

# **DRAFT**

# **ENVIRONMENTAL ASSESSMENT**

# **CHECKLIST**

## **Property Addition to Paul's Memorial Fishing Access Site**

**12/15/2022**



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## I. Compliance with the Montana Environmental Policy Act

Before a proposed *project* may be approved, environmental review must be conducted to identify and consider potential impacts of the proposed project on the human and physical environment affected by the project. The Montana Environmental Policy Act (MEPA) and its implementing rules and regulations require different levels of environmental review, depending on the proposed project, significance of potential impacts, and the review timeline. § 75-1-201, Montana Code Annotated (“MCA”), and the Administrative Rules of Montana (“ARM”) 12.2.430, General Requirements of the Environmental Review Process.

FWP must prepare an EA when:

- It is considering a “state-proposed project,” which is defined in § 75-1-220(8)(a) as:
  - (i) a project, program, or activity initiated and directly undertaken by a state agency;
  - (ii) ... a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or
  - (iii) ... a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.
- It is not clear without preparation of an EA whether the proposed project is a major one significantly affecting the quality of the human environment. ARM 12.2.430(3)(a));
- FWP has not otherwise implemented the interdisciplinary analysis and public review purposes listed in ARM 12.2.430(2) (a) and (d) through a similar planning and decision-making process (ARM 12.2.430(3)(b));
- Statutory requirements do not allow sufficient time for the FWP to prepare an EIS (ARM 12.2.430(3)(c));
- The project is not specifically excluded from MEPA review according to § 75-1-220(8)(b) or ARM 12.2.430(5); or
- As an alternative to preparing an EIS, prepare an EA whenever the project 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 the impacts of the proposed project 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 (ARM 12.2.430(4)).

MEPA is procedural; its intent is to ensure that impacts to the environment associated with a proposed project are fully considered and the public is informed of potential impacts resulting from the project.

## II. Description of Proposed Project

This section includes a short description of the proposed project including the project sponsor/ applicant/ responsible party, the type of proposed action and the anticipated schedule of the proposed project.

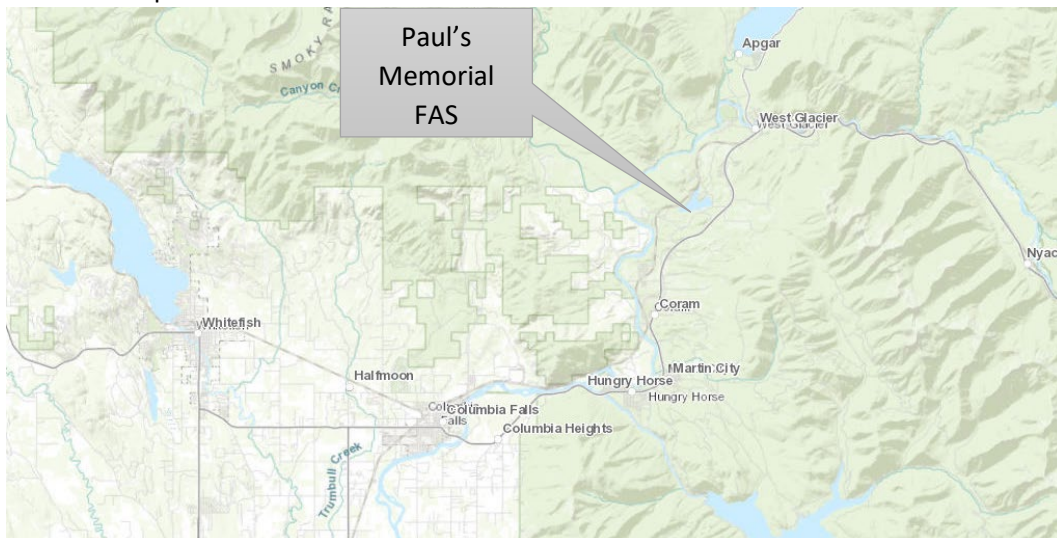
**Name of Project:** Property Addition to Paul’s Memorial Fishing Access Site

**Description of Proposed Project:** Montana Fish, Wildlife & Parks, (FWP) is proposing to accept a donation of 4 acres of property bordering the existing 10-acre Paul’s Memorial Fishing Access Site (FAS) on Lake Five near West Glacier. The FAS currently includes 150ft of shoreline and the proposed addition would add an additional 250ft of shoreline to accommodate shore-based recreation and reduce crowding and safety hazards at the existing boat ramp and dock. FWP’s ownership would be subject to a life estate held by one of the donor’s

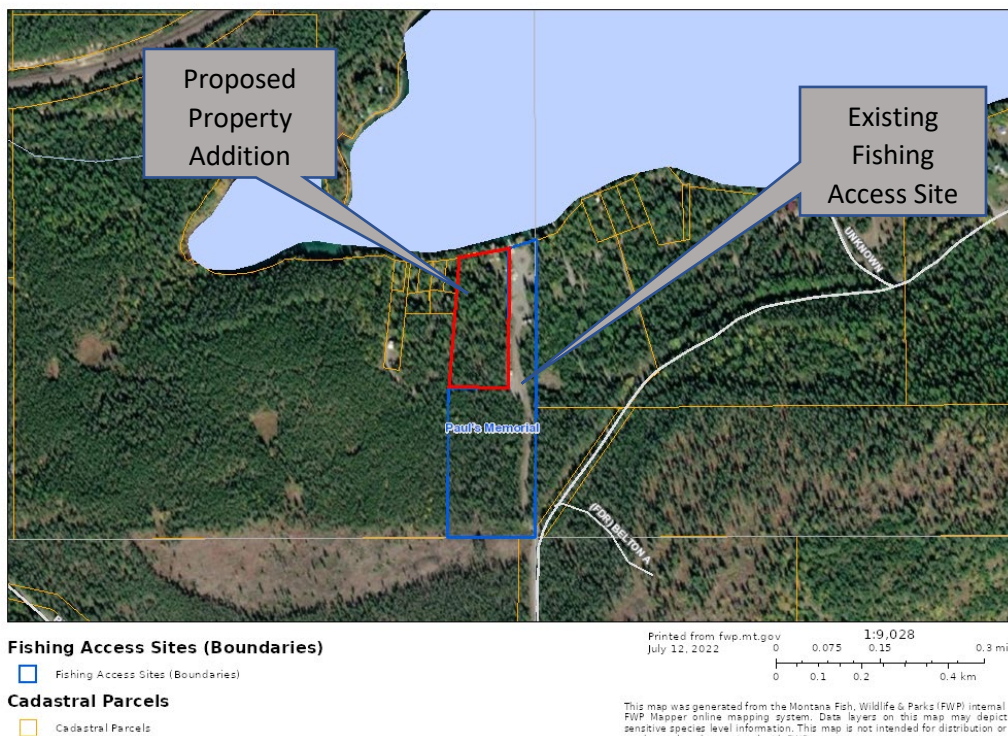
family members. Thus, FWP would not possess the property until the death of that family member. FWP is not proposing any development or improvements on the property and any future improvements would be subject to a separate Environmental Assessment.

### **Affected Area / Location of Proposed Project**

- Legal Description
  - Latitude/Longitude: N48.46142 W114.02491
  - Section, Township, and Range: T31N,R19W,S9.
  - Town/City, County, Montana: West Glacier, Flathead County, Montana
- Location Map



Property Map



Some layers may not appear in the legend due to page size limitations.

### III. Background

Paul's Memorial FAS provides access to boating, fishing, and other water-based recreation on the 164-acre Lake Five near West Glacier. Lake Five is situated approximately 31 miles northeast of Kalispell on Hwy 2 and approximately three miles west of West Glacier and the west entrance to Glacier National Park. This is a very busy recreation corridor with access to major attractions including Glacier National Park, the Flathead National Forest and three forks of the Flathead River.

Paul's Memorial FAS offers the only official public access to Lake Five. Belton Stage Road touches the shoreline on the southeast side of the lake, but no parking is provided there. The rest of the shoreline is owned privately and not publicly accessible. One privately owned resort on the lake offers day-use access for a fee. Lake Five is popular for fishing, recreational boating, paddling, and swimming during the summer and ice fishing during the winter. Fish species present in Lake Five include brook trout, kokanee salmon, largemouth bass, longnose sucker, northern pike minnow, pumpkinseed, rainbow trout, smallmouth bass, western cutthroat trout, and yellow perch.

Paul's Memorial FAS is managed for day-use only and a seasonal on-site host is provided to manage visitor use, night closures and perform routine cleaning and maintenance during the summer months. Special boating regulations on Lake Five prohibit the use of personal watercraft (PWC) such as jet skis and mandate that boats pulling skiers and tubers operate in a counterclockwise direction.

Current amenities at Paul's Memorial FAS include an access road, parking area, boat ramp, boat dock, swim dock, vault latrine and host campsite. The parking area includes approximately 8 truck and trailer spaces and 8 single vehicle spaces. Although Paul's FAS is 10-acres in size, it has a disproportionately small amount of lake frontage with only 150ft of lakeshore. As a result, the boat ramp and dock area frequently become congested. Swimmers and sunbathers often congregate on the dock and around the boat ramp causing difficulty for boaters trying to launch and recover their watercraft. Because this presents a potential safety concern, FWP has posted signs that prohibit swimming in the boat ramp and dock area and the on-site host monitors the area. Despite the signage and staff presence, this continues to be a problem.

The property is forested and gently sloping up from the lake and features a small flat clearing that the current occupants utilize as a campsite. Several outbuildings and campers would be removed by the life tenant's heirs upon the life tenant's death. The campsites and outbuildings are currently accessed by a driveway that would be gated and closed to the public upon FWP's physical possession of the property. The addition would be accessible to the public from the current FAS parking area on a walk-in basis.



**Figure 4. Photo of competing uses at the boat ramp**



## IV. Purpose and Need

The EA must include a description of the benefits and purpose of the proposed project. ARM 12.2.432(3)(b). Benefits of the proposed project refer to benefits to the resource, public, department, state, and/or other.

### Project Purpose and Benefits:

Lake Five is located within a high-use recreation corridor and Paul's Memorial FAS constitutes the only public access to the lake. Further, while Paul's FAS is 10-acres in size, it has a disproportionately small amount of lake frontage with only 150ft of lakeshore. As a result, the boat ramp and dock area frequently become congested, creating difficulty for boaters trying to launch and recover their watercraft and increasing the potential for impacts to human safety.

The proposed addition of 250ft of shoreline and four acres of open space, would provide non-boating users with additional public space to swim and picnic in the shade, thereby reducing the need for public use of the boat dock and ramp and in turn lessening impacts to boaters attempting to launch or dock and the potential for impacts to human safety.

If FWP prepared a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it. ARM 12.2.432(3)(b).

	Yes*	No
Was a cost/benefit analysis prepared for the proposed project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

\* If yes, a copy of the cost/benefit analysis prepared for the proposed project is included in Attachment A to this Draft EA

## V. Other Agency Regulatory Responsibilities

FWP must list any federal, state, and/or local agencies that have overlapping or additional jurisdiction, or environmental review responsibility for the proposed project, as well as permits, licenses, and other required authorizations. ARM 12.2.432(3)(c).

A list of other required local, state, and federal approvals, such as permits, certificates, and/or licenses from affected agencies is included in **Table 2** below. **Table 2** provides a summary of state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. Rather, **Table 2** lists the primary state agencies with regulatory responsibilities, the applicable regulation(s) and the purpose of the regulation(s). Agency decision-making is governed by state and federal laws, including statutes, rules, and regulations, that form the legal basis for the conditions the proposed project must meet to obtain necessary permits, certificates, licenses, or other approvals. Further, these laws set forth the conditions under which each agency could deny the necessary approvals.

**Table 2: Federal, State, and/or Local Regulatory Responsibilities**

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
State Historic Preservation Office (SHPO)	SHPO consultation	To ensure that historical resources are not adversely impacted
Travel Montana, Department of Commerce	Tourism Report	To ensure that recreational opportunities are not adversely impacted
Flathead County Weed and Parks Department	Weed Compliance Report	To ensure compliance with local and state noxious weed management regulations

## VI. List of Mitigations, Stipulations

Mitigations, stipulations, and other *enforceable* controls required by FWP, or another agency, may be relied upon to limit potential impacts associated with a proposed Project. The table below lists and evaluates enforceable conditions FWP may rely on to limit potential impacts associated with the proposed Project. ARM 12.2.432(3)(g).

**Table 3: Listing and Evaluation of Enforceable Mitigations Limiting Impacts**

Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.			Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below			Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Enforceable Control	Responsible Agency	Authority (Rule, Permit, Stipulation, Other)	Effect of Enforceable Control on Proposed Project	
FWP Public Use Regulations	Montana FWP	Administrative Rules of Montana (ARM) Chapter 12.8	Allows FWP to manage public use of FWP Paul's Memorial FAS including prohibitions on overnight camping, fires, shooting, and disorderly conduct.	
Noxious Weed Management Plan	Montana FWP, Flathead County	Montana FWP Statewide Integrated Weed Management Plan.	Requires FWP to monitor and control the spread of noxious weeds at the site.	

## VII. Alternatives Considered

In addition to the proposed Project, and as required by MEPA, FWP analyzes the "no-action" alternative in this EA. Under the "no-action" alternative, FWP would not do the proposed project.

The "no-action" alternative forms the baseline from which the potential impacts of the proposed Project can be measured. Under the no-action alternative FWP would not accept donation of 4 acres adjacent to Paul's Memorial FAS and it is unknown what would happen to the property. It's expected the property would likely remain in private ownership. Conditions at Paul's Memorial FAS would remain unchanged and congestion and user conflicts at the boat ramp would persist.

	Yes*	No
Were any additional alternatives considered and dismissed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

\* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review is included below

### Other Alternatives Not Carried Forward for Detailed Analysis

No other alternatives were considered but not carried forward for further analysis.

## VIII. Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population

The impacts analysis identifies and evaluates **direct**, **secondary**, and **cumulative impacts**.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the effect.
- **Secondary impacts** "are further impacts to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action." ARM 12.2.429(18).
- **Cumulative impacts** "means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures." ARM 12.2.429(7).

Where impacts are expected to occur, the impact analysis estimates the **extent**, **duration**, **frequency**, and **severity** of the impact. The duration of an impact is quantified as follows:

- **Short-Term:** impacts that would not last longer than the proposed project.
- **Long-Term:** impacts that would remain or occur following the proposed project.

The severity of an impact is measured using the following:

- **No Impact:** there would be no change from current conditions.
- **Negligible:** an adverse or beneficial effect would occur but would be at the lowest levels of detection.



- **Minor:** the effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate:** the effect would be easily identifiable and would change the function or integrity of the resource.
- **Major:** the effect would irretrievably alter the resource.

Some impacts may require mitigation. As defined in ARM 12.2.429, mitigation means:

- Avoiding an impact by not taking a certain action or parts of a project;
- Minimizing impacts by limiting the degree or magnitude of a project and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or
- Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project or the time period thereafter that an impact continues.

A list of any mitigation strategies including, but not limited to, design, enforceable controls or stipulations, or both, as applicable to the proposed project is included in **Section VI** above.

FWP must analyze impacts to the physical and human environment for each alternative considered. The proposed project considered the following alternatives:

- Alternative 1: No Action; and
- Alternative 2: Proposed Project

**Table 4: Impacts to the Physical Environment – Alternative 2: Proposed Project**

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Terrestrial, avian, and aquatic life and habitats	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	While no development, construction, or groundbreaking is proposed, recreational use of the property could cause negligible levels of disturbance to some wildlife species. These are expected to be no greater than the disturbance already caused by use of the existing FAS and other recreation on Lake Five.
Water quality, quantity, and distribution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Signage would be posted regarding responsible recreation and leave no trace principles to educate users about protecting water quality by not littering, etc. Potential impacts to water quality are expected to be minimally greater than impacts already caused by use of the existing FAS and other recreation on Lake Five. FWP would mitigate impacts with staff presence and maintenance of the site.
Geology	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact expected from the proposed project.
Soil quality, stability, and moisture	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The impacts to soil quality, moisture, and stability are not expected to be greater than impacts already caused by the current landowner's use of the property.
Vegetation cover, quantity, and quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Impacts to vegetation cover, quantity and quality are expected to be minimal. Public use of the property could lead to noxious weed spread. FWP would monitor and control weeds as per FWP's Statewide Noxious Weed Management Plan. Public use could also lead to some compaction and damage to vegetation and these impacts are expected to be no greater than those caused by the current owner's use of the site.
Aesthetics	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Some temporary structures and vehicles would be removed from the property prior to FWP taking ownership. This would maintain or slightly improve the aesthetic quality of the property. No further development is proposed at this time.

Air quality	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impacts expected from the proposed project.
Unique, endangered, fragile, or limited environmental resources	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	While some threatened species of concern have been identified within and near the property, the property does not provide critical habitat to those species. Impacts to those species are expected to be no greater than those already created by the current owner's use of the property and the current public use of Lake Five. Threatened species observed near the site include Canada lynx, grizzly bear, and bull trout. Species of Concern observed near the site include Townsend's big-eared bat, wolverine, fisher, western pygmy shrew, northern goshawk, bobolink, pileated woodpecker, common loon, harlequin duck, pacific wren, western toad, westslope cutthroat trout, and brush-tipped emerald.
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP consulted with the State Historical Preservation Office or SHPO to identify any existing historical and/or archaeological sites within the proposed project area that may be impacted by the proposed project. No sites were identified by SHPO; therefore, the proposed project would not impact historical and archaeological sites.
Demands on environmental resources of land, water, air, and energy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant demands on environmental resources of land, water, air, and energy are expected because of the proposed project. Any impacts are expected to be consistent with current impacts from recreational use of the FAS and Lake Five and mitigated at the added property by FWP staffing presence and maintenance.

**Table 5: Impacts to the Human Population**

<b>HUMAN POPULATION</b>	<b>Duration of Impact</b>			<b>Severity of Impact</b>					
<b>Resource</b>	<b>None</b>	<b>Short-Term</b>	<b>Long-Term</b>	<b>None</b>	<b>Negligible</b>	<b>Minor</b>	<b>Moderate</b>	<b>Major</b>	<b>Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures</b>
Social structures and mores	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant impacts to social structures and mores are expected because of the proposed project. Any impacts are expected to be consistent with current impacts from recreational use of the FAS and Lake Five.
Cultural uniqueness and diversity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The proposed action will not change the existing use of the area and, according to SHPO, will not impact any existing historic or cultural resources in the area. Therefore, no impacts to cultural uniqueness and diversity in the area are expected from the proposed project.
Access to and quality of recreational and wilderness activities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The quality of recreational access to Lake Five and the recreational experience at Paul's Memorial FAS would be improved with the proposed property addition. User conflict and congestion on the existing shoreline and boat ramp would be alleviated by having an expanded shoreline for non-boater use.
Local and state tax base and tax revenues	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP would pay property taxes consistent with private ownership. No impacts to the local tax base and tax revenue are expected from the proposed project.
Agricultural or Industrial production	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The proposed project area is not currently used for agricultural and/or industrial production; therefore, the proposed project will not impact such practices. No impacts to agricultural or industrial production will occur because of the proposed project.
Human health and safety	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Safety at Paul's Memorial FAS would be improved by reducing congestion at the boat ramp and dock.
Quantity and distribution of employment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No development, construction, or groundbreaking activities, and associated employment opportunities, will occur. Further, recreational use of the property would be consistent with existing uses. Therefore, no impacts to quantity and distribution of employment are expected because of the proposed project.

Distribution and density of population and housing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Public ownership of the additional shoreline would preclude additional housing from being built at that location on Lake Five. Therefore, the proposed project will not impact distribution and density of population and housing in the project area.
Demands for government services	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP staffing capacity due to existing presence and scheduled maintenance at the FAS is sufficient to absorb any additional impacts from the proposed project. The expected reduction in user conflicts is expected to reduce the need for enforcement engagement at the FAS. Therefore, the proposed project would not impact demands for government services in the proposed project area.
Industrial, agricultural, and commercial activity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The proposed project area is currently used for recreational purposes and will continue to be used for such purposes. Therefore, the proposed project will not result in any impact to industrial, agricultural, or commercial activities in the proposed project area.
Locally adopted environmental plans and goals	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP is not aware of any locally adopted environmental plans or goals that may be impacted by the proposed project. Therefore, no impacts would be expected from the proposed project.
Other appropriate social and economic circumstances	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No additional impacts are expected from the proposed project.

**Table 6: Determining the Significance of Impacts on the Quality of the Human Environment**

If the EA identifies impacts associated with the proposed project FWP must determine the significance of the impacts. ARM 12.2.431. This determination forms the basis for FWP's decision as to whether it is necessary to prepare an environmental impact statement.

According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.

Criteria Used to Determine Significance	
1	<p>The <b>severity, duration, geographic extent, and frequency</b> of the occurrence of the impact</p> <p><b>“Severity”</b> describes the density of the potential impact, while <b>“extent”</b> describes the area where the impact will likely occur, e.g., a project may propagate ten noxious weeds on a surface area of 1 square foot. Here, the impact may be high in severity, but over a low extent. In contrast, if ten noxious weeds were distributed over ten acres, there may be low severity over a larger extent.</p> <p><b>“Duration”</b> describes the time period during which an impact may occur, while <b>“frequency”</b> describes how often the impact may occur, e.g., an operation that uses lights to mine at night may have frequent lighting impacts during one season (duration).</p>
2	The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur
3	Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts
4	The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values
5	The importance to the state and to society of each environmental resource or value that would be affected
6	Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions
7	Potential conflict with local, state, or federal laws, requirements, or formal plans



## IX. Private Property Impact Analysis (Takings)

The 54<sup>th</sup> Montana Legislature enacted the Private Property Assessment Act, now found at § 2-10-101. The intent was to establish an orderly and consistent process by which state agencies evaluate their proposed projects under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency projects pertaining to land or water management or to some other environmental matter that, if adopted and enforced without due process of law and just compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agencies to assess the impact of a proposed agency project on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency project has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act.

**Table 7: Private Property Assessment (Takings)**

	Yes	No	
<i>Is FWP regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>Does FWP have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<i>If so, FWP must determine if there are alternatives that would reduce, minimize, or eliminate the restriction on the use of private property, and analyze such alternatives. Have alternatives been considered and/or analyzed? If so, describe below:</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>PRIVATE PROPERTY ASSESMENT ACT (PPAA)</b>			
<b>Does the Proposed Action Have Takings Implications under the PPAA?</b>	<b>Question #</b>	<b>Yes</b>	<b>No</b>
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action deprive the owner of all economically viable uses of the property?	3	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 5a and 5b and continue with question 6.)	4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Does the action deny a fundamental attribute of ownership?	5	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action have a severe impact of the value of the property?	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the impact of government action direct, peculiar, and significant?	7a	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Does the proposed action result in taking or damaging implications?</b>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Taking or damaging implications exist if <b>YES</b> is checked in response to Question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if <b>NO</b> is checked in response to question 5a or 5b.			
If taking or damaging implications exist, the agency must comply with MCA § 2-10-105 of the PPAA, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.			
<b>Alternatives:</b> The analysis under the Private Property Assessment Act, §§ 2-10-101 through -112, MCA, indicates no impact. FWP does not plan to impose conditions that would restrict the regulated person's use of private property to constitute a taking.			

## X. Public Participation

The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. FWP is responsible for adjusting public review to match these factors (ARM 12.2.433(1)). Because FWP determines the proposed action will result in limited environmental impact, and little public interest has been expressed, FWP determines the following public notice strategy will provide an appropriate level of public review:

- An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to FWP. If the document is out-of-print, a copying charge may be levied (ARM 12.2.433(2)).
- Public notice will be served on the Montana Fish, Wildlife and Parks website at:  
<https://fwp.mt.gov/news/public-notices>
- Notice of the EA's availability will be distributed to neighboring landowners to ensure their knowledge of the proposed project and opportunity for review and comment on the proposed action.
- FWP maintains a mailing list of persons interested in a particular action or type of action. FWP will notify all interested persons and distribute copies of the EA to those persons for review and comment (ARM 12.2.433(3)).
- FWP will issue public notice in the following newspaper periodical(s) on the date(s) indicated.

Newspaper / Periodical	Date(s) Public Notice Issued
Daily Interlake	By 12/28/2022
Helena Independent Record	By 12/28/2022

- Public notice will announce the availability of the EA, summarize its content, and solicit public comment.
  - **Duration of Public Comment Period:** The public comment period begins on the date of publication of legal notice in area newspapers (see above). Written or e-mailed comments will be accepted until 5:00 p.m., MST, on the last day of public comment, as listed below:

**Length of Public Comment Period:** 30 days  
**Public Comment Period Begins:** December 15<sup>th</sup>, 2022  
**Public Comment Period Ends:** January 15<sup>th</sup>, 2023

Comments must be addressed to the FWP contact, as listed below.

○ **Where to Mail or Email Comments on the Draft EA:**

Name: TONY POWELL

Email: [tpowell@mt.gov](mailto:tpowell@mt.gov)

Mailing Address:

FWP Region 1

490 N Meridian Rd,

Kalispell, MT 59901

## XI. Recommendation for Further Environmental Analysis

<b>NO</b> further analysis is needed for the proposed action	<input checked="" type="checkbox"/>
FWP must conduct <b>EIS</b> level review for the proposed action	<input type="checkbox"/>

## XII. EA Preparation and Review

	Name	Title
<b>EA prepared by:</b>	Tony Powell	Recreation Manager, Region One, Columbia Falls District
<b>EA reviewed by:</b>	Hope Stockwell	Parks and Outdoor Recreation Division Administrator