Lake Five: Responses to Questions Raised in the Public Comment Process

Process

1. **Why wasn't the public meeting held during the summer?**
Negotiations on the property were not finalized last summer. FWP must do their work in an efficient and timely manner as projects arise; therefore, rather than waiting, FWP proceeding during the winter months. Additionally, the summer months are normally the busy season for operational needs, so public processes are held when the day-to-day workload is less. Finally, on this project there are time constraints in the donation agreement that made it necessary to begin the public process this winter.

2. **Why has an environmental impact statement not been made? How was the decision to do an EA instead of an EIS sufficient? How does that meet the criteria in 4.2.315?**
Please see Attachment 1 regarding the environmental review process and significance criteria. The resources impacted at Lake Five are not unique, and the impacts are not considered severe.

Significance is defined in several ways, with an EIS required if the project is deemed significant in any one facet. Specifically they include:
(a) The severity, duration, geographic extent, and frequency of occurrence of the impact: This project, is small in geographic extent. While the project would be permanent, the impacts are not considered severe with suggested mitigation measures.

(b) The probability that the impact will occur if the proposed action occurs or, conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur: The probability of the types of impacts raised as issues is limited. Impacts on water quality, safety and crowding, and loss of privacy would be minimal, with the potential for significant impacts being remote.

(c) Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts: This project would neither induce nor inhibit growth.

(d) The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values: None of the resources being impacted are unique, and the quantity of the area impacted is small.

(e) The importance to the state and to society of each environmental resource or value that would be affected: The resource values that would be impacted would have minimal impact on a statewide basis.

(f) Any precedent that would be set as a result of an impact of the proposed action that would commit the Department to future actions with significant impacts or a decision in principle about such future actions: Since this is the only project proposed for Lake Five, there is no cumulative impact from this project.

(g) Potential conflict with local, state, or federal laws, requirements, or formal plans: None

Based on the above criteria, it was determined that the impacts were not significant; hence an environmental assessment was the adequate level of review.

3. **Why are stakeholders only allowed 30 days to review and comment on the proposal? Why is the project suddenly in need of immediate action?**
The standard comment period on an environmental assessment is 30 days. In this case that comment period was extended for an additional two weeks. If the project is approved, design and engineering will have to occur over the summer for construction to be completed by July of 2006.

   The public was not notified of this project during preliminary discussion with Mrs. Taylor. Negotiations between the landowner, Mrs. Taylor, and the FWP Foundation were kept private, as is the standard practice when negotiating purchase price in land acquisition projects. This is done to keep the price of land from increasing due to state interest in property. Additionally, these negotiations were between private parties, the Foundation, the Ridenours, and Mrs. Taylor. Public participation was sought at the point the public agency, Fish, Wildlife & Parks, became involved in the process.

4. **Why hasn't the alternative of the use of the existing launch site been included in this report? Why did FWP turn down a request that would fulfill the intention of the donor (exchange for Resort boat launch), while saving the state money, all while doing this in a manner that increases the quality of life around Lake Five?**
There were issues that made the alternative of the existing launch site not a viable alternative:
   a. The inclusion of restrictions on users of the access site that would not apply to lake users accessing through other sites.
   b. The access site considered in this environmental assessment is the property owned by the Fish, Wildlife & Parks Foundation. As the agency continues to work with private individuals to gain access to public waters, it is important to the Department's credibility that they work with the landholders in a forthright manner. Since the proposed trade was not acceptable to the original donors, the site was not pursued.

Another alternative considered and dismissed was the use of a piece of property adjacent to the Walsh property. This location was discussed, but the Ridenours were reluctant to sell this piece, and gaining legal access would have been necessary. Therefore this alternative was dropped.

5. **Doesn't it seem logical to have a plan to provide a fishery and the environment required to support it before building a fishing ramp?**
Lake Five has had a history of fisheries since the 1920s. There have been bass, trout, salmon, and panfish fisheries. Currently, there is a fishery for kokanee salmon, perch, bass, and brook trout, but there has not been an emphasis on fish management since the 1970s due to limited public access. The lake environment currently demonstrates good fish growth rates including perch to over 14 inches and trout to over 17 inches. Over the last 15 years, the majority of angler use has been during the winter months. This appears to be related to the limited public access when the lake is not covered with ice.

6. **Why aren't you genuinely interested in asking the community and adjacent landowners to participate in the entire planning and development process?**
The Department does have a genuine interest in working with the entire community on this proposal.

7. **What is it in your process that prevents an overzealous Department from making a nearsighted decision on a matter such as this and then foisting it off on the community with little or no responsibility or personal accountability in the future? Where are the checks and balances and corrective/oversight forces that ensure that FWP projects are working on the current priorities?**
Funding for Fish, Wildlife & Parks is done through the legislative process. Additionally, pursuant to MEPA, MCA Title 75, Chapter 1, the Department conducts an environmental review and involves the public so that it may make an informed decision. Moreover, the Commission must approve a Department acquisition of interest in land.

8. **How do a few people seem to have a say on this issue?**
FWP has attempted to notify all interested persons through news releases and through direct mailings to property owners around Lake Five. Public participation is designed to encourage participation by all citizens.

9. **How many people attended the open house on March 8? How many Lake Five property owners attended? How many supported the proposal, how many did not, and how many were there only to gather information?**
Forty-three people signed in at the open house. Eleven identified themselves as property owners, but several that did not identify themselves in this way on the sign-in sheet are also property owners. Four comment sheets were given

to FWP at the meeting, evenly split between those supporting Alternative III and those supporting Alternative I.

10. **Why has FWP targeted Lake Five**? **Has the public asked for access to Lake Five? Is there any record of any person complaining that they can't fish Lake Five because there is no public fishing access site?**
FWP regularly receives inquiries from the public about waters where public access is limited or nonexistent. There are notes in the FWP Region One Fisheries files dating back to 1981 noting the need for better public access on Lake Five.

11. **The intent of the donation is that a fishing access site be developed, not an open public access. Who was given the power to change the intent of the donation and by whom? Is this proposal truly intended as a fishing access or is there another reason? Did Mrs. Taylor understand and agree with the development plans? Does Ms. Taylor know that her intention of creating a peaceful, loving memorial for her son has been obviated by this ridiculous proposal?**
Mrs. Taylor was sent copies of the development plan and did approve those plans. In the agreement between the FWP Foundation and Mrs. Taylor, much of the design plan is outlined.

The Department Fishing Access Program is designed to give the public access to state waters. This program is funded through motorboat gas taxes and fishing license dollars. The program, while called the Fishing Access Program, does not limit use at the sites maintained under that program to a single activity. Mrs. Taylor was aware of the design and type of access proposed, and approved of that proposal.

12. **By what process did Mrs. Taylor and FWP select Lake Five as the site for the proposed development?**
Mrs. Taylor was presented with a list of eight potential sites. Within the same time period (within about a week) FWP was contacted by the Ridenour family wanting to sell a piece of property for public access. After Mrs. Taylor reviewed the list and after touring Lake Five and meeting with Edna Ridenour, she selected Lake Five as her preferred site.

13. **Does FWP plan to implement any user access fees at the proposed Lake Five public access? If not, are there any FWP policies that would preclude any user access fees ever being implemented at the site? In general does FWP use user access fees?**
In the past FWP has charged user access fees at state parks, but has never charged them at fishing access sites. In 2004, users access fees at state parks were replaced by a vehicle license fee, though FWP continues to charge for camping. User access fees were never used at fishing access sites, as these sites are funded through fishing license dollars and federal motorboat funding.

While there is no policy that would preclude user access fees in the future, there is also no intention to do so. If FWP did propose to implement user fees at fishing access sites, a full public review would be required, as well as Fish, Wildlife & Parks Commission action.

14. Does FWP have any documents that detail the process, procedures, and approvals FWP must follow? If so, what are these documents?

When an agency takes a state action, MEPA, Title 75 Chapter 1 MCA is triggered. The agency then must comply with MEPA's requirements. In addition, any acquisition of land by the Department requires Commission approval. For capital projects, FWP must follow the environmental review process listed above and also have funding approved through the State Legislature. FWP must also meet the requirements in MCA 23-1-126, the Good Neighbor Policy. Please see Attachment 2 for a response on how that policy was met.

15. Why did the Department extend the comment period – was it at the request of Mr. Illi?

To gain all the public comment that it could, and due to the volume of comment received, FWP chose to provide more time to comment than required. There were requests for an extension of the comment period from homeowners around Lake Five, as well as from numerous members of the public.

16. Was the size of Lake Five determined by means of the 1:100,000-scale hydrography layer within the Department's GIS system? Why the discrepancy in lake size? Would like to see calculation on no-wake zone – total acreage of lake, and how many acres would still be available to open boating.

The initial Fish, Wildlife & Parks (Fish and Game at that time) survey on Lake Five was done in 1954. At that time the surface acreage was estimated at 320 acres, including 80 acres of wetland. Documents for a chemical treatment of the lake in 1960 referenced 235 surface acres estimated from a map made from an aerial photo. In 1964, FWP created bottom contour maps for over 40 lakes in northwest Montana. The Lake Five map listed a surface acreage of 235 acres. The contour maps have proven popular with the public and have simply been copied since that time along with that surface acreage.

More recent FWP databases such as the Montana Fisheries Information System (MFISH) have used GIS mapping techniques and identified surface acreage as 151.8 acres. It would take a formal survey to definitely establish surface acreage. Surface acreage will vary with water level.

According to GIS mapping techniques, the total acreage of lake that would be available for wake speeds would be approximately 74.6 surface acres.

17. Where in the EA are the following covered:

a. Physical capacity of the site to withstand the proposed modifications and the likely impacts on the resource – this should include the lake itself.

The physical capacity of the site itself was examined when the Design and Construction Bureau examined the site for a site design alternative. Impacts to the lake itself would be from the addition of a maximum of 15 additional boats. Public estimates of the number of boats currently using the lake ranges from 8 to 70 on a peak day during the busy July/August season. It is FWP's opinion, based on experience in managing recreation sites, that social crowding is self limiting, i.e., if a lake is considered to be "too busy" by users, they will limit themselves by going elsewhere.

b. Life expectancy used the analysis of the proposed improvements – if the site generates income, that information must be part of the analysis.

It is not anticipated that this site will generate income, as no user fees are anticipated. Normal life expectancy on boat ramps and other facilities is generally fifteen to twenty years.

c. Impact of the development on tourism – was this sent to the Department of Commerce?

That form has been completed. A copy is in Attachment 3.

d. How does this project relate to long-term Department plans?

In 2001 FWP completed a six-year planning process. In that plan, acquiring increased opportunities for public recreation was identified as a primary goal for the Fishing Access Site Program. In addition, Lake Five has been identified as a priority for public access since 1981.

e. How did you comply with 12.8.604 – public surveys of desire for the project?

12.8.604(h) states that a project should address the desires of the public as expressed to the Department, including comments received by the Department which may be on file or user surveys. FWP has received comment from the public regarding the need for access on Lake Five. FWP has not completed a public survey.

f. The opportunity to submit verbal and written comments during the open house.

Various forms of comments were received during the public comment period, including written and verbal comments. The open house provided an opportunity for questions and answers, and written comments on the comment sheets. While FWP did not take verbal comment during that forum, they did provide the opportunity for verbal comments by phone or personal meetings.

g. Has this project been approved by the Montana legislature?

All potential statewide fishing access site (FAS) projects for the upcoming biennium are developed prior to the Legislative Session. The project needs and proposals are published in handout form to provide information on the types of projects anticipated. The Lake Five project is listed in both the 'proposed' statewide FAS project list and in the 'selected' lists that were developed in late 2004 in preparation for the 2005 Legislative Session.

Please note that the Legislature does not approve specific FAS projects or allocate funding to individual FASs. The funding authority is allocated as a single line-item amount for statewide FAS project needs. For the 2005 Legislative Session, the anticipated funding is expected to be $800,000 in what is termed FAS Site Protection funding for the next biennium.

h. How does the EA address the impact of increased boating and jet ski use on the lake itself?

From public comment, estimates of use range from 8 to 70. FWP District Warden Perry Brown has stated that peak use is approximately 8-10 at a time. The addition of a maximum of seven additional boats was deemed to be minor. Water quality at Lake Five is excellent, and regulations are in place to protect water from poorly maintained boats. Boating use is self-limiting; if a lake is perceived to be crowded, people will disperse elsewhere. In addition, FWP is willing to work with adjacent homeowners to adopt water use regulations to mitigate for social and safety issues. Finally, with public access, the 200' no wake distance from shore regulation will be implemented. This will move water skis and jet skis into the center of the lake, which will reduce shoreline impacts from erosion and provide a safety zone for swimmers and fishermen.

18. Did FWP complete a private land fishing access scoring form? Was it used in connection with this project? What objective analysis was utilized to measure the claimed public benefit?

That form is used in conjunction with a proposal to pay a private individual to provide public access on his/her property. Since that was not what was anticipated in this project, the form was not completed.

19. What private agenda is FWP pursuing, and why?

The Department agenda is to provide and manage public recreation. Montana Code Annotated 23-2-101 gives the authority to the Department of Fish, Wildlife & Parks to plan and develop outdoor recreational resources in the state, which authority shall permit receiving and expending funds including federal grants for this purpose.

20. A local sportsman's group requested that the comment period be extended. Who is this group and at what meeting (date and president's name) by quorum did this group request an extension?
At the March 10 Flathead Wildlife meeting a verbal request was given to Jim Vashro and Jim Satterfield, requesting an extension of the comment period. No request was received in writing.

21. Who is Warren Illi and his connection of FWP?
Warren Illi is a past president of Flathead Wildlife and has previously served on Region One's Citizen's Advisory Committee.

22. Why are the rights of private property owners considered an obstacle to proceedings by a public agency? Since when, and under what justification, is participation by adjoining landowners a complication against efforts by the Department? Since your agency continues to insist that no decision has been made, to what was the obstacle related? What, if no decision had been made, was being complicated?
The rights of private property owners are not at obstacle to proceedings by a public agency; however, it has been the Department's experience that all potential land acquisitions are controversial, with adjacent property owners having strong opinions opposing most new acquisitions.

Fisheries

23. What would have happened if the Department had left the lake alone? Would there still be bass?
No species other than kokanee and one plant of grayling have been stocked since the mid-1970s. Largemouth bass, yellow perch, pumpkinseed sunfish, and longnose suckers have established self-sustaining populations with abundance varying by species and from year to year.

24. Are you unaware that the fishery in Lake Five is virtually dead? Why does FWP plan to spend money to plant fish into a dying lake in order to maintain the fish population?
Creel data shows angler use varying between 99 and 3,106 angler days per year since 1989. Our fisheries survey data shows a mixed species fish community, with salmon, brook trout, and perch showing good growth. Fish abundance could be increased with regular stocking. The Department has no information to indicate that the lake cannot support fish populations. All lakes are naturally aging, but this process can take hundreds of years. There is nothing to suggest the process is unnaturally accelerated at this time in Lake Five.

25. I question whether the project includes anyone working with technical education and expertise on matters involving the environment that has

ever been to Lake Five to witness the condition of the fishery. If so, who are they, and what did they find and conclude?
The Regional Fisheries Manager, Jim Vashro, has over 30 years of experience, with 23 years in Region One. Fisheries Biologist Mark Deleray has over 14 years of experience, with 13 years in Region One. Both have Masters of Science degrees in fisheries science and management. Fisheries surveys have been done on Lake Five since 1954 and have found a mixed species community, including brook trout, kokanee salmon, largemouth bass, and yellow perch, with trout and perch showing good growth and sizes. Longnose suckers and perch were the most abundant species in our recent netting catch.

26. Why did FWP poison all the bass?
In 1960 and 1968, the Department made two attempts to remove perch, sunfish, and suckers to improve the trout fisheries. Neither treatment was completely successful, and these species returned. The Department stocked bass into the lake in 1974, 1975, and 1976 to increase the bass population size.

27. Do state regulations allow fish stocking in nonpublic bodies of water? Does the fact that FWP has been (possibly illegally) stocking Lake Five then become the justification for making this lake a public lake with the need for a public fishing access? Was Lake Five planted illegally, given the lack of public access? On what basis has FWP determined that there is public access and that it is lawful to plant fish?
The Department does not stock waters without public access; however, the Department can permit private individuals to stock fish into nonpublic bodies of water. Lake Five was stocked regularly from 1924 to 1976. Stocking was halted in the 1970s due to concern over public access. An experimental plant of kokanee was made in 1986 to see if an egg source could be developed for the state hatchery system. That did not pan out, but a salmon fishery did develop, with anglers using a county road right-of-way, railroad right-of-way, and private land to access the lake. Stocking of kokanee has therefore been continued on a limited basis.

28. If you have to continually stock to maintain a feasible fishing population and justify the existence of a fishing access, what kind of responsible natural resource management is that? Who wins?
Lake Five currently contains self-sustaining populations of brook trout, largemouth bass, yellow perch, and pumpkinseed sunfish. The Department annually stocks kokanee salmon. In the 1950s, 1960s, and 1970s, the Department stocked rainbow and cutthroat trout into Lake Five. Stocking hatchery-produced trout into Montana lakes has been a very successful and accepted strategy of fisheries management for many decades. Currently, the Department stocks trout in about 240 lakes in Region 1 where natural production does not meet demand. These fish provide successful and popular

fisheries. In Montana, stocking fish into lakes has been a very popular program.

At this time, there is very limited public access at Lake Five. The access consists of a county right-of-way easement along the lakeshore. MFWP has not illegally stocked Lake Five, but has limited stocking proportional to access.

29. Does FWP have any evidence or statistics for a lake consistent with the size of Lake Five in which full access has resulted in the increased fishing you envision?

Yes, on similar-sized lakes such as Beaver and Bootjack Lakes, both in the Flathead Valley, when public boating access was taken away, angler use dropped by approximately 75%. MFWP has just recently constructed a boat ramp on a fishing access at Beaver Lake in an effort to improve the public access to the lake.

30. How was the regulatory requirement met in connection to stocking Lake Five with nonindigenous fish?

All fish plants are approved by the Regional Fish Manager, Hatchery Bureau Chief, and Chief of Fisheries. An environmental assessment was not required before 1991, and no nonindigenous species have been introduced since that time.

31. How is the current stocking program not for immediate harvest? 12.7.601 specifies that the planting of catchable-size trout for immediate harvest is not considered resource management, but a means of providing additional man-days of recreation. If it was for immediate harvest, how did FWP meet the criteria for number of fisherman days and catch rate.

The criteria mentioned apply to stocking catchable trout on a put-and-take basis. Waters such as Lake Five are usually planted with sub-catchable fish on a put-grow-take basis.

32. Why would this project be undertaken when it requires constant stocking?

Stocking hatchery-produced trout into Montana lakes has been a very successful and accepted strategy of fisheries management for many decades. Currently, the Department stocks trout in about 240 lakes in Region 1. These fish provide successful and popular fisheries.

33. Where are the creel census surveys to substantiate the species and distribution of fish in Lake Five?

There are current survey data on fish species distribution and relative abundance. The lake has been annually netted since 2001, and also in 1994, 1973, 1971, 1967, and 1957. There are also estimated angler use estimates

since the early 1980s through a statewide mail-in creel survey. The data are available at the MFWP regional office in Kalispell.

34. Why is there a limit on illegally introduced species in this lake when FWP acknowledges their introduction? Why does the report not include some fish that do live in the lake, such as northern pike?

Two species have been reported as illegal plants: walleye and northern pike. There is no limit on walleye in the Western Fishing District. The daily limit on northern pike is 15, which is essentially no limit. There is no evidence either species is established in Lake Five. FWP has not captured or observed a northern pike in any of the sampling efforts to date; therefore, it does not appear they have established a population.

35. If you did plant 20,000 fish there, what would they eat?

Stocked trout and salmon would primarily eat zooplankton, and aquatic and terrestrial insects or other invertebrates.

36. Smallmouth bass would be a reasonable fish to plant. If FWP is concerned about bucket biology, why not poison all lakes that have small-mouth?

Future fisheries evaluations will likely include considerations of stocking bass. The Department currently stocks bass, both smallmouth and largemouth, in 10 lakes in Region 1. Illegal fish stocking is a large problem in Montana and has resulted in numerous expensive treatment projects to remove the illegally stocked fish. The Department does not currently have any plans to treat a lake that was illegally stocked with smallmouth bass. Stocking bass in Lake Five would trigger the need for a warm water stamp to harvest bass and perch.

37. What studies have been done to determine the current and future fishing value of this lake, considering such factors as surface area and water depth, as well as the heavy and ever-increasing motorboat traffic?

No studies have been done to specifically determine current or future fishing values. Fisheries surveys have shown that trout and perch can grow to good lengths. Current salmon stocking and past fishing reports have shown that stocking fish can successfully establish fisheries in Lake Five.

38. Can fish survive or reproduce in Lake Five? How healthy is it to ingest a fish living in such contaminated water?

Bass, perch, sunfish, and brook trout are successfully surviving and reproducing in Lake Five. Stocked kokanee salmon are surviving in Lake Five. The Department is not aware of any health risk associated with eating these fish or that the lake is contaminated. A report from the Flathead Basin Commission, Attachment 4 states that Lake Five has better water quality than many area lakes.

39. **I would like to see proof to support the claim by FWP that trout, salmon, and bass live in Lake Five. I have not seen any fish except for perch in a number of years. Have there been any recent fish viability studies?**
Netting survey data is available at the Kalispell office of MFWP. Netting has been conducted annually since 2001. In all four years, brook trout, perch, and kokanee salmon were captured. One bass was captured in 2004; others were observed by field personnel. Bass are rarely captured in netting surveys due to their shape and ability to avoid the nets.

There have not been any recent fish viability studies, but bass, perch, sunfish, and brook trout are successfully surviving and reproducing in Lake Five. These fish species appear to have viable populations. Stocked kokanee salmon are surviving in Lake Five. Most trout and salmon require running water to reproduce. Lake Five doesn't provide that, so most stocked salmonids will be caught or eventually die out.

Enforcement

40. **If there is increased patrol, where is the manpower coming from to perform this? Is the state increasing the number of officers? Who is going to enforce the other rules on the lake that are currently going unenforced? How will the increased enforcement presence be accomplished? Law enforcement is already stretched thin, yet we were told there will be more of a law enforcement presence – how can that be unless you hire more men? Does public access determine the enforcement activity provided to the waters of Montana?**
There will not be an increase in the number of Fish, Wildlife & Parks enforcement personnel in the region; however, in the past there has been no public access for enforcement personnel, which is necessary in order to do water safety patrols. In the past, access at the resort has, at times, been denied. With the development of a public access site, water access for enforcement personnel will increase.

41. **Can we expect an officer everyday, once a week, or maybe as in the past, once a year?**
While homeowners cannot expect daily enforcement on Lake Five, enforcement will increase due to the ability of enforcement personnel to launch their boats on Lake Five to do water safety. The number of visits will be based on use patterns and complaints/violations observed. FWP will include Lake Five in our routine water safety patrol schedule until patterns of use are established.

42. **Exactly how much enforcement can be provided for the sum of $500 per year?**
$500 per year was considered the cost for travel, per diem, and boat fuel for enforcement personnel. Salary for enforcement personnel was not considered

as no additional enforcement personnel are anticipated being hired due to the presence of public access.

The number of boats from the public access site will be controlled by the limited parking at the site and enforcement of no-parking regulations along the public roadways.

43. What is the response time for emergencies or parking or trespass issues? How close is the nearest stationed law enforcement presence that could possibly respond, and will they respond?

As homeowners in this area are aware, the response time in emergencies is longer than it is in some other areas. Trespass issues would be handled through the Enforcement Division and would depend on what other activities were occurring at the time. Parking issues can be handled on a non-emergency basis. Via phone, the Enforcement Division could give permission to have a vehicle towed. Additionally, NTAs written for parking violations can be written at any time up to a year after the violation and mailed to the offending party. The on-site host would be capable of gathering the information for such a violation.

44. There is not enough manpower to take care of problems at existing access sites (cites Echo Lake), why create more? What is your plan for law enforcement for this access site?

Public demand for access to state waters continues to grow. Because of the acknowledgement that unsupervised use could lead to problems for adjacent homeowners, a host is recommended to live on-site to provide a presence that will preclude most types of unauthorized activities from starting in the first place. Additionally, their ability to open and shut the gate will eliminate late night disturbances.

Water Quality

45. Is the lake already polluted? Water samples taken in 1984 indicated e-coli bacteria were present. Are we to risk health problems with significantly increased recreational boating? (Water quality issue relating to unburned gasoline?) How do you think water quality would not be adversely impacted with additional access? What are the impacts on water quality of this project?

E. coli bacteria are produced by all animals, including waterfowl, furbearers, small mammals, and human sources, such as septic tanks. Low densities of E. coli do not threaten human health.

Please see Attachment 4 for a copy of the water quality results on Lake Five. Mark Holston of the Flathead Basin Commission stated there has been a lot of data collected there since 1993, working with local volunteers. He further stated that Lake Five is deep and fed by lake bottom springs, and that their data indicate that the lake, compared to other lakes in the basin, is quite

healthy. Many other small lakes are much more impaired. He further stated that the depth of the lake and the constant introduction of cold spring water are partly responsible for this.

If boats are not maintained correctly, and are discharging excessive gasoline, they can be cited and fined for that offense. Water quality at Lake Five would continue to be monitored in the future.

46. **What is the flushing time for the lake pollution?**
Unknown. Flushing time is measured as the amount of time it takes for the lake volume to replace itself. Lake Five has no inlet, being fed by underground springs. The only surface outlet is a seasonal outlet to Mud Lake. Most water leaves underground through gravel; therefore, flushing time for the lake is unknown.

Safety/crowding

47. **What provisions are you making for controlling the number of watercraft on the lake? Have you determined the safe number that could be allowed? How and who is going to enforce those limits? How many boats are too many on the lake? Will there be any monitoring done? How many boats are appropriate for safe boating on a 152-acre lake? What statistical proof of safety is available?**
There are no provisions for FWP to control the number of watercraft on the lake, and no research has been completed to determine the safe number that could be allowed. If it was determined that a maximum number of boats was allowable on the lake, all users, including adjacent lot owners, would be impacted with some type of permit system.

48. With the traffic the resort already brings in, do we really need more? Can a small lake support increased public usage?
The proposed site is limited in scope. Additionally, use on recreational waters tends to be self-limiting. When a lake is perceived as busy, people tend to go elsewhere. FWP will work with the community on water use regulation if it is deemed appropriate.

49. As indicated in the Gov. own words, they will have a sort of security present. Does this stop the casing of the properties now from trawling the shorelines? What will stop the public from boating to my shores, violating my privacy, or vandalizing my property?
While there will be a host on-site to ensure minimal impacts to adjacent neighbors of the site, it will not be within their prevue to act as security for adjacent private property. There will be no more control over this issue than currently exists.

50. It mentions a contact for enforcement – we have this already with all the owners. Now we will have one 24 hours a day? For what reason?
The contact for enforcement would be if problems at the fishing access site were impacting neighbors. This individual will also have contact numbers for FWP enforcement if issues arise.

51. Who in their right mind would want to fish in the middle of all the boating activity? Don't see how fishermen can enjoy their experience with jet skis and water ski boats orbiting around them. How will these conflicts be mediated?
Conflicts between fishermen and jet skis will be somewhat helped with the implementation of distance-from-shore regulations. Additionally, on busy lakes, fishermen generally fish early or late, leaving the heat of the day for other recreational activities. If conflicts continue, water use regulations could be implemented, with the support of the community at Lake Five.

52. How would you enforce a distance-from-shore regulation with this proposal other than to always have law enforcement officers on-site?
Just as with any regulation, random enforcement is used. There will be times when enforcement is not present, just as is true on all public bodies of water.

53. Adding more boats to the mix is a death waiting to happen. Does FWP just not care or is this an example of government head-in-the-sand mentality at its finest? How can the state create a dangerous situation in terms of water safety? If the number of jet skis and water skiers has already been reported as a concern, then by more than doubling the amount of motorized traffic on the lake, would you not actually just be adding to the problem?
The limited amount of access provided by this proposal will increase the number of boats on the lake. With the implementation of the no-wake 200' distance-from-shore regulations, and the increase in water safety patrols, the potential for impacts to safety can be mitigated. If the lake is already at critical mass for water safety, FWP will work closely with the community to establish recreational water-use regulations to provide safety for boaters at Lake Five.

54. If the development site is approved, what present plans does FWP have in limiting the size and speed of boats and the use of Lake Five or any portion of Lake Five?
FWP has no plans, but if the community indicates that it is necessary to limit the size and speed of boats and the use of Lake Five, FWP will work with the community to establish water-use regulations.

55. What power does FWP have in unilaterally limiting the size, speed, and use of Lake Five or any portion of Lake Five?

The Fish, Wildlife & Parks Commission has the statutory authority to regulate waters for social and safety issues through MCA 87-1-303(2). Normally, a request is received from users of the body of water, requesting some water use regulation. That request goes through a public hearing process and is decided upon by the Fish, Wildlife & Parks Commission.

56. How did you measure that 7 boat spots for the public access would be minimal, when, if you have ever spent time on the lake, you would observe that that is about the maximum number of boats on the lake at any given time, therefore doubling the number of boats in use?
In public comment on this project, the number of boats on the lake at any one time during the peak season has been estimated at between 8 and 70. Perry Brown, the FWP District Warden, stated he believes peak use is approximately 8-10 boats at a time. An additional 7 boat spots, could double the number if peak use is indeed 8, but would be less than a 10% increase if the high number is current. It has been FWP's experience that recreational boating use is self-limiting, with people choosing to go to alternative sites if a site is viewed as too busy. It is anticipated that impacts would be minor and could be mitigated through the increase in water safety patrols, and the implementation of the 200' no- wake distance-from-shore regulation. FWP also commits to work with the community to implement boating restrictions if this is needed or supported.

Facilities/Operations

57. What about the possibility of a canoe access only?
Since funding for the development of fishing access sites is partially from federal motorboat funding, this would not meet federal requirements. Additionally, FWP is concerned about disallowing the public to use a public access in a manner that is more restricted than what private landowners are doing.

58. What about reduced trailer parking for motorboat traffic to reduce motorboat traffic?
This will be considered in the EA process.

59. Will the host pad be manned 365 days a year? If not, the public will now assume they have rights to the property and during the winter the snowmobile activity will increase. How does that help the ice fishing?
The host pad will be manned during peak season, May 1 through September 30. That season can be extended to mid-April and mid-October if demand requires it. The property will be open during the winter for ice fishing, with the road being plowed by FWP. This will be done to enable ice-fishing access without individuals parking along the side of the county road. Maintenance during that time will be done on a periodic basis by staff from the FWP headquarters in Kalispell.

It is unclear how this site will increase snowmobile activity. If individuals are using snowmobiles to access ice fishing, then snowmobile activity may increase. If the concern is snowmobile racing on the lake, FWP will work with the local community regarding that issue if it occurs, based on regulations on unsafe operation.

60. How would the site be maintained into the future?

Mrs. Taylor set up a trust fund, with the interest to be used for site maintenance. It is anticipated that that interest will be about $2,250 per year. Additional funding that is needed for operations will come from the regional fishing access site budget, funded through fishing license dollars and federal motorboat funding.

61. How will the littering/garbage problem be handled?

A pack-in pack-out policy will be established. If this is unsuccessful, bear-proof containers will be placed on-site during the peak season, with the resident host hauling refuse from the site. If necessary, FWP will contract with a local company for garbage service.

It will be the responsibility of the host to manage litter and other maintenance issues on the site, with larger repairs, etc., being handled by the regional maintenance crew.

62. If the public access is day use, why would the access be open until 11 p.m.? Will there be boaters on the lake after dark?

This is the standard operating time for fishing access sites, based on the early and late hours fishermen tend to fish. If another time would be more appropriate, this can be negotiated with the community.

63. Please make clear the public access use during the fall, winter, and spring months. When will the access be open and when will it be closed? What kind of patrolling or protection from misuse would be available when the host is not on-site? Will the public be able to access the lake from the public access in the winter by walking, skiing, snowshoeing or snowmobiling in? If the gate is closed to access in the winter, where will the ice fisherman park for access to the lake? If the gate is left open, who will plow the access road?

The site will be open year round. There will be no host on-site to open and shut the gate daily, so the gate will be left open. The public will be able to access the lake from the site in the winter by walking, skiing, snowshoeing, or snowmobiling to this fishing location. If snowmobile racing on the lake becomes an issue, FWP will work with the local community to regulate that behavior, based on regulations concerned with unsafe operation. If spring or fall late-night gatherings occur, FWP will maintain authority to initiate seasonal closures (October, November, and April), or some other means of

ensuring that the site is not being used for keggers and other late-night activities.

Patrols from the Fish, Wildlife & Parks district warden will occur during the off-season as well as during the peak season. Snowplowing and maintenance will be done from the FWP headquarters in Kalispell on a periodic basis.

64. What kind of toilet facilities will there be in the winter for the ice fisherman when the access is closed during the winter?
FWP uses vault toilets, which are usable year round.

65. How was the number of parking spots determined?
The site was designed by the Design and Construction Bureau, based on the terrain and gift agreement.

66. Will your caretaker be guarding your public access property every minute from 6:00 a.m. to 11:00 p.m.? What happens after 11:00 p.m? Will your caretaker have authority to curtail the public from having keggers after a day on the water? Will he/she regulate garbage and waste disposal? Will bears smelling trash be controlled by the caretaker? If there is only one host, when will he/she take care of personal business – i.e., who will cover the site when they are gone?
When the host is gone there will be no one at the site. Generally hosts live on-site, taking time off during the day to do personal business, and are there nightly. They would be expected to open the gate in the morning and close it at a set time nightly. Vehicles that are at the site after closing time are normally ticketed. Past experience has shown that by having someone there to shut the gate at night, many of the problems associated with public access sites can be eliminated. It would be the host's responsibility to assess a group's behavior, inform them of the regulations, and call authorities if violations are occurring. Past experience has shown us that having a presence on-site generally curtails undesirable behaviors such as keggers.

The host will regulate garbage and waste (See Question 74). Bear-proof containers should eliminate conflicts with bears; if not, adjustments will be made to eliminate attractants.

67. Will the public access site be closed after 11:00 p.m. and cars and people after 11:00 p.m. impounded? When the 23 parking spaces are filled, will the caretaker be able to turn others away? How will you limit the number of boats and users when the carrying capacity is reached? What will happen if your belief that the limited parking of this new site is not self-regulating?
The host at the site can close the gate when capacity is reached, placing full signs on the road into the site. Signing can also be placed along the county and entrance roads disallowing parking along those roadways. If people

continue to park along the county roadway, FWP will work with the Sheriff's Department to curb that behavior. Notice of Violations can be issued through the Enforcement Division as necessary.

68. Will you build a caretaker's cabin on the site?
No, an RV pad will be provided with sewer, water, electricity, and phone. The hosts have their own recreational vehicle for living quarters.

69. Will the caretaker be paid, or will payment be to live on the site?
The host will be a volunteer, and will not receive pay; however, FWP will pay the cost of utilities and phone for the host, and reimburse for incurred costs for mileage and supplies.

70. Does your agency find the caretaker? For how many years?
FWP recruits statewide for hosts and is generally very successful. Hosts must stay at least a month, and generally make a commitment for one season. Many hosts return yearly, while some stay one year, and a new host is recruited the following year. Recruiting is done beginning in January each year.

71. What caretaker arrangements will you make for winter use of the site?
No host will be on-site during the winter. Maintenance will be done out of the regional headquarters.

72. Why do new parks and access points always have to be shiny Cadillacs when an '89 Chevy would suit this community better?
Some level of development is required for resource protection and safety. It is anticipated that the Lake Five community will require a host to prevent late night disturbances, crowding, parking along the access roads, and other issues. Paving may or may not be provided, based on public comment and budgetary constraints. Parks and access points have to be built to certain standards to protect resources and provide safe and enjoyable visits.

73. Is there a plan to keep the public from mistakenly using our driveway?
A turn-around will be located at the entrance to the site. Signing will also be placed along the roadway identifying it as a dead-end and private property. The alternative of creating a separate entrance road will be examined, based on terrain and funding.

Environmental

74. Are there toxic materials left in the lake as a result of the Columbia Falls Aluminum plant discharge?
Unknown. Water quality at this site is good, and the existence of toxic materials in the lake, if any, will not be impacted by this action.

75. Do we know with certainty the precise flora and fauna of the area? Are there at-risk populations?

The site has been inventoried for cultural resources. A request for information on possible threatened, endangered, or sensitive species was done through the Montana Natural Heritage Program. They identified the following species:

Brush-tipped Emerald (Dragonfly). This species is common throughout their range, but not common in Montana. They normally occupy boggy streams. Since the area of disturbance is not on the stream, there should be no impacts from the development of this site. With the implementation of a distance-from-shore regulation, the wetlands should be more protected than they are currently, increasing protection for the Brush-tipped Emerald.

Common Loon: According to Wildlife Biologist Gael Bissell, Lake Five has not been a loon breeding lake in the recent past either due to lack of nesting habitat or disturbance. Loons do use the lake in the spring, indicating some interest by pairs for nesting or a hangout spot while waiting for other lakes to open up. They also feed there occasionally in the summer as they do on Lion Lake. If loons attempt to nest on the lake, FWP would place buoys out to reduce disturbance to the nest. Lake Five does provide an alternate feeding lake for loons nesting elsewhere or for nonbreeders.

Velvetleaf Blueberry: This plant was identified as existing north of Lake Five at an elevation of between 3,320 and 3,366 feet. It exists in dry, flat planes, with well-spaced lodgepole pine stands creating partial shading. Lake Five's elevation at water level is 3,260 feet, with a different microclimate than demanded by the Velvetleaf Blueberry.

Bull Trout: Bull trout do not exist in Lake Five, so will not be impacted by this project.

Grizzly Bear: Wildlife Biologist Tom Litchfield was consulted. It was his opinion that, because the activities are limited to day use, except for the on-site host, impacts to bears would be minimal. Bears use the area as they pass through; therefore, to prevent habitation to food sources for either black or grizzly bear, the site will be pack-in, pack-out. Any garbage left on-site overnight will be in bear-proof containers, and there will be no bird or other wildlife feeders allowed on-site. The slight increase in activity associated with day use should not affect grizzly bear.

Bald Eagles: According to Wildlife Biologist Kristi BuBois, there are no known eagle nests on Lake Five, with the closest known nest being on Hungry Horse Reservoir. A larger number of eagles do migrate through the area in spring (mid-February to the end of March) and fall (September through November), but the presence of a fishing access site should not impact that activity. Eagle numbers are expanding. If an eagle nest is located on Lake Five, FWP will follow the Montana Bald Eagle Management Plan adopted in July of 1994.

76. The lake is in the process of dying from overuse. Where in the report has this impact been addressed? If Lake Five is a dying lake, why was that not considered in the EA?

All lakes naturally age. The rate of aging can be accelerated by human activities, such as septic tanks, fertilizers and chemicals, and shoreline alterations, but there are no indicators that Lake Five is dying.

77. What happened to the healthy ecosystem of the lake itself? I read the statistics in the report and see that FWP has planted thousands of fish over many years. Where are those fish?

The lake appears to have a healthy ecosystem from the water quality and viable fish population standpoints. Some fish species are self-sustaining and persist in the lake. Other species do not have the habitat to reproduce and will eventually die due to harvest, disease, or old age. Regular stocking will replenish those fisheries.

78. Where did the information come from on bears - that bears, including grizzly, frequent the Lake Five area?

The draft EA was reviewed internally before being sent out to the public. The Wildlife Manager, Jim Williams, had an opportunity to review and comment on the EA. It is recognized that black bear and grizzly bear travel through the corridor around Lake Five, but the impacts of the fishing access on bear will be similar to that of other housing because the site will be closed nightly, with only one seasonal residence.

Garbage issues as related to bears will be mitigated by the use of bear-proof containers for any refuse housed on-site.

79. With the increased boat usage of the lake, what impact will there be on the habitat in the lake and surrounding wetlands? What studies were referred to in making an analysis?

The Flathead Basin Commission runs a volunteer water quality monitoring program, and that should continue as long as there are volunteers. FWP conducts regular fishery surveys to detect changes in the fisheries and evaluate management and use.

80. Clarification is needed to define nuisance noise (decibels), what a tolerable level is, and what steps will be taken to monitor and mitigate the effects.

In boating regulations, decibel levels have been set at 90 dba at 1 meter, which is above the noise level of most watercraft. For snowmobiles, noise levels limits are set at 78 dba at 50'. Noise from human activity will occur during daylight hours, but it is not anticipated that this noise will be any greater than that coming from private property. A host will be on site to contact enforcement if rowdy behavior and, hence, excessive noise is occurring at the site.

Economic:

81. What is the real cost of the project? What are the construction costs and annual operating costs? What are the long-range projections in terms of maintenance, upkeep, and care of the public access site by FWP?
See Attachment 5 for the cost estimates for capital construction. Utilities for a volunteer host, based on previous experience, are anticipated to be $90 - $120 per month. Enforcement costs for mileage and per diem are anticipated at $500 per year.

82. How does FWP plan to fund ongoing costs of the site? Has FWP estimated these amounts for the proposed site? If so, how much are they?
In anticipation of the additional maintenance and operation costs that would be incurred with the development at Lake Five, FWP and the Foundation worked with Mrs. Taylor to develop a proactive strategy to manage this aspect of the FAS. A decision was made to invest a portion of the funds Mrs. Taylor wanted to donate to the Foundation in a long-term trust account that would pay annual dividends, which could then be used to offset the annual operations and maintenance expenses. The current rate of return on long-term investments is 4.5%, which will give FWP an annual rate of return of approximately $2,250 per year.

83. What federal funds would be used to develop the site as you mention in the EA. Do you have them secured already?
Federal funds that would be used would be Wallop-Breaux funding, which is an excise tax on fishing equipment, and federal motorboat funding, from taxes on gasoline. This funding must be matched with 25% state funding to $75% federal funding. The value of the donated land can be used for the state match. Federal funding is available and will be committed to this project or other projects being considered by FWP.

84. Within FWP, how are new budget items approved? What are the lines of Department approvals likely to be required for the proposed new ongoing costs at the proposed site?
The process and procedures for any potential development efforts of a Department owned or managed site involves both internal and external steps. The internal steps involve FWP managers, biologists, maintenance staff, the Department's Design & Construction (D&C) staff, and others. Potential development or construction needs are determined at the regional level, by the local FWP program manager. The final decisions related to the funding of specific projects, the types of funding to be utilized, allocation of D&C work priorities, and related details are made at the division level (Helena FWP Headquarters).

Once the preliminary internal steps are made related to a potential development project, the project is documented in an environmental assessment (EA), which is then issued for public review and comment. The standard review process involves a 30-day public comment period. The Department's EA process is detailed in ARM 12.2.430 through 12.2.433.

At the conclusion of the public comment period on any EA, a record of decision (ROD) is issued for the project. The ROD is a document signed and released by the regional supervisor in one of the seven FWP administrative regions of Montana. From that point, an individual ROD can be appealed to the FWP Director. The next level of appeal is to the FWP Commission.

All potential statewide fishing access site (FAS) projects for the upcoming biennium are developed prior to the Legislative Session. The project needs and proposals are published in handout form to provide information on the types of projects anticipated. The Lake Five project is listed in both the 'proposed' statewide FAS project list and in the 'selected' lists that were developed in late 2004 in preparation for the 2005 Legislative Session.

Please note that the Legislature does not approve specific FAS projects or allocate funding to individual FASs. The funding authority is allocated as a single line-item amount for statewide FAS project needs. For the 2005 Legislative Session, the anticipated funding is expected to be $800,000 in what is termed FAS Site Protection funding for the next biennium. Budget requests are submitted on an annual basis from the Region. These requests are approved by the divisional administration in Helena and submitted to the legislature for funding.

Other:

85. What will be the impact of future development by current property owners?
Unknown

86. Are there any standards in place, fees charged, fines for littering, or charges for environmental damage?
If an individual is cited for littering, bond for this offence is set at $60. If the violation is significant (i.e., vandalism, tree cutting, etc.) the courts can be asked to require restitution for the offense. Environmental damage could be considered by the court system for restitution.

87. The area is zoned as residential under the Canyon Plan adopted in 1994 as part of the Middle Canyon Zoning District. This zoning designation does not permit the type of site that you are proposing. How can you put an FAS there?

FWP lands agents have investigated this issue. The land is in the Canyon Area Land Use Regulatory System. Section 6.2 (A)(4) of the CALURS authorizes the use of this property as a fishing access site, which is considered a community park. Please see Attachment 6 for a copy of that determination.

88. Where did the comment that there are currently complaints from adjacent neighbors about water-skiing on the lake come from? Since there is currently no public access on Lake Five, then what public has expressed concerns about jet skis and water-skiing as referred to on page 4 of the EA?

From a verbal conversation with two property owners on Lake Five that stated they were either concerned with water-skiing on the lake already or believed the lake was already heavily used for recreation.

89. From FWP's perspective, how is FWP's proposed public access to Lake Five quantitatively different from the public access via the Lake Five Resort?

Access through the Lake Five Resort is not ensured for the future. Public boat access has been lost at a number of lakes in Region One (Lake Blaine, Beaver Lake, Many Lakes, Milner Lake, etc.) when land previously used by the public was sold or converted in use. Additionally, FWP has received some comments that state the resort is no longer available for day use. A user access fee would not be charged at this public access.

90. Does FWP have a long-range development plan for Lake Five? When was the last time it was updated?

There are no specific long-range development plans for Lake Five, other than the need to acquire public access. There is no intent to provide for overnight camping or other recreational opportunities.

91. What documents exist that describe FWP's interest in Lake Five?

FWP Region One fisheries maintains a file on Lake Five that has correspondence and survey data dating back to the 1950s. That file is open to the public upon request.

92. Does FWP maintain a policy regarding the naming of public access sites?

Yes, please see Attachment 7 for a copy of that policy.

93. Did FWP have an independent appraisal of the real property? If not, is one planned?

An appraisal was completed.

94. Is this an effort to put the Resort out of business?

No. In correspondence received from Mike Ridenour at the resort, it was stated that this access would not impact his business. Additionally, the resort

will continue to offer many amenities that would not be available at a public access site.

95. Section 75-7-202 defines a lake to mean a body of standing water and the area within its lakeshore occurring naturally having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation. Therefore, is Lake Five actually a lake?

MCA 75-7-702 defines a lake for the purpose of conferring statutory authority over lakeshore alteration projects to a local governing authority – in this case, Flathead County. MCA 75-7-203 gives the county the authority to change the minimum size to 20 acres, and Flathead County adopted that lower minimum. The waters of the state of Montana are a public resource regardless of the size of the lake.

96. Lake Five is a public water supply; under 75-6-102(16), therefore, an EIS should have been done – why was it not?

The statute cited refers to public water supplies with a water source, treatment system, and distribution system with at least 15 connections. Individual water systems do not meet that definition.

97. How about turning the site over to a nonprofit, who could then run it with restrictions on motorboats?

Having a two-tiered recreation system, which allows people launching from private property to recreate in an unrestricted manner, while restricting the recreation opportunities of people launching from a public site is contrary to the mission and goals of FWP. Transferring management to a nonprofit for the purpose of discriminating against one user group could be seen as a way to get around statutory requirements to not behave in a discriminatory manner. Additionally, this would be difficult to enforce. Therefore, this is not an alternative that will be acceptable to the public or the agency.

If a nonprofit would like to operate this site, within the guidelines and constraints agreed to, this would be acceptable to FWP, and is done at other locations on Whitefish and Bitterroot Lakes to operate public recreation areas.

98. If the state develops a new access site, will the fishermen come and use it because the lake is a quality fishing location, or will the general public simply utilize the free access to flood the lake with more jet skis and motorboats?

In the public comment received, 26 people specifically identified a need for access at Lake Five for the purpose of fishing. While there is no doubt that the general public will use the access for other boating activities, this will be minimized by the limited parking available**.**

99. Is this proposal truly intended as a fishing access or is there another reason?

The proposal would develop and manage the site consistent with development and management of over 300 other fishing access sites across the state.

100. Is the intention of FWP to put this fishing access in no matter what arguments the local landowners have?

It is the intention of FWP to look at all comments received on this project, including those from local landowners and from people who do not reside on the lake, and make an informed decision based on the need for public access, landowner concerns, and environmental issues?

101. Why do you ignore this major, existing recreational activity in favor of a hypothetical group of potential users who don't make their wishes known to Mr. Vashro more than twice a year? At what point do the rights of jet ski operators infringe on the rights of other operators? To what extent would this unfettered access make usage unpleasant for the other people using the access?

It is not the Department's intent to restrict any lawful activity. If the community around Lake Five determines that boating restrictions are needed, FWP will assist with the process of gaining approval for those restrictions.

MONT. ADMIN. R. 12.2.430

ADMINISTRATIVE RULES OF MONTANA

*** THIS DOCUMENT IS CURRENT THROUGH SEPTEMBER 30, 2004 ***

TITLE 12: DEPARTMENT OF FISH, WILDLIFE AND PARKS
CHAPTER 2: OVERALL DEPARTMENT RULES
SUB-CHAPTER 4: RULES IMPLEMENTING THE MONTANA ENVIRONMENTAL POLICY ACT

MONT. ADMIN. R. 12.2.430

12.2.430 GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS

Section 75-1-201, MCA, requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare a detailed statement (an EIS) on each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with 75-1-201, MCA, the agency shall apply the following criteria:

(1) The agency shall prepare an EIS as follows:

(a) whenever an EA indicates that an EIS is necessary; or

(b) whenever, based on the criteria in ARM 12.2.431, the proposed action is a major action of state government significantly affecting the quality of the human environment.

(2) An EA may serve any of the following purposes:

(a) to ensure that the agency uses the natural and social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;

(b) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;

(c) to determine the need to prepare an EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;

(d) to ensure the fullest appropriate opportunity for public review and comment on

proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and

(e) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory requirements do not allow sufficient time for an agency to prepare an EIS. The agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by ARM 12.2.439 to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.

(3) The agency shall prepare an EA whenever:

(a) the action is not excluded under (5) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(b) the action is not excluded under (5) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (2) (a) and (d) through a similar planning and decision-making process; or

(c) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

(4) The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

(5) The agency is not required to prepare an EA or an EIS for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify any extraordinary circumstances in which a normally excluded action an EA or EIS;

(b) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) minor repairs, operations, or maintenance of existing equipment or facilities;

(d) investigation and enforcement: data collection, inspection of facilities or enforcement of environmental standards;

(e) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and

(f) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.

TITLE 12: DEPARTMENT OF FISH, WILDLIFE AND PARKS
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MONT. ADMIN. R. 12.2.431

12.2.431 DETERMINING THE SIGNIFICANCE OF IMPACTS

(1) In order to implement 75-1-201, MCA, the agency shall determine the significance of impacts associated with a proposed action. This determination is the basis of the agency's decision concerning the need to prepare an EIS and also refers to the agency's evaluation of individual and cumulative impacts in either EAs or EISs. The agency shall consider the following criteria in determining the significance of each impact on the quality of the human environment:

(a) the severity, duration, geographic extent, and frequency of occurrence of the impact;

(b) the probability that the impact will occur if the proposed action occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;

(c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

(e) the importance to the state and to society of each environmental resource or value that would be affected;

(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and

(g) potential conflict with local, state, or federal laws, requirements, or formal plans.

(2) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial.

(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.)

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Attachment 2

RESPONSE TO QUESTIONS REGARDING THE GOOD NEIGHBOR POLICY

FWP takes a proactive approach to the Good Neighbor Policy. Potential impacts to adjoining property owners are initially evaluated and mitigated at all acquisitions during the planning and development phases. Itemized below is a detailed explanation of how FWP approaches each acquisition and development opportunity in relation to the Good Neighbor Policy and more specifically the approach the Department has taken with Lake Five:

The Good Neighbor Policy has two distinctive goals:

1. To prevent impacts to adjoining lands from weeds, trespass, litter, noise, erosion, and loss of privacy.
2. That maintenance of existing sites is given priority over developing new sites.

A. Impacts to adjoining lands:

1. **Weed Control** – An aggressive weed management program is implemented upon acquisition. Weed control is important to FWP and all new FASs come under the Region's FAS Weed Management Program. Weed control activities are contracted with either the county or with private herbicide applicators. In addition the Department uses mechanical means as well as biological control methods where appropriate. In the case of Lake Five the Department will contract with the Flathead County Weed Department.
2. **Trespass** – In almost all cases new site development includes property boundary fencing. The purpose is to delineate private from public land and to minimize potential trespass on adjoining lands. In many cases the boundary is also signed. At Lake Five the boundary will be fenced during initial construction. There are no immediate plans to put up boundary signs, but they will be installed at a later date if deemed necessary.
3. **Litter** – FWP has a pack-it-in – pack-it-out policy for trash at FASs. Generally, staff is hired to clean the site and pick up trash on a regular basis. When on-site hosts are available they police the area on a daily basis for litter, as well as do routine maintenance, with the maintenance staff being called for a higher level of repairs. At Lake Five the current plans call for an on-site host to provide assistance in a variety of duties including litter control.
4. **Noise and Light Pollution** - No nighttime lights will be installed. Some noise from people using the FAS is to be expected. However, excessive noise would catch the interest of the on-site host. Having an on-site host provides an atmosphere that deters the types of activities that often create noise-related problems. After dark, noise should be minimal as the site will be closed to the public from late evening to early morning.
5. **Streambank Erosion** – Potential impacts from erosion are anticipated and will be planned for during the engineering design phase. Stream banks will be properly sloped and vegetative buffers will be created to minimize sediment delivery to the water. The site is also designed to direct vehicles as well as pedestrian traffic to

areas that have been hardened. In addition, barriers will be placed at locations where vehicles could potentially drive off-road. The purpose of the hardened-surface boat ramp that is planned for construction is to minimize erosion of the shoreline and the subsequent potential for sediment delivery to the water.

6. **Loss of Privacy** –The FAS is situated in a forested area, which will reduce visual impacts. Vegetative screening will also be planted to provide a visual barrier between the site and adjacent neighbors. The closest neighbors are the Ridenours, who are selling the property for the proposed FAS, and they are not in opposition to the potential loss of privacy that may result as a consequence of this action.

B. Maintenance as a priority over additional development at state parks and FASs:

Maintenance is and continues to be the highest priority for FWP. In the case of Lake Five, maintenance was given a priority during the early stages of negotiation with Mrs. Taylor.

In anticipation of the additional maintenance and operation costs that would be incurred with the development of the Lake Five FAS, the Department worked with Mrs. Taylor to develop a proactive strategy to manage this aspect of the proposed FAS. Ultimately a decision was made to invest a portion of the money Mrs. Taylor wanted to donate to the Department into a long-term trust account that would pay annual dividends, which could then be used to offset the annual operations and maintenance expenses. This was done with the intent of making the proposed Lake Five FAS as self-sufficient as possible.

Specifically, the anticipated annual cost for operation and maintenance of this site is anticipated to be $1,600 per year, with an additional $500 per year for travel and per diem costs for enforcement personnel. The current rate of return on long-term investments is 4.5%, which will give the Department an annual rate of return of approximately $2,250. Consequently, no additional funding will be required to operate and maintain this facility nor will it be redirected from other maintenance projects to support the maintenance of the facilities proposed at this site.

C. Any development above that defined as maintenance must be approved by the Montana Legislature.

All potential statewide fishing access site (FAS) projects for the upcoming biennium are developed prior to the Legislative Session. The project needs and proposals are published in handout form to provide information on the types of projects anticipated. The Lake Five project is listed in both the ‘proposed’ statewide FAS project list and in the ‘selected’ lists that were developed in late 2004 in preparation for the 2005 Legislative Session.

H:\Allan\Policies and Guidelines\Good Neighbor Policy- LakeV.doc

TOURISM REPORT
MONTANA ENVIRONMENTAL POLICY ACT (MEPA) & MCA 23-1-110

The Montana Department of Fish, Wildlife and Parks has initiated the review process as mandated by MCA 23-1-110 and the Montana Environmental Policy Act in its consideration of the project described below. As part of the review process, input and comments are being solicited. Please complete the project name and project description portions and submit this form to:

Victor Bjornberg, Tourism Development Coordinator
Travel Montana-Department of Commerce
PO Box 200533
1424 9th Ave.
Helena, MT 59620-0533

Project Name: Lake Five Fishing Access Site Acquisition

Project Description:

In January of 2003 a woman, wishing to honor her son who had recently passed away, approached Fish, Wildlife & Parks. In honor of her son, she wished to provide a fishing access site for public use. Region One had identified Lake Five as a high priority for public access. During the same time frame, landowners who have property on Lake Five approached FWP. They wished to complete a sale with the Department to provide public access on the site, as this was a request of their late father. With this confluence of desires, they completed a bargain sale/purchase of ten acres on Lake Five and donated the land, along with funds for future maintenance of the site, to the Fish, Wildlife & Parks Foundation. The intent of the donation is that a fishing access site, to be known as Paul's Fishing Access Site, be developed on the lake and made available to the public. Development will be done using state and federal funds. A trust fund will be set up through the Fish, Wildlife & Parks Foundation to provide a portion of the annual maintenance of this site.

The alternatives considered in the draft EA are:

Alternative I: No Action

FWP would not accept the donation of ten acres on Lake Five and would not develop a fishing access site on the property. The funds donated for the purchase and management of the property would be returned.

Alternative II: Minimal Development

In this alternative FWP would accept the donation of ten acres on Lake Five and would develop a fishing access site on the property; however, the level of development would be reduced. No host pad would be installed, and the roads would be gravel instead of paved.

Alternative III: Preferred Alternative

In this alternative FWP would construct a day-use boat access area for 7 vehicle and trailer combinations, and 16 parking sites for individual cars. Development would include a paved entrance road, parking, a vault toilet, boat ramp, signs and gates, and a host pad. All the facilities, with the exception of the host pad, will be developed in the primary development project. The host pad will be completed after proper permitting and zoning is completed, and will include power, a well, and a septic system. The purpose of having a host on-site is to reduce impacts to other people adjacent to the property and elsewhere on the lake by closing the site at night, providing maintenance services, and providing someone to contact enforcement if problems occur on the site.

1. Would this site development project have an impact on the tourism economy?
   NO **YES** If YES, briefly describe:

FWP Comments: Because the proposed site is limited in size (seven boat and vehicle combinations and sixteen car parking spaces) and scope (day use only, no camping), it is not anticipated to draw people from out of the area. The site is near Glacier National Park, in a heavily used recreational corridor.

A private resort exists on Lake Five that will be near the site selected for this project. However, their business is mainly cabins and RV facilities. Currently they do allow individuals to launch at their launch for $10.00 per day. The proposed site would impact that boat launching aspect of their business, but would not impact the camping and RV facilities.

Travel Montana Comments:

We concur with FWP's preferred alternative. It appears best suited to address public access, environmental and social concerns. We appreciate FWP's stated goal of developing this site with sensitivity to impacts on other Lake Five landowners. We strongly encourage the agency to follow through on this commitment.

2. Does this impending improvement alter the quality or quantity of recreation/tourism opportunities and settings?
   NO **YES** If YES, briefly describe:

FWP Comments: The proposed project would increase recreational opportunity on Lake Five.

There is concern from adjacent homeowners that Lake Five is already crowded with water based recreation, and that while this project would increase the quantity of recreation, it would lessen the quality of that experience.

Travel Montana Comments: We concur that this development increases both the quantity and quality of the recreation/tourism opportunity on Lake Five. Respecting public concerns that the quality of the experience at Lake Five may be diminished by this increased public access, we encourage FWP to use its on site management and law enforcement staff to monitor public use and discourage illegal or unsafe activities.

Signature_____Victor A. Bjornberg, Tourism Development Coordinator, Travel Montana_____Date_____April 13, 2005_____
7/98sed

Attachment 4

From: Watkins, Marty
Sent: Monday, May 16, 2005 11:15 AM
To: Ivy, Nancy
Subject: FW: Lake Five Water Quality

-----Original Message-----
From: Mark Holston [mailto:basin123@centurytel.net]
Sent: Monday, March 28, 2005 9:59 AM
To: Watkins, Marty
Subject: Re: Lake Five Water Quality

Marty:

I've pulled together some interesting water quality information on Lake Five, and will deliver it to FWP later this morning.

As you know, we have been doing data collection there since 1993, working with local volunteers.

There are a lot of raw data reports that have been collected and are in the process of being analyzed by the FLBS at Yellow Bay.

At this time, the most useful information we have that is easily understandable and scientifically valid are the annual **Chlorophyll *a*** and **Total Phosphorus** readings we've taken.

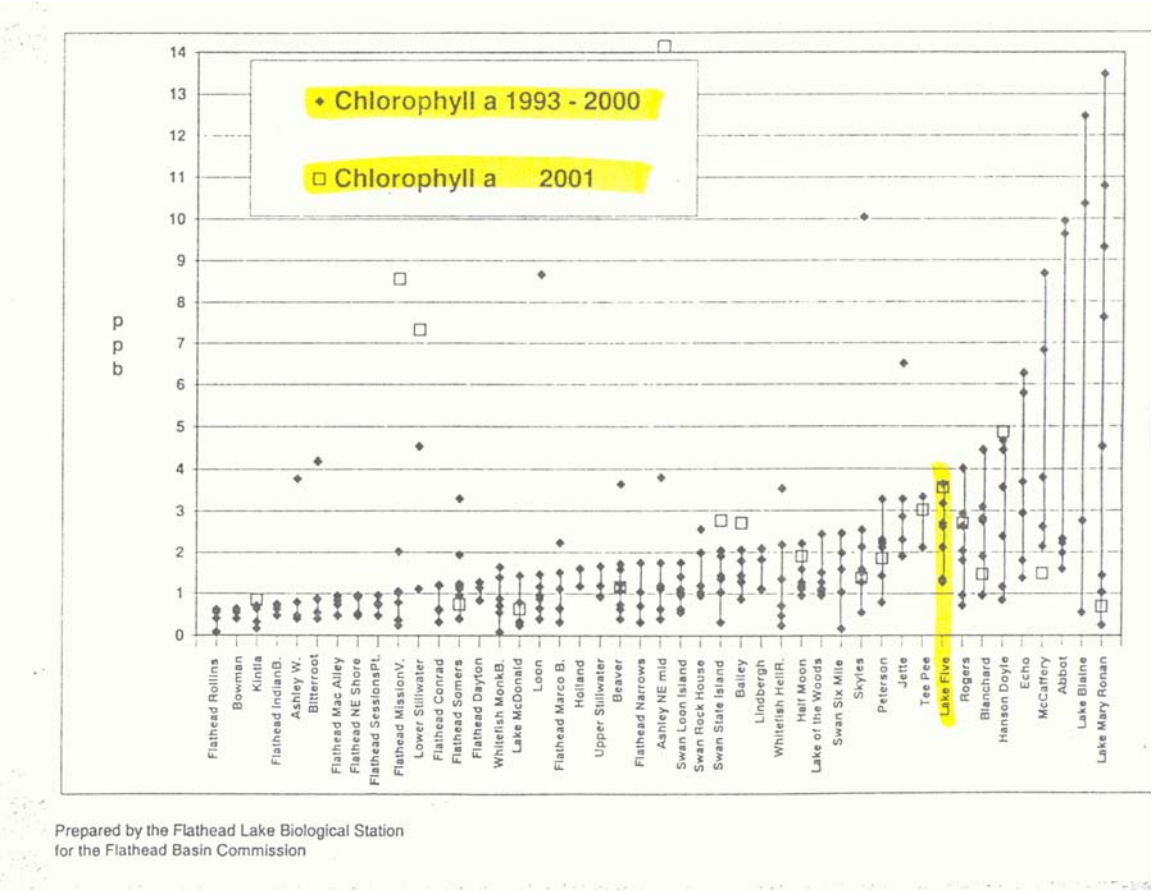
Chlorophyll *a* is used as an indicator of plant and algae productivity. Higher values suggest deteriorating water quality.

Total Phosphorus is the sum of all forms of phosphorus. Excessive amounts can lead to fertile (eutrophic) conditions and algae blooms. The higher the reading, the more serious the water quality problem.

The good news for Lake Five is that it is deep and fed by lake bottom springs. Our data indicate that the lake, compared to other lakes in the basin, from Flathead, Tally and Bowman to Echo and Blanchard, is quite healthy. Many other small lakes are much more impaired. I would say that the depth of the lake and the constant introduction of cold spring water is partly responsible for this (you may wish to consult with someone like Jim Craft at the FLBS for his assessment).

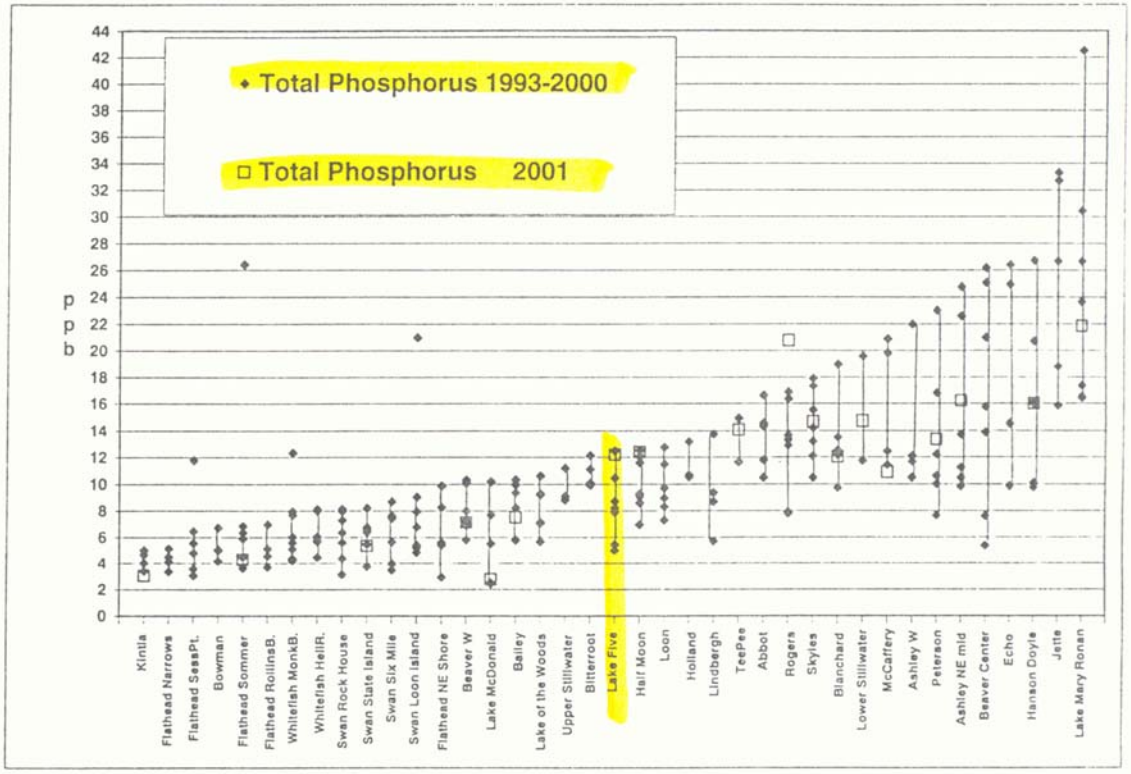
As researchers at the FLBS will tell you, however, is that in small, basically clean lakes like this, it doesn't take much to "push it over the edge." The dividing line between good and deteriorating water quality is a thin one, and often these small lakes can swing rapidly in the wrong water quality direction if they are abused.

Attachment 4



Prepared by the Flathead Lake Biological Station
for the Flathead Basin Commission

Attachment 4



Prepared by the Flathead Lake Biological Station
for the Flathead Basin Commission

Preliminary Cost Estimate

Paul's FAS on Lake Five Date: 4/22/2004

Region One By: B. Mangum File No. 740.5

Item	Estimated Quantity	Unit Measure	Unit Price	Item Total
Mobilization				
Equipment Mobilization	Lump Sum		$1,000.00	$1,000.00
Establishment of BMP's	Lump Sum		$1,000.00	$1,000.00
				$0.00
Site Protection				
New Security Gate	1	Each	$1,500.00	$1,500.00
Barrier Rocks	30	Each	$75.00	$2,250.00
Highway Approach Signs	2	Each	$500.00	$1,000.00
Precast Concrete Wheel Stops	25	Each	$100.00	$2,500.00
Double Sided Highway Approach Signs	2	Each	$750.00	$1,500.00
Double Sided Directional Sign	1	Each	$750.00	$750.00
Single Sided Entrance Sign	1	Each	$750.00	$750.00
Regulation Sign	1	Each	$750.00	$750.00
Single Pole Parking Signs	3	Each	$100.00	$300.00
4 Wire Perimeter Farm Fence	2500	Lin. Ft.	$1.20	$3,000.00
				$0.00
Parking/Ramp Development				
Clearing and Grubbing	500	Cu. Yd.	$4.00	$2,000.00
Soil Sterilization	24000	Sq. Ft.	$0.25	$6,000.00
Asphalt Paved Parking Area	24000	Sq. Ft.	$3.00	$72,000.00
30' x 16' Cast in Place Concrete Upper Ramp	480	Sq. Ft.	$7.00	$3,360.00
20' x 16' Precast Concrete Cable Mat Ramp	320	Sq. Ft.	$22.00	$7,040.00
Crushed Rock Drainage Channel at Side of Ramp	40	Lin. Ft.	$10.00	$400.00
Unclassified Excavation	428	Cu. Yd.	$5.00	$2,140.00
Reclamation of Disturbed Topsoil and Vegetation	Lump Sum		$1,000.00	$1,000.00
6' x 40' Roll-In Dock	1	Each	$25,000.00	$25,000.00
				$0.00
Latrine and ADA Parking				
Precast Concrete Vault Latrine	1	Each	$8,000.00	$8,000.00
17' x 20' Concrete Parking Pad	340	Sq. Ft.	$5.00	$1,700.00
Concrete Sidewalk	300	Sq. Ft.	$5.00	$1,500.00
				$0.00
ADA Accessible Canoe Launch				
Concrete Sidewalk	350	Sq. Ft.	$5.00	$1,750.00
Canoe Launch Platform	1	Each	$25,000.00	$25,000.00
Single Pole Signs	2	Each	$75.00	$150.00
				$0.00
Site Amenities				
Campground Host Pad and Utilities	1	Each	$50,000.00	$50,000.00
Camp Fire Ring	1	Each	$200.00	$200.00

Picnic Table	3	Each	$300.00	$900.00
Park Style Benches	3	Each	$700.00	$2,100.00
Vegetative Buffer	Lump Sum		$10,000.00	$10,000.00
				$0.00
New Access Road Construction				
Unclassified Excavation	150	Cu. Yd.	$5.00	$750.00
Asphalt Paved Road Construction	8100	Sq. Ft.	$3.00	$24,300.00
				$0.00
Private Access Road Improvements				
20' Wide Gravel Access Road	14500	Sq. Ft.	$1.25	$18,125.00
				$0.00
	Construction Cost Subtotal			$279,715.00
Design Consultant Fee	10% Total Construction Cost			$27,971.50
Construction Management	3% Total Construction Cost			$8,391.45
Contingency	15% Total Construction Cost			$41,957.25
	Total Cost Estimate			$358,035.20

Flathead County Planning and Zoning

Earl Bennett Building
1035 1st Ave W
Kalispell, Montana 59901

Phone: (406) 751-8200
Fax: (406) 758-8210

RECEIVED
MAR 2 5 2004
FISH, WILDLIFE & PARKS
FIELD SERVICES

March 24, 2005

Darlene Edge
Montana Department of Fish, Wildlife and Parks
PO Box 200701
Helena, MT 59620-0701

Re: Zoning Determination for Lot 1 in Government Lot 3, Paul's FAS in Section 9, Township 31 North, Range 19 West P.M.M., Flathead County, Montana.

Dear Ms. Edge:

This letter is in response to a request for a formal zoning determination on the above- referenced property.

This tract is located near West Glacier on Lake Five in the Middle Canyon Zoning District and is governed by the Canyon Area Land Use Regulatory System (CALURS). Section 6.2 (A)(4) of the CALURS authorizes the use of this property as a Fishing Access Site, which is considered a Community Park. A copy of the relevant section of the regulations is enclosed.

Should you have further questions or require additional documentation, please contact me at (406) 751-8200.

Sincerely,

Kirsten Holland
Planner I

enclosure

6. In-home offices for accountants, bookkeepers, realtors, attorneys, etc.

7. Guest cottage.'

8. Above-garage sleeping/office space.'

9. Family hardship dwelling.'

'Listed uses may be accessory to an existing residential dwelling. Only 1 such accessory structure is permitted per tract of record.

C. **Major Land Uses**

1. Guest cabins: The number of permitted cabins is determined based on a land area ratio of 1 cabin per 5 acres. Maximum number of cabins per parcel shall be 10. Clustering is required to maximize area of contiguous open space.

2. Artist studio and gallery.

3. Outfitting establishments: minimum lot size requirement of 10 acres. Open space requirement of 50% of parcel area.

4. RV parks: at least 40% of parcel shall remain as undisturbed open space.

5. Retail food/gas store < 3,000 sq. ft. in floor area.

6. Restaurant: must be located in association with other commercial use or be in close proximity to a designated community center.

6.2 MIDDLE CANYON REGION

A. **Exempted Uses**

1. Single family dwellings (1 dwelling per lot/tract of record when consistent with the "Exemptions" provisions of these Regulations).

2. Agricultural structures.

3. Accessory structures.

4. Community park.

5. Home occupations such as artists, craft persons, day-care (12 or fewer children), social service providers, tutors, and other such activities carried on entirely within the residence by the homeowner.

6. Minor expansions of existing commercial or industrial buildings when the expansion is less than 25% of the existing floor areas and the total area expansion does not exceed 1000 square feet.

7. Duplex within designated community center of West Glacier.

B. **Minor Land Uses**

1. Public utility structures.

2. Police/fire stations and other emergency service buildings.

Site Naming Policy for the
Department of Fish, Wildlife & Parks

I. The purpose of this policy is to:

A. Provide guidance when selecting names for the various department properties.

B. Minimize conflicts that have arisen in the past on account of using vague criteria in determining names.

C. Provide a fair and consistent standard for naming sites.

D. Provide a procedure for approving and entering these site names into the land book.

II. Background for naming:

A. The Fish and Game Commission minutes of 1970 state that "…not to name a recreation area after a person, living or dead, unless this person has made a significant contribution to Montana's recorded history."

B. Park Statute 23-1-102 states that the department may designate lands under its control as state parks, state historic sites, state monuments or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated.

C. The definition of a rule in Montana Administrative Procedures Act (MAPA) "means each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes that organization, procedures, or practice requirements of an agency" 2-4-102 (10). The definition does not include "statements concerning only the internal management of an agency or not affecting private rights or procedures available to the public" 2-4-102 (10) (a).

III. Responsibility for naming:

A. The director is responsible for naming of Department sites.

B. Naming requests should originate in the region and be submitted to the appropriate division for review.

C. The division should submit the names to the director's office for final concurrence.

D. Director's office will notify the land section of the names for inclusion in the land book and also notify the region and divisions of the name.

IV. Naming Criteria:

A. The most important criteria in naming the site is to use a name presently used if at all possible.

B. Natural and cultural feature names should be high priority in name selection.

C. Check with the Land Section to prevent duplication of names "i.e., Elmo and Lake Elmo; Brown's Lake and Browne's Lake, etc.

D. Do not name an area after a person living or dead unless this person has made a significant contribution to the State of Montana or the Department of Fish, Wildlife & Park's recorded history. Significant is defined as having "or expressing a meaning; meaningful; important, notable, valuable" according to American Heritage Dictionary. Sites may be dedicated to individuals or groups and not named for individuals or groups by using appropriate signing.

This criterion must not exclude the possibility that lands needed by the Department may be "gifted" to the State with the understanding they will be named after someone.

E. Site names after features noted on USGS sheets should conform to the USGS geographical names file. The Fisheries Division in Helena has this file.

F. Locally accepted spelling of names should be used where there are multiple variations. Please refer the site name to the appropriate county planning office to help determine acceptable names when conflicts arise.

G. Use only one or two works where possible so the signing is not too complicated for identification purposes.

V. Monetary Contributions

A. Funds given to the Department by individuals or groups should not rate as criteria for giving preference in naming. If credit must be given, the preferred method is a plaque on site.

VI. Naming Techniques

A. The regions may wish to use various techniques in originating their names.

1. Solicit public input from interest groups, especially when it's a matter of great public interest or of concern to the public.

2. Have a contest for the naming based on established criteria.