

2.0 REASON FOR THE RE-EVALUATION

The Code of Federal Regulations (CFR), Title 23, Part 771 sets forth all Federal Highway Administration (FHWA) and Department of Transportation (DOT) requirements under the National Environmental Policy Act (NEPA) for processing highway projects.

Specifically, Section 771.130 of the federal regulations requires a supplemental EIS to be prepared whenever the FHWA determines that:

- Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or
- New information or circumstances relevant to environmental concerns and bearings on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

In order to determine if changes to the proposed action or new circumstances are significant, the regulations require the preparation of appropriate environmental studies. It has been accepted practice in FHWA to use an Environmental Re-evaluation, as defined in CFR Section 771.129, to determine the need for a supplemental EIS.

Additionally, Administrative Rules of Montana (ARM) set forth agency requirements under the Montana Environmental Policy Act. ARM 18.2.247 states the following:

- 1) "The agency shall prepare supplements to either draft or final environmental impact statements whenever:
 - a. The agency or the applicant makes a substantial change in a proposed location;
 - b. There are significant new circumstances, discovered prior to final agency decision, including information bearing on the proposed action or its impacts that change the basis for the decision; orFollowing preparation of a draft EIS and prior to completion of a final EIS, the agency determines that there is a need for substantial, additional information to evaluate the impacts of a proposed action or reasonable alternatives.
- 2) A supplement must include, but is not limited to, a description of the following:
 - a. An explanation of the need for the supplement
 - b. The proposed action; and
 - c. Any impacts, alternatives of other items required by ARM 18.2.243 for a draft EIS or ARM 18.2.245 for a final EIS that were either not covered in the original statement or that must be revised based on new information or circumstances concerning the proposed action.
- 3) The same time periods applicable to draft and final EISs apply to the circulation and review of supplements." (History: Sec. 2-3-103, 2-4-201, MCA; IMP: Sec. 2-3-104, 75-1-201, MCA; NEW, 1988 MAR p. 2692, Eff. 12/23/88.)