Chapter 1
Purpose of and Need for the Proposed Action

1.1 Introduction

American Colloid Company (ACC) has submitted an amendment (Amendment #10) to its existing Plan of Operations MTM77811 and State of Montana Mined Land Reclamation Permit #00297 for mining bentonite (Figure 1.1).

The ACC project area lies within a larger mining region in which two companies operate. The Amendment #10 project area lies within the Alzada North mine area. Most of the mine related disturbances in this area are north of the Ridge Road and are within the Willow Creek watershed. The other mine area within the region is the Alzada South mine area, which is located south of the Ridge Road and is within the Thompson Creek watershed.

The ACC, located in Belle Fourche, South Dakota, has been mining bentonite in the Alzada, Montana area under State of Montana Mined Land Reclamation Permit #00297 (Alzada North) since 1977. As active areas have been mined out reclaimed and removed from the permit over the years, additional acreages have been added through nine amendments to the permit.

The permit currently contains 3,600 acres (Permit #00297). About 2,070 acres have been disturbed by mining within the current permit, 1,640 acres have been reclaimed through the seeding stage and about 300 acres are currently under some phase of mining. In addition, 1,443 acres have been released from bond and removed from the permit, 300 acres of which were disturbed and reclaimed.

About 821 acres in the permit are federally owned and administered by Bureau of Land Management (BLM) and 2,779 acres are privately owned (Figure 1.2). Amendment #10, if approved as submitted, would increase the permit by 1,487 acres, of which 583.8 acres would be federal (BLM) and 903.2 would be private ownership. All lands within the permit boundary are not allowed to be disturbed. Only those lands which are specifically designated for mining or mine related purposes are allowed to be disturbed.

Those areas are designated in the mine plans which accompanied the amendment application and are considered to be a part of the BLM's Plan of Operations for the mine if approved or approved as modified via the decision resulting from this EA.

The disturbed area associated with the amendment would total 686 acres of which 205 acres are BLM surface and 481 acres are private surface.

The permit area includes both private and federal lands, therefore the mining is regulated by both the Bureau of Land Management and the Montana Department of Environmental Quality. BLM and DEQ have determined that one Environmental Assessment (EA) will be prepared to satisfy requirements of both the National Environmental Policy Act (NEPA) and Montana Environmental Policy Act (MEPA).

1.2 Agency Roles and Responsibilities

The preparation of this EA was done by both the BLM and DEQ acting as co-leads. As co-leads, the agencies were responsible for conducting the scoping meetings, developing the alternatives, coordinating with the proponent, conducting the analysis, collecting public comments and conducting consultations. The co-lead also ensures that the analysis and resulting document fulfills each agency's needs as required by the various Federal and State acts, laws, and regulations that pertain to the project.

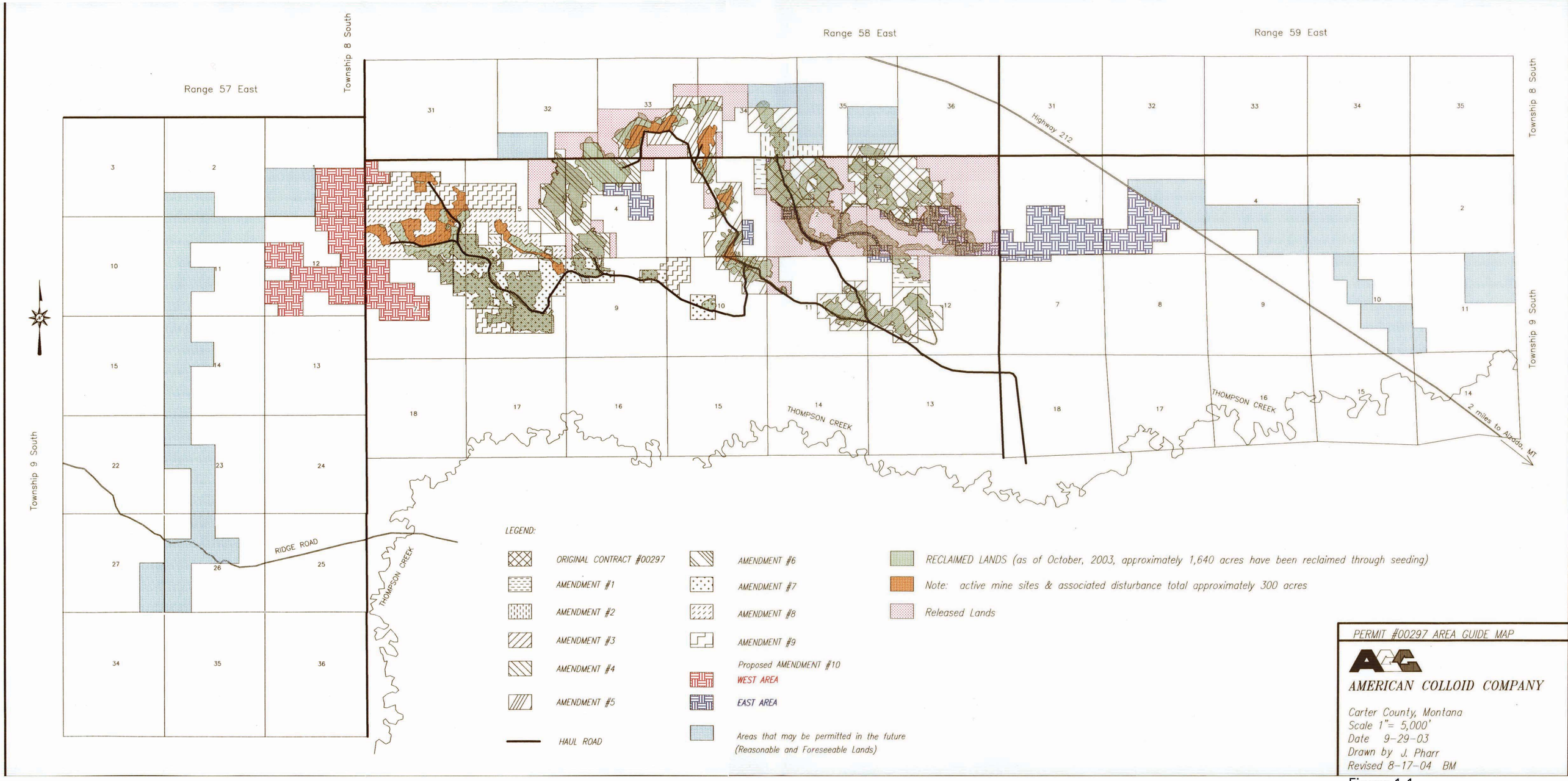
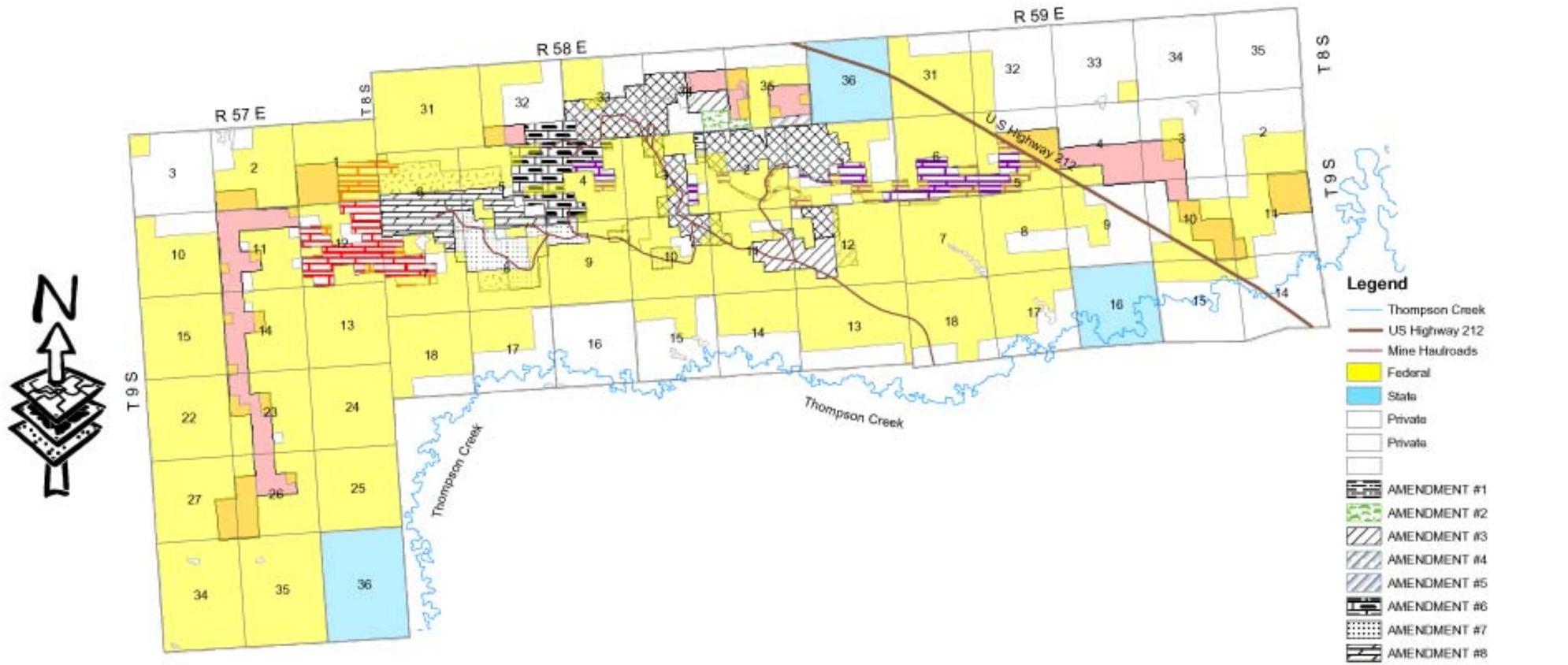

Range 57 East
Range 58 East
Range 59 East
Township 8 South
Township 9 South
Highway 212
2 miles to Alzada, MT
THOMPSON CREEK
RIDGE ROAD
LEGEND:
ORIGINAL CONTRACT #00297
AMENDMENT #1
AMENDMENT #2
AMENDMENT #3
AMENDMENT #4
AMENDMENT #5
HAUL ROAD
AMENDMENT #6
AMENDMENT #7
AMENDMENT #8
AMENDMENT #9
Proposed AMENDMENT #10
WEST AREA
EAST AREA
Areas that may be permitted in the future
(Reasonable and Foreseeable Lands)
RECLAIMED LANDS (as of October, 2003, approximately 1,640 acres have been reclaimed through seeding)
Note: active mine sites & associated disturbance total approximately 300 acres
Released Lands
PERMIT #00297 AREA GUIDE MAP
AMERICAN COLLOID COMPANY
Carter County, Montana
Scale 1"= 5,000'
Date 9-29-03
Drawn by J. Pharr
Revised 8-17-04 BM

Figure 1.1

SURFACE OWNERSHIP FOR AMENDMENT 10

CARTER COUNTY, MONTANA



Created by the GIS Section
Miles City Field Office
August 9, 2004

Figure 1.2

Bureau of Land Management

Bentonite is a clay mineral and has been determined to be locatable under the general mining laws of 1872. The right to mine and the ownership of the bentonite on federal and some split estate lands is obtained by filing and maintaining mining claims. The federal regulations, which are used to regulate locatable mineral exploration and development on BLM administered public lands are called the Surface Management of Mining Claims Under the General Mining Laws, found at 43 CFR 3809, which are commonly referred to as the "3809" regulations. These regulations require mining claimants and /or operators to submit a Plan of Operations (for disturbances greater than 5 acres) for BLM's review and approval. The plan must contain detailed information about the mining proposal and protective measures so that "Unnecessary or Undue" degradation does not occur to the Federal lands. The operator must also comply with the performance standards set forth in 43 CFR 3809.420.

The Federal authority for locatable minerals, under the surface management regulations, extends only to Federally owned surface or to some split estate lands, obtained under the Stock Raising Homestead Act.

The regulations at 43 CFR 3809.411 directs BLM to prepare an environmental review under NEPA for a new Plan of Operations or a substantial modification to an existing plan.

The following authorities are used to process and evaluate bentonite mining applications: the NEPA of 1969; the Environmental Quality Improvement Act of 1970. These acts and policies provide BLM with the authority to manage and administer public lands. Additional guidance and regulations are set forth in the 40 CFR 1500 regulations (Protection of Environment), 43 CFR 1601 (Planning, Programming and Budgeting), and 43 CFR 3809 (Surface Management).

State of Montana Department of Environmental Quality

The legislation that regulates and controls gravel and bentonite mining operations in Montana is the Opencut Mining Act. This law and its approved rules place operational guidance and limitations on a project during its life, and provides for the reclamation of land subjected to opencut materials mining. The basic standard is that, post-mining, the land would be stable and meet its beneficial use, which is usually designated by the landowner.
Under the Act, all lands, even federal lands are regulated and must meet its requirements. The State and the BLM have signed a Memorandum of Understanding (MOU) under which we jointly regulate federal land under BLM jurisdiction. That MOU is presently being modified to account for recent changes in both state and federal laws, but those MOU discussions would not interfere with the agencies' ability to analyze and render a decision on ACC's Amendment #10 application.

The Act requires that a reclamation bond, cash deposit or other financial instrument be submitted to the state to cover the complete costs of reclaiming the site to its approved, post-mining land use.

The permit or amendment decision is based upon whether or not the proponent has met the requirements of the Opencut Mining Act, pursuant rules, and other laws pertaining to the proposed action.

1.3 Purpose and Need for the Document

Amendment #10 involves adding 1,487 acres to the existing plan, of which 583.8 acres are BLM surface, and 903.2 acres are private surface. These lands are further identified as the West Area and the East Area. The West Area is located approximately 13 miles northwest of

Alzada, Montana and contiguous to permitted lands and current mining. The East Area is approximately 6-10 miles northwest of Alzada and contiguous to permitted lands; access is directly from Highway 212. Proposed mining will affect approximately 686 acres on Amendment #10 over a 10-year or less life of the mine.

The purpose of the proposed action is to provide for a continuation of orderly, efficient and environmentally responsible mining of the bentonite resource. These lands are open to mineral entry, and valid mining claims have been filed on these lands. The mining claimant has the right to mine and develop the mining claims as long as it can be done without causing unnecessary or undue degradation and it is in accordance with pertinent laws and regulations. Amendment #10 will allow ACC to mine bentonite reserves as part of the logical mine progression from existing operations.

Bentonite is an important industrial mineral. The proposed action is needed in order to meet customer clay needs. The various grades of bentonite have different uses; therefore, a company may have pits open simultaneously in more than one area and in different bentonite beds.

The legal descriptions of the land contained in Amendment #10 can be found in Appendix 1.

1.4 Other Relevant Environmental Documents

- Powder River Resource Area Resource Management Plan of 1985 (PRRA RMP). This EA is in conformance with and tiered to the PRRA RMP FEIS.

- EA No. MT-020-99-216, for American Colloid Company Amendment #9 to Plan of Operations MTM77811, March, 2001.
- FEIS, Proposed Open Cut Mining Contract for American Colloid Company, Montana Department of State Lands, 1976.

1.5 BLM Decisions Required

BLM decision options regarding ACC's proposed amendment include approving it as submitted, approve it subject to mitigation, or deny or withhold approval of the amendment application if it is found that the proposal would result in unnecessary or undue degradation of the public lands (No Action Alternative).

1.6 DEQ Decisions Required

The DEQ decision options would include approving the amendment as submitted, approving as modified, or denying it if it is found that mining could not be done in compliance with the Opencut Act.

1.7 Public Scoping and Issue Identification

Scoping is an activity required by both the NEPA and the MEPA. Scoping affords the public the opportunity to identify issues, suggestions and concerns by participating in a public meeting, and/or by submitting written comments. Many subjects can be raised that are not germane to the specific project under review. These are identified and dropped from analysis. Relative comments are included in the environmental analysis required by NEPA/MEPA.

The agencies conducted a public scoping meeting in Alzada, Montana, on November 18, 2003. Approximately 15 people, mostly from Carter County, Montana attended and another 15 persons were from local, state and federal agencies. Several groups and agencies were present including members of the Thompson Creek watershed monitoring group, Carter County Conservation District, Carter County Commissioners, the Natural

Resource Conservation Service, Bentonite Companies, DEQ, BLM, staff members of Montana's congressional delegation, Cochran Grazing Association and local landowners.

Not all the comments or concerns submitted were considered relative or within the scope of the analysis. In addition, many of the comments dealt with the same issue, such as water. These comments have been combined and summarized in one or two issues that cover the concern. The full range of comments and concerns recorded at the public scoping meeting can be found attached to this document as Appendix 2. The following relative issues were identified either by the agencies or the public to be analyzed in this EA.

Water

- Thompson Creek has been listed by the DEQ as an impaired stream because of total suspended solids. What effect does mining in the Alzada North area have on the quality of water in Thompson and Willow Creeks?
- Is water being pre-empted from reaching the stream by mining pits? Are water rights being filed and is this affecting senior water rights holders? Are there other new water uses within the affected drainage which are affecting senior water rights?

Permitting and Mining Operations

- Could the agencies limit the number of pits open at any time?

Reclamation

- Each landowner may have different reclamation goals and those may have changed over time.
- Reclaimed lands seem to be producing good vegetated cover and forage, and better protection of the land from wind and water erosion.
- Reclaimed land may not be establishing as many ecological niches as the native prairie and may not be as good habitat as before.

Grazing Management

- What effect will mining have on local ranching operations?

Recreation

- How will the mining affect recreationists and recreational values?

Social and Economic Values

- Bentonite mining provides 80% of the Carter County government's income. If revenue from this source was interrupted, what impacts to the county residents would occur?
- What local jobs and payroll might be lost if the mine closed?

1.8 Federal, State and Local Permits; or Required Consultations

<u>Mined Land Reclamation Permit #00297, as amended</u>
DEQ Open Cut Bureau authorizes activities on private, State, and Federal Lands such as sand and gravel and bentonite mining as required by the Opencut Act.

<u>BLM Plan of Operations MTM77811, as amended</u>
The BLM, Miles City Field Office authorizes mining activities on Federal surface estate, pertaining to locatable minerals such as bentonite via the authority found in federal regulations at 43 CFR 3809 "Surface Management of Mining Claims Under the General Mining Laws". The BLM generally does not have authority to regulate locatable mineral mining on private surface.

Storm Water Discharge Permit

DEQ authorizes construction activities that may impact State Waters under the General Permit for Storm Water Discharges Associated Construction Activity Permit. ACC has obtained storm water discharge permit #MTR300103 from DEQ.

SHPO Consultation

Pursuant to the "1997 Programmatic Agreement Among BLM, SHPO and ACHP Regarding the Manner in which BLM will meet its Responsibilities Under the National Historic Preservation Act", the PA gives authority to BLM to make the determination of whether cultural properties may be affected by this undertaking as defined in Section 301(7) of the National Historic Preservation Act.

In addition, pursuant to Montana BLM's "Guidelines For Identifying Cultural Resources" Handbook H-8110 (Draft April 2000), Part II.B regarding "When Inventory is Needed", Criteria B stipulates that an appropriate level of inventory and evaluation must be conducted prior to authorizing, or assisting of funding any land use activity which may affect cultural resources. Findings indicate that Class III inventories, encompassing the undertakings' Areas of Potential Effect, are adequate to demonstrate that no cultural resources exist in the Areas of Potential Effect for this undertaking and that all of the undertakings' activities will occur within adequately inventoried areas.

Tribal Consultation

Gilbert Brady, Tribal Historic Preservation Officer for the Northern Cheyenne Tribe was presented details and maps of the proposed action. No comments were offered concerning the action.