heritage Area.

(3) EFFECT.—Nothing in this subsection prevents the development, maintenance, or operation of any water resource facility located on—

(A) the reservation;

(B) Federal lands outside the Cultural Heritage Area; or

(C) non-Federal land.

(o) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and a legal description of the Cultural Heritage Area with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The map and legal description filed under paragraph (1) shall have the same force and effect as if included in this section, except that the Secretary may correct typographical errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description filed under subparagraph

(A) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

SEC. 6. TRIBAL COORDINATION.

(a) CONSULTATION.—

(1) IN GENERAL.—The Secretary shall consult with the Tribe not less than twice each year, unless otherwise mutually agreed, regarding—

(A) the protection, preservation, and management of the Cultural Heritage Area (B) proposed new uses;

(C) whether management is compatible with the values and attributes of the Badger-Two Medicine Traditional Cultural District; and

(D) management actions within the Cultural Heritage Area necessary to—

(i) fulfill the purposes of this Act;

(ii) ensure management decisions reflect Native knowledge; and

(iii) protect the Tribe’s off-reservation rights.

(2) PROCESS FOR CONSULTATION.—

(A) EXISTING REGULATIONS.—The Secretary shall carry out consultation under this section in accordance with this Act and the requirements in chapter 1560 of the Forest Service Manual (or successor regulations).

(B) SCHEDULE.—As soon as practicable after the date of enactment of this Act, the Secretary shall establish, in consultation with the Tribal Business Council, a schedule for consultation.

(C) INITIATION.—To initiate consultation, the Secretary shall request, in writing, to consult with the Tribal Business Council.

(D) IN-PERSON CONSULTATION.—The Secretary shall carry out consultations, in person, with the Tribal Business Council.

(E) SUMMARY.—Within 30 days after the completion of each consultation, the Secretary shall send a written summary of the consultation to the Tribal Business Council.

(F) REOPENING CONSULTATION.—If the Tribal Business Council disagrees with the summary of consultation, the Tribal Business Council may, within 30 days, request to reopen the consultation.

(2) TRIBAL MANAGEMENT PROPOSALS.—The Secretary shall consider proposals for management actions within the Cultural Heritage Area submitted by the Tribe and respond in writing within three months if a management action proposed by the Tribe is rejected.

(b) NEW USES.—

(1) NEW USES.—

(A) REQUEST FOR CONSENT AFTER CONSULTATION.—

(i) DENIAL OF CONSENT.—If the Tribe denies consent for a new use within the Cultural Heritage Area within 30 days after completion of the consultation process, the Secretary shall not proceed with the new use.

(ii) GRANTING OF CONSENT.—If the Tribe consents to the new use within the Cultural Heritage Area in writing or fails to respond within 30 days after completion of the consultation process, the Secretary may proceed with the notice and comment process and the environmental analysis.

(B) FINAL REQUEST FOR CONSENT.—

(i) REQUEST.—Before the Secretary signs a record of decision or decision notice for a proposed new use within the Cultural Heritage Area, the Secretary shall again request the consent of the Tribe.

(ii) DENIAL OF CONSENT.—If the Tribe denies consent for a new use within 30 days after receipt of the proposed record of decision or decision notice, the new use shall not be authorized.

(2) PUBLIC INVOLVEMENT.—With respect to a proposed new use within the Cultural Heritage Area, the public shall be provided notice of—

(A) the purpose and need for the proposed new use;

(B) the role of the Tribe in the decisionmaking process; and

(C) the position of the Tribe on the proposal.

(c) EMERGENCIES AND EMERGENCY CLOSURE ORDERS.—

(1) AUTHORITY.—The Secretary shall retain the authority of the Secretary to manage emergency situations within the Cultural Heritage Area to—

(A) provide for public safety; and

(B) issue emergency closure orders in the Cultural Heritage Area subject to applicable law.

(2) NOTICE.—The Secretary shall notify the Tribe regarding emergencies, public safety issues, and emergency closure orders as soon as practicable.

SEC. 7. BADGER-TWO MEDICINE ADVISORY COUNCIL.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish an advisory council, to be known as the “Badger-Two Medicine Advisory Council” (referred to in this section as the “Council”).

(b) DUTIES.—The Council shall advise the Secretary with respect to the preparation and implementation of the management plan.

(c) APPLICABLE LAW.—The Council shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(d) MEMBERS.—The Council shall include 9 members to be appointed by the Secretary with backgrounds that reflect—

(1) the purposes for which the Cultural Heritage Area was established; and

(2) the interests of the stakeholders that are affected by the planning and management of the Cultural Heritage Area.

(e) REPRESENTATION.—

(1) IN GENERAL.—The Secretary shall ensure that the membership of the Council is fairly balanced in terms of the points of view represented and the functions to be performed by the Council.

(2) TRIBAL REPRESENTATION.—The Council shall include a representative of the Tribe, who shall be recommended to the Secretary by the Tribal Business Council.

(f) DURATION.—The Council shall terminate on the date that is 1 year from the date on which the management plan is adopted by the Secretary.

SEC. 8. SELF-DETERMINATION CONTRACTS.

(a) IN GENERAL.—The Secretary may contract with the Tribe to perform administrative or management functions within the Cultural Heritage Area through contracts entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.).

(b) REQUIREMENTS.—With respect to any contract carried out under subsection (a)—

(1) the Secretary shall carry out all functions delegated to the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304 et seq.); and

(2) the contract shall be entered into under, and in accordance with, section 403(b)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5363(b)(2)).

(c) ENVIRONMENTAL AND OTHER REQUIREMENTS.—

(1) RULE OF CONSTRUCTION.—This section shall not be construed to alter or abridge the application of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(B) any other Federal environmental law (including regulations).

(2) ENVIRONMENTAL ANALYSES.—Nothing in this section shall be construed to allow the Secretary or the Tribe to waive completion of any necessary environmental analysis under applicable Federal law.

(3) RETENTION OF NEPA RESPONSIBILITIES.—The Secretary shall make any decision required to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other applicable Federal law (including regulations) with respect to any activity to be carried out on Federal land under this section.

(4) **APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.**—Nothing in this section shall alter or abridge the application of subchapter II of chapter 5, or chapter 7, of title 5, United States Code with respect to this section.

SEC. 9. LEGAL EFFECT.

(a) **FISH AND WILDLIFE.**—Nothing in this Act affects the jurisdiction or responsibilities of the State with respect to fish and wildlife.

(b) **PUBLIC ACCESS.**—Except as otherwise provided, nothing in this Act affects public access to the Cultural Heritage Area.

(c) **WATER RIGHTS.**—

(1) **IN GENERAL.**—Nothing in this Act—

(A) constitutes an express or implied reservation by the United States of water or water rights for any purpose; or

(B) modifies or otherwise affects any water rights existing on the date of enactment of this Act, including any water rights held by the United States.

(2) **STATE WATER LAW.**—The Secretary shall follow the procedural and substantive requirements of the applicable state and Federal law in order to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to the Cultural Heritage Area.

(d) **TREATY RIGHTS; TRIBAL LAND.**—

(1) **TREATY RIGHTS.**— Nothing in this Act alters, modifies, enlarges, diminishes, or abrogates the treaty rights of any Indian tribe, including the off-reservation reserved rights secured by the Treaty with the Blackfoot Indians on October 17, 1855 and the Agreement with the Indians of the Blackfeet Indian Reservation on September 26, 1895.

(2) **TRIBAL LAND.**—Nothing in this Act affects any land or interest in land held in trust by the Secretary of the Interior for the Tribe or individual members of the Tribe.

(e) **NO EFFECT ON JURISDICTION.**—Nothing in this Act limits or otherwise affects the civil or criminal regulatory jurisdiction, including law enforcement, for issues under the jurisdiction of the Tribe.

(f) **EXISTING STRUCTURES AND FACILITIES.**—The maintenance of structures and facilities within the Cultural Heritage Area in existence as of the date of enactment of this Act may be permitted to continue—

(A) in accordance with—

(i) this Act; and

(ii) applicable law;

(B) in a manner consistent with the purpose described in section 5(c); and

(C) subject to such reasonable regulations, policies, and practices as the Secretary considers necessary.

SEC. 10. NON-DISCLOSURE OF CULTURAL SITES.

(a) **IN GENERAL.**—The Secretary shall not disclose to the public, information regarding the nature and location of cultural sites where the Secretary concerned determines, in consultation with the Tribe, that such disclosure may risk harm to cultural resources of the site, cause a significant invasion of privacy, or impede the use of the site for traditional cultural activities by the Tribe or members of the Tribe.

(b) **EFFECT.**—Information withheld from the public under subsection (a) shall not be deemed a Federal record for purposes of the Freedom of Information Act (5 U.S.C. 552 et seq.).

