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STATE OF MONTANA RAVALLI COUNTY 518504 Page 1 of
RECORDED: 07/07/2003 12:25 PF
Nedra L. Taylor CLERK AND RECORDER BY: Marilyn Storey FEE: $0.0

AGREEMENT

THIS AGREEMENT is made and entered into by and between ED CUMMINGS, hereinafter called OWNER, and RAVALLI COUNTY, a political subdivision of the State of Montana, hereinafter called COUNTY, as of the date of this instrument.

WITNESS:

That the owner agrees to sell and the COUNTY agrees to purchase gravel and rock from the OWNERS property described as follows:

SEE ATTACHED EXHIBIT A

The COUNTY agrees to pay for said gravel and rock, to be mined on the aforementioned property, at the rate of $1.00 per cubic yard for 25,000 yards for fiscal year 2004. The cubic yards mined will be determined based on the truck count at the end of each month.

IT IS UNDERSTOOD AND AGREED that the COUNTY shall perform all of the obligations under the Open Cut Mining Reclamation Statute as set out in 82-4-401, MCA, through 411 and hold the OWNER harmless in regard to these obligations, to include his attorney's fees and costs in the event of litigation, or possible litigation, under the foregoing statute.

THE PARTIES agree that in the event of litigation between the Parties, the prevailing Party will be entitled to reasonable attorney's fees, and costs, associated with the litigation.

THE PARTIES agree that the COUNTY will maintain a liability insurance policy for the benefit of the OWNER in the amount of at least $1,000,000 per incident, and in any event to hold the OWNER harmless for anything that happens, or allegedly happens, on the premises during the term of this contract.

THE OWNER COVENANTS AND AGREE AS FOLLOWS:

1. That he is the owner of the premises and is entitled to receive payment for the sale of rock and gravel.

2. The OWNER grants an easement to the COUNTY to the existing county road, for the term of this contract, to remove rock and gravel from the premises.

3. That the COUNTY be allowed to use the mine site described above for the mining, crushing, and stockpiling of rock and gravel during the term of this contract.

4. That the COUNTY has exclusive use of this gravel pit and no one other that the OWNER, or his agent, will be allowed on the mine site. It may be necessary for the

OWNER, or someone acting for him, to enter the premises incident to farming the adjacent property.

5. That the COUNTY is guaranteed a minimum of 25,000 cubic yards over the term of this contract.

THE COUNTY COVENANTS AND AGREES AS FOLLOWS:

1. That the County will obtain an Open Pit Mining Permit as required by 82-4-401 through 441, MCA.

2. That the County will be responsible for, and perform, all reclamation required by said mining permit.

3. That the COUNTY will control dust within the mine site and on North Kootenai Creek Road.

4. That the COUNTY will develop the mine in a neat and orderly manner.

IT IS UNDERSTOOD AND AGREED that the terms of this agreement shall be for 1 Fiscal year and the COUNTY, shall within two years of completion of the contract, do any reclamation work required by reason of the mining of the rock and gravel.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seal this 7th day of July, 2003.

OWNER:

Ed Cummings

BOARD OF RAVALLI COUNTY COMMISSIONERS:

Betty T. Lund, Chairman

Alan Thompson, Member

Greg Chilcotte, Member

Medra P. Taylor / Tena L. Miller deputy
Attest: Clerk & Recorder

EXHIBIT A
CUMMINGS PIT
LAND DESCRIPTION

That portion of the W½ of NW ¼ of Section 16 T9N R20W described as follows:

Located 1,312 feet north of North Kootenai Creek Road. An area of approximately 5 acres.

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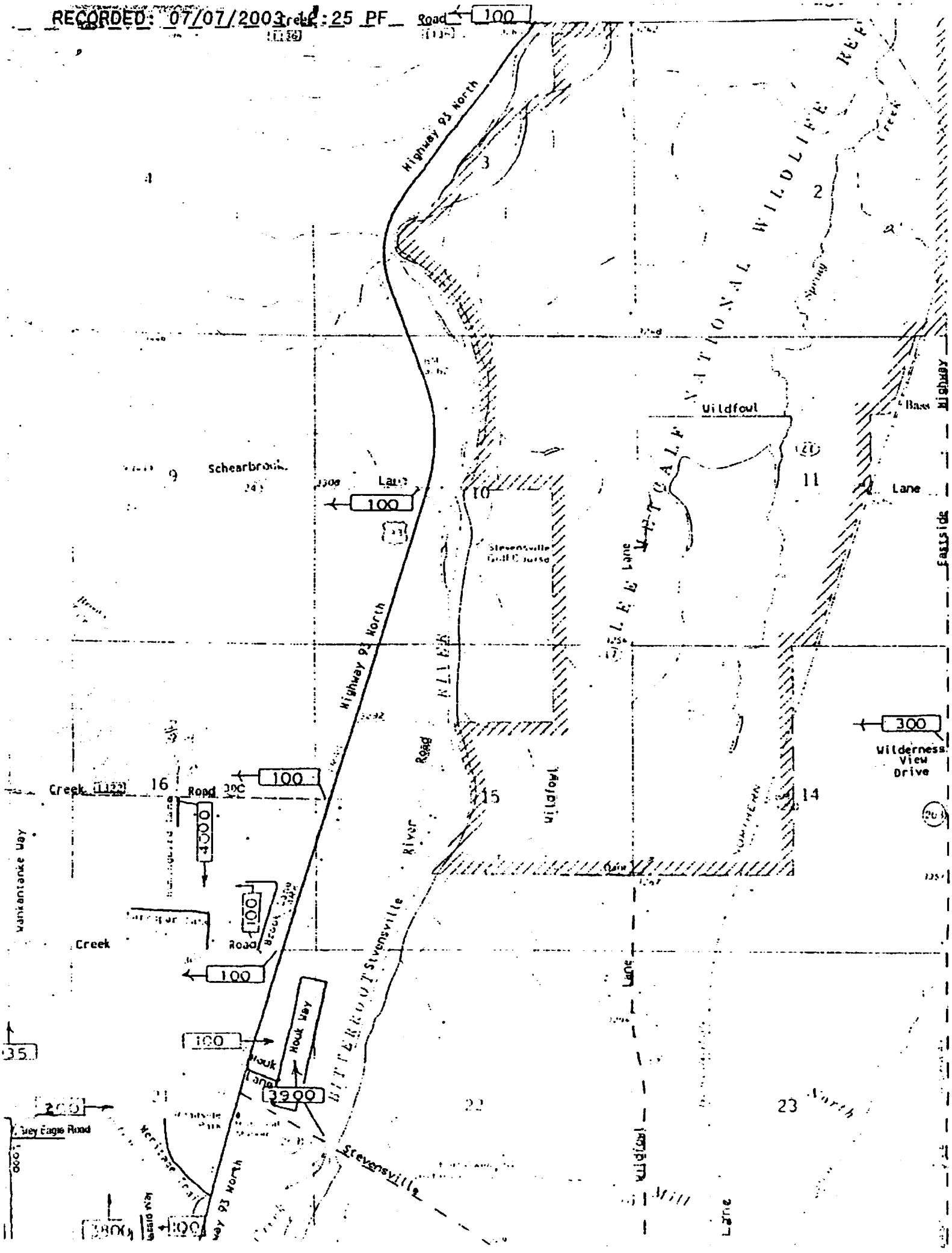

Ed Cummings
237 Schearbrook Lane
Stevensville, MT 59870
June 27, 2005

Ravalli County Commissioners
215 S. 4th St., Suite A
Hamilton, Montana 59840

Re: Cummings Gravel Pit

Dear Commissioners:

This letter serves as a reminder that Ravalli County has a written contract with me to "do any reclamation work required by reason of the mining of rock and gravel" from the open cut gravel mine dug by the county on my property in 2003. The contract specifies that the contract will run until July 1, 2004, and that reclamation work shall be completed "within two years of completion of the contract". Thus the contractual completion date for the County to have reclaimed my pit is July 1, 2006, twelve months from now.

The reasons given to me for the County opening this pit were:

1. Provide gravel needed to pave N. Kootenai during 2004; and
2. Provide a source of gravel for the County on the West Side; and
3. There were no other adequate gravel sources on the West Side.

These reasons no longer exist. The County has not paved N. Kootenai and does not now appear to have any interest in doing so. The neighboring Ruffatto ranch has opened a very large pit to service the expansion of Highway 93. Large amounts of cheap gravel should become available on the West Side as the Highway 93 road expansion winds its way to Hamililton.

The bottom line is that the gravel pit remains unused on my ranch. Its disturbed ground is sprouting noxious weeds and the area is an eyesore in an otherwise pleasant field. This pit should not be allowed to sit idle just in case the County may someday want some more gravel.

Please reclaim this pit as is required by your contract.

Yours

Ed Cummings

cc- County Road Supervisor

mailed 6/27/05

Ed Cummings
237 Schearbrook Lane
Stevensville, MT 59870

October 19, 2005

Dave Ohnstad
Ravalli County Road Department
244 Fairground Rd.
Hamilton, MT 59840

Re: Cummings Gravel Pit

Dear Mr. Ohnstad:

This letter provides a record of our visit with the County Commissioners October 11, our visit to the gravel pit October 11 with two Road Department employees, and our visit with Rod Sandol of D.E.Q. at the pit October 12.

I have also have received a copy of the pit reclamation plan filed with D.E.Q. by Reed Willey in July of 2003.

As a result of these meetings I have been told by Mr. Ohnstad that reclamation work on the pit will be completed during the fall of 2005 "before the snow flies", actually before the ground freezes.

My only involvement in the reclamation is that I am relying on it being done as promised.

There are some long term residual reclamation requirements on the original permit application filed by Reed Willey. These longer term requirements involve reseeding, fertilizing, weed control, and restriction of grazing over a two year period. If Mr. Sandol will release the permit with only these requirements remaining, I will be glad to do the seeding, fertilizing, weed control, and grazing restriction if the County will buy the seed and fertilizer. Seeding, fertilizing, and grazing control are what I do for a living.

Thank you for your professional attention to this matter.

Ed Cummings
cc. Commissioners
James McCubbin

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ddannyboy332@aol.com wants to be able to chat with you. Okay?
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north kootenai creek road

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David Ohnstad dohnstad@rc.mt.gov to Allen, me

Hello Allen and Ed -

Please see the following message to the County Commission. I have scheduled to discuss this, at least preliminarily, with the Administration Building in Hamilton.

You are most welcome to participate.

David

From: David Ohnstad
Sent: Friday, September 16, 2011 2:40 PM
To: J.R. Iman; Greg Chilcott; Matt Kanenwisher; Suzy Foss; Ron Stoltz
Cc: Glenda Wiles
Subject:

Good Afternoon -

We have the opportunity to secure additional recycled ACP from projects that MDT is planning for next summer. We have rea that the current offer be accepted.

The total amount available, from two projects (1300 and 6800) is estimated at 8100 cubic yards. The materials are provided a no cost to the county.

In 2009 a group of North Kootenai Creek residents discussed with the B.O.C.C. the desire for improvement of North Kootenai and from the county's perspective placing a more stable surface on North Kootenai Creek Road would have benefit - to roadw un-paved roadways that was identified as being a higher-impact roadway in terms of surface stabilization and dust abatement

There are three distinct parts of North Kootenai Creek Road.

Michael Cummings
Sam Carnes
Steve Powell
Debra Stoenner
kelle bradshaw

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The first 5500 feet west of Highway 93 (to Wankantanka Way) occurs within easements of various designation, ranging from p demonstrate that the statutory process for adoption as a "county road", it has been operated as a county road for many decad section line. Further expansion (widening) would be pursued to the north of the section line and the existing roadway, where t placement of the recycled ACP, outside of the easement dedication process, would largely consist of fence removal, minor cle current (2009) ADT is 203.

From Wankantanka Way west 2600 feet, North Kootenai Creek Road is a petitioned and adopted "county road" occurring with attempting to acquire additional easements through this section, although a 60 foot easement would be consistent with standa cross section of the existing easement and local soil conditions, a reasonable design could be placed within that easement, al section to the east (24 feet). The current (2009) ADT is 130. Preparation for the placement of the recycled ACP would includ of the existing roadbed.

The third section, from the county road west 2300 feet to the trailhead, is a Forest Road operated by the county under our coo section in the proposed project.

The volume of recycled ACP for the two county road segments is estimated at approximately 4700 cubic yards. The estimate $105,000.00 **plus the cost of delivery**. In the event the FS participates, the estimated volume of material necessary for their

The preparation of the roadbed and placement of the materials would consist of Road & Bridge equipment and personnel and After the recycled ACP has been graded and compacted, we would propose to seal the surface through application of a rejuve enhances the bonding and reduces the segregation of the materials, and prevents water from compromising the compacted r durable surface with recycled ACP without surface treatment/sealing, the addition of the rejuvenating agent would increase th rejuvenating agent for the county road segments of North Kootenai is estimated at $20,500.00, plus delivery (from Billings). W rejuvenating agent would represent approximately 4 years of dust abatement materials (current rates).

Other Road & Bridge departments in Montana, including Yellowstone and Gallatin, have had success incorporating this rejuve highway projects). The vendor for the rejuvenating agent has worked with a number of other county Road & Bridge departme

Absent the placement of the recycled ACP materials, North Kootenai Creek Road remains in need of re-surfacing, which woul Gravel Mine. We will produce estimates on the value of that effort; however, the aggregate surfaced roadway would require a of service that has been identified as being desirable. At the same surface widths as noted above, the cost of dust abatement $4900.00 annually. The FS has secured resources for another two years of dust abatement on the FS section of the roadway

I have placed this for your consideration on Monday afternoon.

We recommend the following -

1) That the RCRBD secure the recycled ACP from the MDT. The MDT is currently developing the project specifications and agreement is typically produced by MDT for formal action by the commission. The MDT project(s) are tentatively being planne the larger project is being pursued.

2) That the RCRBD and the BOCC continue to work with the North Kootenai neighbors to identify easement requirements (e the project.

3) That the Forest Service determine their interest in extending the project and work with the RCRBD to develop a cooperati agent on their section.

We are also considering placement of recycled ACP on the first (approximately) 1600 feet of Hoover Lane south of Dry Gulch abrupt grade and routinely becomes quite distressed with corrugation during the summer months, requiring repetitive grading. $4300.00. This section of Hoover Lane also needs re-surfacing and drainage grading, with or without the recycled ACP. The haul limits that may be candidates for placement of recycled ACP, with or without rejuvenating agent. We will continue review

Thank you.

David

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Edward & Carole Cummings< cummingsbigsky@gmail.com>

north kootenai creek road

1 message

David Ohnstad< dohnstad@rc.mt.gov> Fri, Sep 16, 2011 at 2:45 PM
To: Allen Gates <abgates1_92@msn.com>, cummingsbigsky@gmail.com

Hello Allen and Ed -

Please see the following message to the County Commission. I have scheduled to discuss this, at least preliminarily, with the commission on Monday afternoon (09/19) at 1:30 at the County Administration Building in Hamilton.

You are most welcome to participate.

David

From: David Ohnstad
Sent: Friday, September 16, 2011 2:40 PM
To: J.R. Iman; Greg Chilcott; Matt Kanenwisher; Suzy Foss; Ron Stoltz
Cc: Glenda Wiles
Subject:

Good Afternoon -

We have the opportunity to secure additional recycled ACP from projects that MDT is planning for next summer. We have realized benefit from access to these materials in the past and recommend that the current offer be accepted.

The total amount available, from two projects (1300 and 6800) is estimated at 8100 cubic yards. The materials are provided at no cost to the county, and are delivered to the county's project site at no cost to the county.

In 2009 a group of North Kootenai Creek residents discussed with the B.O.C.C. the desire for improvement of North Kootenai Creek Road. There appears to continue to be some level of interest, and from the county's perspective placing a more stable surface on North Kootenai Creek Road would have benefit - to roadway users and to the county. North Kootenai Creek Road is one of those un-paved roadways that was

identified as being a higher-impact roadway in terms of surface stabilization and dust abatement and was included in this year's Dust Abatement Program.

There are three distinct parts of North Kootenai Creek Road.

The first 5500 feet west of Highway 93 (to Wankantanka Way) occurs within easements of various designation, ranging from prescriptive to dedicated of varying widths. While research did not demonstrate that the statutory process for adoption as a "county road", it has been operated as a county road for many decades. The majority of the existing roadway occurs to the south of the section line. Further expansion (widening) would be pursued to the north of the section line and the existing roadway, where the (singular) property owner has indicated interest. Preparation for placement of the recycled ACP, outside of the easement dedication process, would largely consist of fence removal, minor clearing, and grading, widening and shaping of the existing roadbed. The current (2009) ADT is 203.

From Wankantanka Way west 2600 feet, North Kootenai Creek Road is a petitioned and adopted "county road" occurring within a dedicated 30 foot easement. At this time we do not propose attempting to acquire additional easements through this section, although a 60 foot easement would be consistent with standard practice. Given the grade and alignment of the existing roadway, the cross section of the existing easement and local soil conditions, a reasonable design could be placed within that easement, albeit at a somewhat narrower driving surface width (20 feet) than the section to the east (24 feet). The current (2009) ADT is 130. Preparation for the placement of the recycled ACP would include easement clearing (tree removal), and grading, widening and shaping of the existing roadbed.

The third section, from the county road west 2300 feet to the trailhead, is a Forest Road operated by the county under our cooperative agreement. The Forest Service may consider including this section in the proposed project.

The volume of recycled ACP for the two county road segments is estimated at approximately 4700 cubic yards. The estimated market value of the material (estimate at $15.00 per ton) is over $105,000.00 **plus the cost of delivery**. In the event the FS participates, the estimated volume of material necessary for their section would be 1200 cubic yards.

The preparation of the roadbed and placement of the materials would consist of Road & Bridge equipment and personnel and the rental of a pad-foot compactor ($1825.00 for a one-week rental). After the recycled ACP has been graded and compacted, we would propose to seal the surface through application of a rejuvenating agent that softens the residual asphalt oil in the ACP which enhances the bonding and reduces the segregation of the materials, and prevents water from compromising the compacted roadway. While we have had reasonable success in constructing a durable surface with recycled ACP without surface treatment/sealing, the addition of the rejuvenating agent would increase the potential for a more definitive success. At current rates, the cost of the rejuvenating agent for the county road segments of North Kootenai is estimated at $20,500.00, plus delivery (from Billings). We would apply the agent with county equipment. The cost of the rejuvenating agent would represent approximately 4 years of dust abatement materials (current rates).

Other Road & Bridge departments in Montana, including Yellowstone and Gallatin, have had success incorporating this rejuvenating agent in the placement of recycled ACP (also obtained from MDT highway

projects). The vendor for the rejuvenating agent has worked with a number of other county Road & Bridge departments throughout the state.

Absent the placement of the recycled ACP materials, North Kootenai Creek Road remains in need of re-surfacing, which would include transport of crushed aggregate from the county's Stevensville Gravel Mine. We will produce estimates on the value of that effort; however, the aggregate surfaced roadway would require annual stabilization (dust abatement) treatments in order to sustain a level of service that has been identified as being desirable. At the same surface widths as noted above, the cost of dust abatement material on the county road segments would be approximately $4900.00 annually. The FS has secured resources for another two years of dust abatement on the FS section of the roadway.

I have placed this for your consideration on Monday afternoon.

We recommend the following -

1) That the RCRBD secure the recycled ACP from the MDT. The MDT is currently developing the project specifications and needs to know the destination of the recycled material. A written agreement is typically produced by MDT for formal action by the commission. The MDT project(s) are tentatively being planned for next summer. The smaller of the two is currently programmed and the larger project is being pursued.

2) That the RCRBD and the BOCC continue to work with the North Kootenai neighbors to identify easement requirements (east of Wankantanka Way) and potential neighborhood participation in the project.

3) That the Forest Service determine their interest in extending the project and work with the RCRBD to develop a cooperative project. The FS would be responsible for costs of the rejuvenating agent on their section.

We are also considering placement of recycled ACP on the first (approximately) 1600 feet of Hoover Lane south of Dry Gulch Road, south and east of Florence. This section has a considerably abrupt grade and routinely becomes quite distressed with corrugation during the summer months, requiring repetitive grading. The cost of the rejuvenating agent for this section is approximately $4300.00. This section of Hoover Lane also needs re-surfacing and drainage grading, with or without the recycled ACP. There may be other segments of other roadways within the desired MDT haul limits that may be candidates for placement of recycled ACP, with or without rejuvenating agent. We will continue review.

Thank you.

David

Edward & Carole Cummings< cummingsbigsky@gmail.com>

north kootenai easements

1 message

David Ohnstad< dohnstad@rc.mt.gov> Fri, Dec 2, 2011 at 8:23 AM
To: cummingsbigsky@gmail.com

Good Morning Ed -

The easement limits for North Kootenai Creek Road have been staked. If you have opportunity over the next week or so perhaps I can meet you and review the project and how it might impact your existing fencelines and what additional easement we may need to discuss. Most of the stakes are on the easement line, some are offset (a number with a circle around it marked on the stake) with a flagged spike in the ground (road) identifying the exact location.

Thank you for your assistance with this project.

David