



SPA 124 PERMIT DECISION NOTICE

Butte-Silver Bow Roosevelt Drive Erosion Stabilization – Blacktail Creek; Butte MT

10/30/2023

ACTION

Decision Notice (DN). Montana Fish, Wildlife & Parks (FWP) shall prepare a DN for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment or Draft EA prepared for the proposed action as final, and approves Alternative 2, the proposed action.

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

According to the applicable requirements of the Montana Environmental Policy Act or MEPA and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose any potential impacts of the proposed action on the affected human environment. The level of environmental review will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors. *Title 75, Chapter 1, Parts 1 through 3, Montana Code Annotated (MCA)*. Based on these factors, FWP determined a Checklist EA (Draft EA) constitutes the appropriate level of review for the proposed action. Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA.

PUBLIC PARTICIPATION PROCESS

Under usual circumstances, FWP makes the Draft EA available for public review and comment. However, in this circumstance, MEPA's required public process for projects of this nature is impacted by a competing statutory deadline. MEPA requires FWP to comply with its terms "*to the fullest extent possible*." To fulfill the stated policy of MEPA, the agency shall conform to the applicable rules prior to reaching a final decision on proposed actions covered by MEPA. *ARM 12.2.428, Policy Statement Concerning MEPA Rules*. More specifically, § 87-5-504, *MCA*, states:

"Within 30 days after the receipt of such plans [for a project subject to SPA 124 permitting], the department shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the department notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect."

Effectively, within 30 days after receipt of an application [for an SPA 124 Permit], FWP must make a final decision on the proposed action/project. Within the applicable 30-day timeframe, the MEPA practitioner or author of the Draft EA must conduct a rigorous process, making it difficult or impossible for FWP to accommodate a public comment period for the Draft EA within the required 30-day time-period. § 87-5-504, MCA.

Therefore, for the purposes of achieving compliance with MEPA, *"to the fullest extent possible,"* FWP prepares a Draft EA for file, sans public comment, and issues a DN identifying the agency decision, reasons for the decision, and any special conditions surrounding the decision or its implementation. Conditions applicable to the approved action, including recommendations or alternative plans to eliminate or diminish any adverse effects, are contained in the approved SPA 124 Permit (see attached).

DESCRIPTION OF PROPOSED ACTION

Roosevelt Drive follows Blacktail Creek through a narrow canyon for about 1 mile from RM 11.9 to 12.9. The road and creek occupy limited space and the creek has begun eroding into the road prism in multiple locations throughout the canyon. High flows from rain events in May and June of 2023 caused five of the eroding sections to eat into the road to a point where it has made the road hazardous for vehicle traffic and repairs are necessary. Butte-Silver Bow city and county road crews used a combination of rip-rap and concrete blocks to repair and stabilize the road. This work was completed without an SPA 124 permit. This permit was submitted to get the already completed work in compliance with the Stream Protection Act Law and permit further work required to fully repair the road.

PURPOSE AND NEED

This project intends to address areas of Roosevelt Drive being eroded by Blacktail Creek using rip-rap with willow plantings.

ALTERNATIVES ANALYZED

Alternative 1: No Action

In addition to the proposed action, and as required by MEPA, FWP analyzes the "No-Action" alternative in the EA. Under the No-Action alternative, the proposed action would not occur. Therefore, no additional impacts to the human environment would occur. The No Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the No Action alternative FWP would not issue an SPA 124 permit and the county would need to remove illegally placed rip-rap. The stream would likely continue to erode into the road.

Alternative 2: Proposed Action

Under the Proposed Action, FWP would issue an SPA 124 permit and the project would be completed following conditions provided in the SPA 124 permit and the illegally placed rip-rap would be modified to meet specifications. Special conditions include:

1. Rock used in the most downstream three sections can remain in place as is. However, these three sections need to be vegetated using willow cuttings. Cuttings should be cut and imbedded into the rip-rap to a depth of 1 foot or greater. Willows will have higher survival rate if the cutting reaches perennially wet soil. Willow cuttings should be planted when willows are dormant and should be completed on the lower three sections no later than 5/15/2024.
2. The 4th section (second most upstream) is currently stabilized using a combination of rock and concrete eco blocks. The blocks shall be removed and replaced using on-site rock sources. Rock

should be placed and keyed in in a fashion like the downstream three sections. Rock should not encroach into the stream channel and should remain confined to the road prism. Eco blocks should be removed and replaced by rock no later than October 15th 2024.

3. Once eco blocks are removed and replaced by rock in section four willow planting should take place following the same guidelines as the downstream three sections.
4. Section 5 (most upstream) remains in an eroding state with a limited amount of rock placed in two spots to protect the road until a permanent solution is reached. This section should be stabilized using on site rock keyed in similarly to the downstream sections. Rock should not encroach into the active stream channel. Willows should be planted in rip-rap following previous guidelines.
5. Slash from a nearby thinning project has entered the stream forming debris jams that are initiating erosion of the road prism. These debris jams can be removed (using machinery if necessary) in problem spots. Live vegetation should remain in place when debris jams are removed.
6. Any work that might mobilize sediments into the stream should not be completed from May 15th to July 15th.
7. All outstanding issues (eco block removal and willow planting) related to the work that was done without a permit should be remedied no later than 10/15/2024.

DECISION

Based on the environmental review provided in the Draft EA, and, to the greatest extent possible, in accordance with all applicable laws, rules, regulations, and policies, FWP determined the proposed action (Alternative 2) will not have significant adverse impacts on the human environment and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an environmental impact statement or EIS is unnecessary. The project would address outstanding permit violations and provide a long-term solution to Blacktail Creek eroding into the road.

FWP hereby adopts the Draft EA as final and approves Alternative 2, the Proposed Action.

Sincerely,



Randy Arnold
Regional Supervisor
Montana Fish, Wildlife & Parks