

DRAFT

CHECKLIST ENVIRONMENTAL ASSESSMENT

FWP-POR-R3-23-020

Mallard's Rest Road Realignment Project

December 14, 2023



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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. Background and Description of Proposed Project

Name of Project: Mallards Rest FAS Road Realignment Project

Fishing Access Sites (FAS) are managed by Montana Fish, Wildlife & Parks (FWP) to provide the public with access to a variety of recreational opportunities offered by the FAS. The Mallard’s Rest FAS provides public access to the upper Yellowstone River for outdoor activities such as floating, fishing, birding, camping and general day use.

The Mallard's Rest FAS was established and has been available for public use since 1963. In June 2022, the FAS was heavily impacted by flooding of the Yellowstone River. As a result, the FAS is currently closed and there is no public access allowed due to damage sustained to the access road and a portion of the streambank during the 2022 flooding event. Under the proposed action, FWP would establish a new FAS entrance from Montana Highway 89 and reroute the access road through a right-of-way easement located on adjacent DNRC land. Relocation of the access road would serve to avoid the unstable section of the access road impacted by the 2022 flooding event. The topography of the affected area makes the public road easement requested from DNRC under the proposed action the most viable, direct, and economical access route to the existing Mallard's Rest FAS. Appendix 1 provides detailed plans for the proposed project.

The proposed project consists of the following elements:

- Acquire a perpetual right-of-way easement at an estimated cost of \$9,240.00 to allow construction of the new access road on adjacent DNRC owned land. This easement proposes to encumber 0.77 acres of the total 469-acre state owned tract. The remaining acres in the eastern part of the tract are currently leased for grazing purposes and will not be included within the proposed easement (a settlement of damages agreement was signed with the grazing lessee). This is in addition to the existing 15.99 acre permanent recreational easement that FWP has been granted for the Mallard's Rest FAS.
- Install a new gravel access road, a 24-inch culvert on the Park Branch Canal, signs, and fencing at an estimated cost of \$104,678.00.
- The new road would be approximately 950 feet long x 30 feet wide, and it would connect with the existing road as it descends to the FAS.
- Reclaim and close off the old approach and access road from Highway 89

FWP anticipates the proposed project would be completed by June 2024.

Affected Area / Location of Proposed Project:

- Legal Description:
 - Latitude/Longitude: 45.31642, -110.80508
 - Section, Township, and Range: S16, T04 S, R09 E
 - Town/City, County, Montana: US Highway 89 Livingston, MT
- Location Map (Figures 1 & 2)

Figure 1: Mallard's Rest Fishing Access Site general location

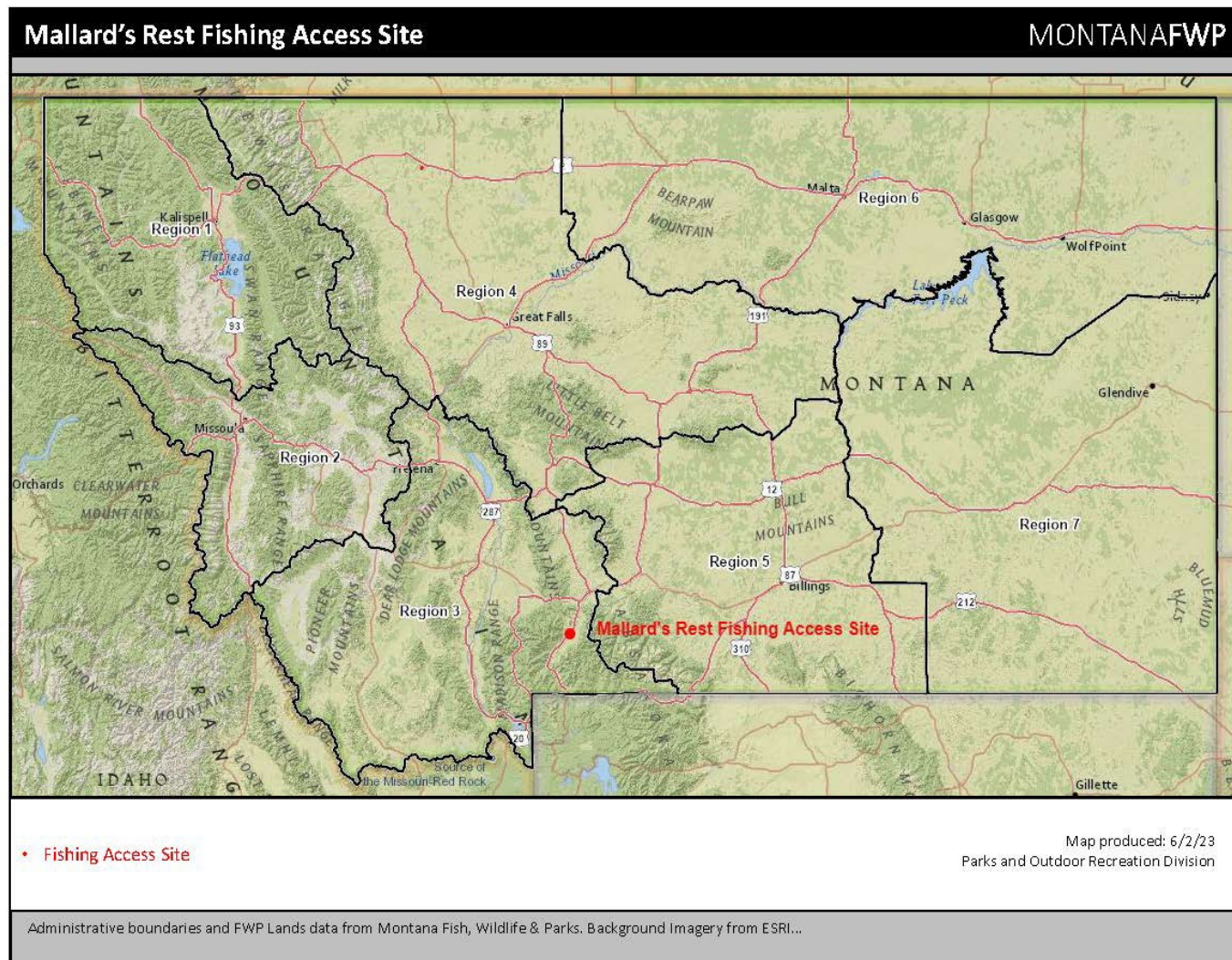
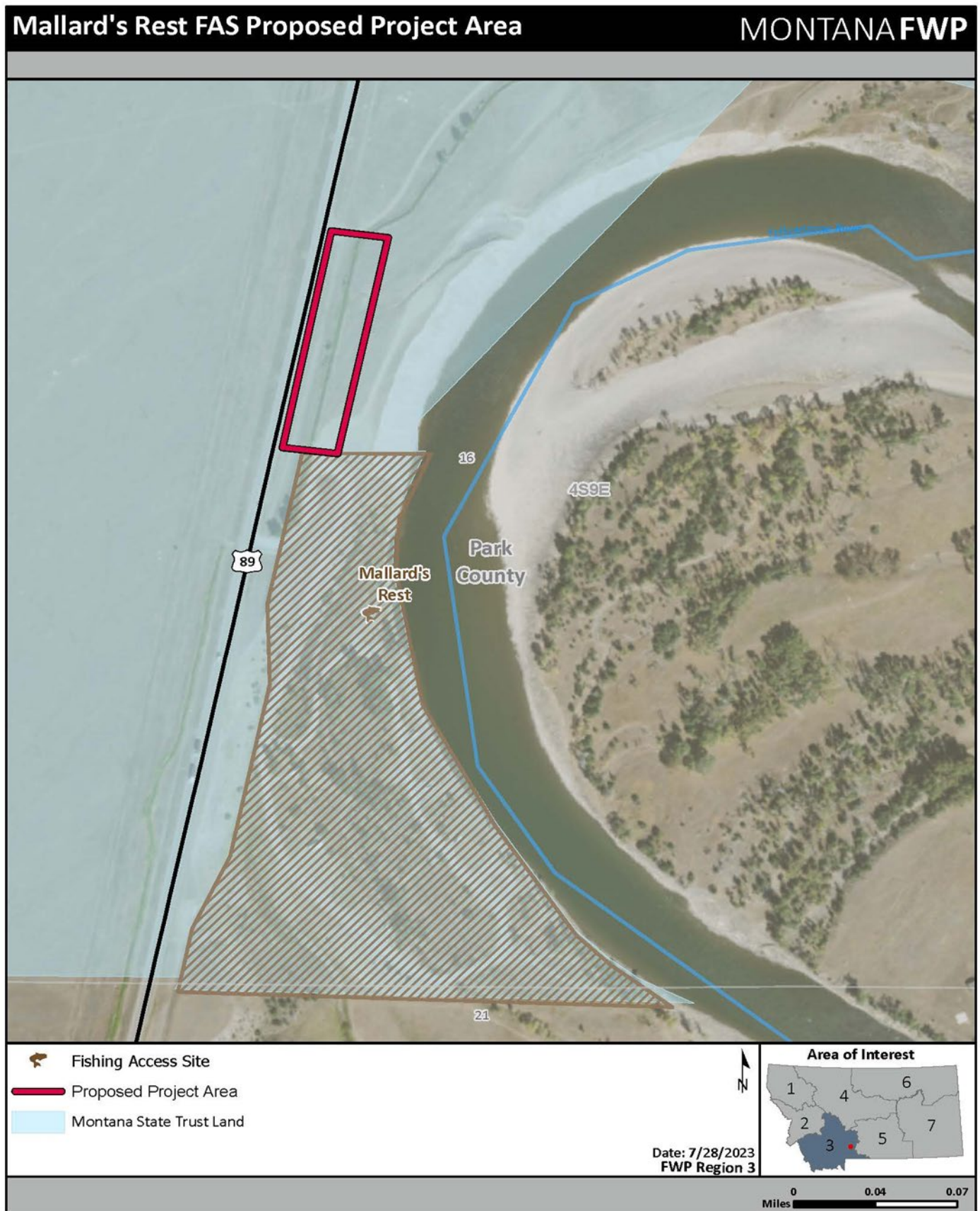


Figure 2: Mallard's Rest FAS project location



III. Purpose and Need

The EA must include a description of the purpose and need or benefits 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.

Because of impacts resulting from a June 2022 flooding event, the access road to Mallard's Rest FAS is unsafe for travel and therefore not available for use by administrative personnel and/or the affected public. Improvements planned under the proposed action would mitigate impacts from the spring 2022 flooding event by relocating a portion of the access road through adjacent DNRC land that is more suitable for such purposes. The proposed action is necessary to facilitate the following essential attributes of the existing FAS:

- Safe public access to the Yellowstone River
- Limited potential for future impacts associated with flooding events, and
- Full used of the Mallard's Rest FAS

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

IV. 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 1** below. **Table 1** provides a summary of requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed for the proposed project. 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 1: Federal, State, and/or Local Regulatory Responsibilities

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
DNRC	Right of Way Easement	Reconstruct access road through DNRC owned land to existing FAS
Montana State Historic Preservation Office (FWP/DNRC Heritage Program)	Cultural Assessment	By Montana law (22-3-433, MCA), all state agencies are required to consult with the State Historic Preservation Office to identify heritage properties on land owned by the state that may be adversely impacted by a proposed action or development project
Montana Department of Transportation	Approach permit	Move the entrance to the new access road to the north off Highway 89

V. 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 2: 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 type="checkbox"/>	No <input checked="" 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 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	FWP	Fish and Wildlife Commission Rules for Public use of FWP sites	Allows FWP to manage public use of FAS's, including regulations regarding access, camping, fires, and conduct	
Noxious Weed Management Plan	FWP	Montana FWP Statewide Integrated Weed Management Plan	Requires FWP to monitor and control the spread of noxious weeds at the FAS, including newly disturbed areas	
Cultural Resource Protection	Montana State Historic Preservation Office (SHPO) Tribal Historic Preservation Offices (THPO), FWP Heritage Program	Cultural Assessment and Inventory; Tribal Consultation Guidelines	In keeping with the Montana Antiquities Act and related regulations, all undertakings on state lands are assessed for their potential to affect cultural resources. The proposed project has been evaluated according to the process for a cultural resource inventory, as outlined in the Administrative Rules of	

			Montana (ARM) 12.8.501-12.8.510, and in consultation with SHPO. Prior to conducting any ground disturbing activities at the affected site, FWP will also consult with all THPO affiliated with the affected property in accordance with FWP's Tribal Consultation Guidelines.
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VI. 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, the proposed project would not occur. Therefore, no additional impacts to the physical environment or human population in the analysis area would occur. 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 acquire a right of way easement through the affected DNRC land to construct a new access road. If the "No Action" alternative were selected, the Mallard's Rest FAS would remain closed to public access due to the safety hazard resulting from the June 2022 Yellowstone River flood event.

	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

VII. 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. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population

Under the “No Action” alternative, the proposed project would not occur. FWP would not acquire a right of way easement through DNRC land to construct a new access road. If the “No Action” alternative were selected, the Mallard’s Rest FAS would remain closed to public access due to the safety hazard of the current access road and damage sustained during the Yellowstone River flood event in 2022. Under such a scenario, the public would be adversely impacted. Mallard’s Rest is a heavily used site for floater put in and take out, camping, fishing, and other recreation. An extended or permanent closure of Mallard’s Rest FAS would also lead to crowding at other access points along the upper Yellowstone River.

Alternative 2: Proposed Project. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population

See **Table 3** (Impacts on Physical Environment) and **Table 4** (Impacts on Human Population) below.

Table 3 - Potential Impacts of Proposed Project on the Physical Environment

PHYSICAL ENVIRONMENT		Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource		None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Terrestrial, avian, and aquatic life and habitats		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to terrestrial, avian, and aquatic life and habitats would be expected because of the proposed project. The proposed project would construct a new entrance to the FAS from MT Highway 89 and a new access road through a 0.77- acre right-of-way easement located on adjacent DNRC land. Construction activities associated with the proposed project may prevent certain wildlife from using the affected area. However, any such impacts would be short-term, consistent with existing impacts, and negligible because the affected area already experiences high human use. Further, the proposed new access road would displace a limited amount of existing wildlife habitat that would otherwise be available for affected species. However, the proposed project would occur within an adjacent property owned by DNRC and would displace a relatively small amount of previously available wildlife habitat (0.77 acres). Further, similar, suitable habitat is located near the affected DNRC property and existing FAS; therefore, it would be expected that any displaced wildlife species would naturally use suitable and available nearby habitat during and potentially following completion of the proposed project. Any adverse impacts would be short and long term, negligible to minor, and consistent with existing impacts at the FAS.
Water quality, quantity, and distribution		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to water quality, quantity, and distribution would be expected because of the proposed project. The proposed project would construct a new access road through a 0.77- acre right-of-way easement located on adjacent DNRC land. Placement of the new road would cross an existing water rights ditch on

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
									the Park Branch Canal, and a new 24-inch culvert would be placed to allow proper flow of water to continue. Because no water resources would be required for the proposed project, no impacts to water quality, quantity, and distribution would be expected because of the proposed project.
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 significant adverse impacts to geology would be expected because of the proposed project. The proposed project would not affect any geologic features in the project area; therefore, no impacts to geology would be expected because of the proposed project.
Soil quality, stability, and moisture	<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"/>	No significant adverse impacts to soil quality, stability, and moisture would be expected because of the proposed project. Movement and compaction of soils to facilitate development of the new road would occur. Further, gravel would be used to help stabilize the road in wet conditions and it would be graded to allow for appropriate drainage. Any impacts to soil quality, quantity and moisture would be long-term and minor.
Vegetation cover, quantity, and quality	<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"/>	No significant adverse impacts to vegetation cover, quantity, and quality would be expected because of the proposed project. Some adverse impacts to existing vegetation cover, quantity, and quality would occur as existing vegetation would be removed including underbrush and grasses when developing the road. Any adverse impacts would be long-term and minor.
Aesthetics	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the aesthetic nature of the affected area would be expected because of the proposed project. Some people may be adversely impacted by noise and movement of materials during the construction phase of the proposed project. Further, existing underbrush would need to be removed. However,

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	
									any impacts would be short-term and minor, lasting only as long as the construction phase of the proposed project.
Air quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to air quality would be expected because of the proposed project. Air quality in the area affected by the proposed project is unclassifiable or in compliance with applicable National Ambient Air Quality Standards (NAAQS). The proposed project would construct a new entrance to the FAS from MT Highway 89 and a new access road through a 0.77- acre right-of-way easement located on adjacent DNRC land, and when completed, would not result in additional new air quality impacts in the affected area. No significant point-sources of air pollution exist in the area affected by the proposed project. Existing sources of air pollution in the area are limited and generally include unpaved county roads (fugitive dust source), vehicle exhaust emissions, and various agricultural practices (vehicle exhaust emissions and fugitive dust). Fugitive dust and vehicle exhaust emissions resulting from the movement of heavy equipment and materials for the proposed project may adversely impact air quality. However, any impacts to air quality would be short-term, mitigated by dust control practices, consistent with existing impacts within the recreational area, and negligible.
Unique, endangered, fragile, or limited environmental resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to any unique, endangered, fragile, or limited environmental resources would be expected because of the proposed project. The presence of any animal or plant Species of Concern and/or any species listed as Threatened or Endangered under the Endangered Species Act (ESA) that may be located within or use the affected area were assessed. Affected species include the following: Bald and Golden eagles. A complete list of any Species of Concern and any Threatened or

PHYSICAL ENVIRONMENT		Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource		None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
										Endangered species that have been observed in the affected area is included in Appendix C. Some existing wildlife habitats, including grasses and shrubs, would be removed from the FAS to facilitate development of the new access road. However, existing wildlife habitat at the FAS would largely stay intact and function similarly to before the project. A review of the National Wetlands Inventory data indicates the project area is not in a designated wetland (Appendix B). FWP strives to balance recreational needs and wildlife habitats, including within the FAS. Any impacts to unique, endangered, fragile, or limited environmental resources that may be in the affected area would be short-term, consistent with the existing impacts at the FAS, and minor.
Historical and archaeological sites		<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 adverse impacts to any historic and archaeological sites would be expected because of the proposed project. In keeping with the Montana Antiquities Act and related regulations (ARM 12.8.501-12.8.510), all undertakings on state lands are assessed by a qualified archaeologist or historian for their potential to affect cultural resources. The process for this assessment may include a cultural resource inventory and evaluation of cultural resources within or near the project area, in consultation with the State Historic Preservation Office (SHPO). FWP also consults with all Tribal Historic Preservation Offices (TPHO) affiliated with each property in accordance with FWP's Tribal Consultation Guidelines. If cultural resources within or near the project area are recorded and are eligible for the National Register of Historic Places, they will be protected from adverse effects through adjustments to the project design or cancellation of the project if no design alternatives are available. If cultural resources are unexpectedly

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	
									discovered during project implementation, FWP will cease implementation and contact FWP's Heritage Program for further evaluation. Therefore, no adverse impacts would be expected because of the proposed project.
Demands on environmental resources of land, water, air, and energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to demands on the environmental resources of land, water, air, and energy would be expected because of the proposed project. The amount of affected land adversely impacted by development of the new access road would be minimal (0.77 acres). Water would be used to mitigate potential fugitive dust impacts from the movement of earth and construction materials. Potential sedimentation impacts to the Yellowstone River associated with further or continued washing out of the existing access road would be mitigated with the proposed action. Some fuel would be required to operate heavy equipment and vehicles used for the construction phase of the proposed project. Any adverse impacts from fuel combustion would be limited by the anticipated short construction period and associated minimal need for fuel. Any impacts to demands for energy would be short-term and negligible to minor. No other impacts to the demands on environmental resources of land, water, air, and energy would be expected because of the proposed project.

Table 4 - Potential Impacts of Proposed Project on the Human Population

HUMAN POPULATION	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	
Social structures and mores	<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"/>	No significant impacts to existing social structures and mores in the affected area would be expected because of the proposed project. The proposed project would construct a new access road through a right of way easement on 0.77 acres of DNRC land. Montanan's, and those that visit Montana for travel, leisure, and other recreational purposes, generally hold high regard for outdoor recreational opportunities and access to rivers. Therefore, because the intent of the proposed project would be to restore recreational access to this part of the Yellowstone River, any impacts to pre-project social structures, customs, values, and conventions in the affected area would be long-term, beneficial, and negligible.
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"/>	No significant impacts to cultural uniqueness and diversity in the affected area would be expected because of the proposed project. The proposed project constitutes relocation of the FAS access road to facilitate ongoing recreational use of the affected FAS. It is not expected this action would result in any relocation of people into or out of the affected area or otherwise change the existing demographic in any way. Therefore, no impacts to the existing cultural uniqueness and diversity of the human population in the affected area would be expected because of the proposed project.
Access to and quality of recreational and wilderness activities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to access or the quality of recreational and wilderness activities would be expected because of the proposed project. No Wilderness areas exist in the affected area; therefore, no impacts to Wilderness recreation activities would occur because of the proposed project. The proposed project constitutes

HUMAN POPULATION	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	
									relocation of the FAS access road. Continued closure of the FAS would be necessary to facilitate construction of new road, which would impact access to the Yellowstone River from the existing FAS during construction. Once the proposed project is completed access to the Yellowstone River would be restored and improved. Therefore, any adverse impacts to access and the quality of recreational and wilderness activities in the affected area would be short-term, and minor. Any beneficial impacts would be long-term and moderate.
Local and state tax base and tax revenues	<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"/>	No significant adverse impacts to the local and state tax base and tax revenue would be expected because of the proposed project. The proposed project constitutes replacement and relocation of the FAS access road, and, when completed, would not result in changes to local or state taxes. The proposed project would be expected to increase state and local tax revenues from the sale of fuel, supplies and/or equipment to complete the project. Any impacts to the local and state tax base and tax revenue would be short -term and negligible, lasting only as long as the proposed project.
Agricultural or Industrial production	<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"/>	No significant adverse impacts to agricultural or industrial production in the affected area would be expected because of the proposed project. The proposed project constitutes development of a new access road through a right of way easement on DNRC land. Though a portion of the DNRC land parcel is currently leased for cattle grazing, the project area would not be within the fenced area that is used. Further, a settlement agreement would be implemented between FWP and the grazing lessee which states the proposed project will improve the fence and gate that borders the leased section of land. Any impacts

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
									to agricultural or industrial production would be long-term and negligible.
Human health and safety	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	No significant adverse impacts to human health and safety would be expected because of the proposed project. Long term, the proposed project would decrease risk to human health and safety at the FAS by rebuilding access to the site that was lost in the June 2022 Yellowstone River flooding event. The site will be opened to safe public access. Management of the sites sanitation and area amenities relies on quality road access. Any impacts to human health and safety because of the proposed project would be long-term, beneficial, and major.
Quantity and distribution of employment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to quantity and distribution of employment would be expected because of the proposed project. The project constitutes road rebuilding activities and, when completed, would not impact the quantity and distribution of the employment in the affected area. Short-term, minor beneficial impacts to the local quantity and distribution of employment may be realized because of the need for contracted services to complete the restoration activities. Any impacts would be short-term, minor, and beneficial.
Distribution and density of population and housing	<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"/>	No significant adverse impacts to the distribution and density of population and housing would be expected because of the proposed project. The proposed project constitutes road rebuilding activities within an existing FAS. Contractors would be used to accomplish portions of the proposed project, which may result in the need for temporary housing if the contractors selected for the proposed project do not live in the affected area. Any impacts from contracted work would be short-term and negligible and, when completed, would not impact the distribution and density of population and housing in the

HUMAN POPULATION	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	
									affected area. Further, the proposed project takes place on land owned by FWP and historically used for recreational purposes. Therefore, any impacts to the distribution and density of population and housing in the affected area because of the proposed project would be short-term and negligible.
Demands for government services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to demands for government services would be expected because of the proposed project. The project constitutes road rebuilding activities within an existing FAS and adjoining DNRC property. The proposed project would use hired contractors to complete the work. Therefore, some impacts to demands for government services would occur as contractors would be paid by FWP for their services. Further, FAS service levels would likely return to or exceed pre-2022 flood damage levels requiring FWP resumption of routine maintenance of the FAS. Any adverse impacts would be short- and long-term and negligible to minor.
Industrial, agricultural, and commercial activity	<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"/>	No significant adverse impacts to industrial, agricultural, and commercial activity would be expected because of the proposed project. The proposed project constitutes development of a new access road through a right of way easement on DNRC land. Though a portion of the DNRC land parcel is currently leased for cattle grazing, the project area is not within the fenced area that is used for grazing operations. Further, a settlement agreement was reached between FWP and the grazing lessee which states the proposed project will improve the fence and gate that borders the leased section of land. Therefore, the proposed project would not displace any existing industrial or agricultural activity. There is commercial use of this FAS by guides and outfitters for floating and fishing. Re-opening of the FAS would allow those affected

HUMAN POPULATION	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	
									businesses to return to pre-2022 flood damage levels. Beneficial impacts to commercial use would be long-term and moderate.
Locally adopted environmental plans and goals	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to locally adopted environmental plans and goals would be expected because of the proposed project. The primary goal of the proposed project would be to re-open the FAS to accommodate ongoing public river access and safe recreational opportunities and the existing FAS. FWP is unaware of any other local adopted environmental plans and goals in the proposed project area. Any impacts would be long-term, minor to moderate, and beneficial.
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 significant adverse impacts to any other appropriate social and economic circumstances would be expected because of the proposed project. FWP is unaware of any other appropriate social and economic circumstances that may be impacted by the proposed project. Therefore, no significant adverse impacts to other appropriate social and economic circumstances would be expected because of 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. 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. ARM 12.2.431.

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 severity, duration, geographic extent, and frequency of the occurrence of the impact</p> <p>“Severity” describes the density of the potential impact, while “extent” 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>“Duration” describes the time period during which an impact may occur, while “frequency” 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

VIII. Private Property Impact Analysis (Takings)

The 54th 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)

PRIVATE PROPERTY ASSESMENT ACT (PPAA)			
Does the Proposed Action Have Takings Implications under the PPAA?	Question #	Yes	No
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 4a and 4b and continue with question 5)	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 type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input 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 type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input 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 type="checkbox"/>
Does the proposed action result in taking or damaging implications?		<input type="checkbox"/>	<input checked="" type="checkbox"/>

Taking or damaging implications exist if **YES** 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 **NO** is checked in response to question 4a or 4b.

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.

Alternatives:

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.

IX. 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-notice>*
 - *Notices of the draft EA will be mailed 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)).*
 - *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: 15 days

Public Comment Period Begins: December 14, 2023

Public Comment Period Ends: December 29, 2023

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

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

Mark Filonczuk (Recreation Manager Region 3) mark.filonczuk@mt.gov

Mailing Address:

MT FWP Region 3 Office

c/o Mallards Rest FAS Road Project EA

1400 S. 19th Ave

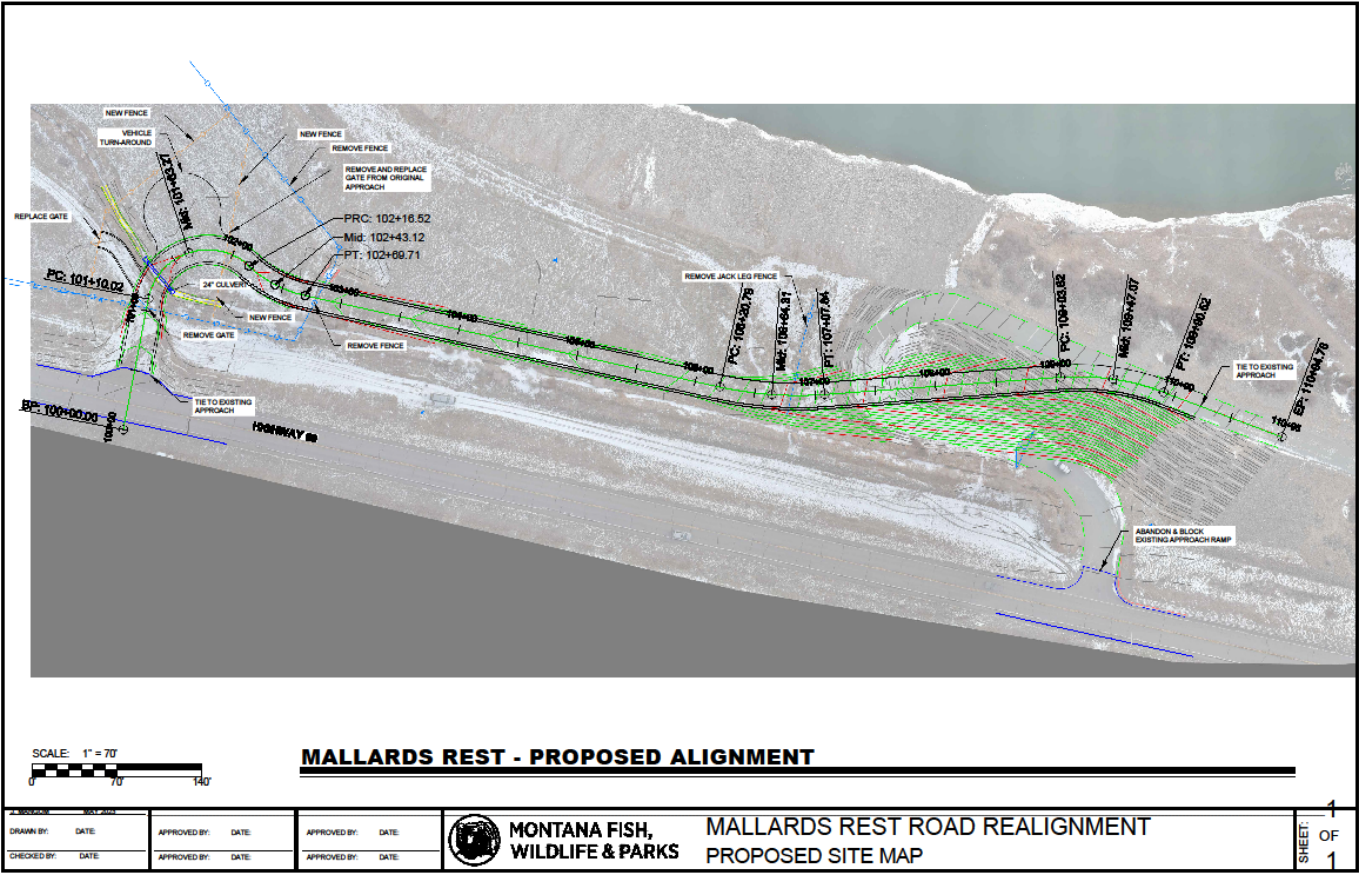
Bozeman, MT 59718

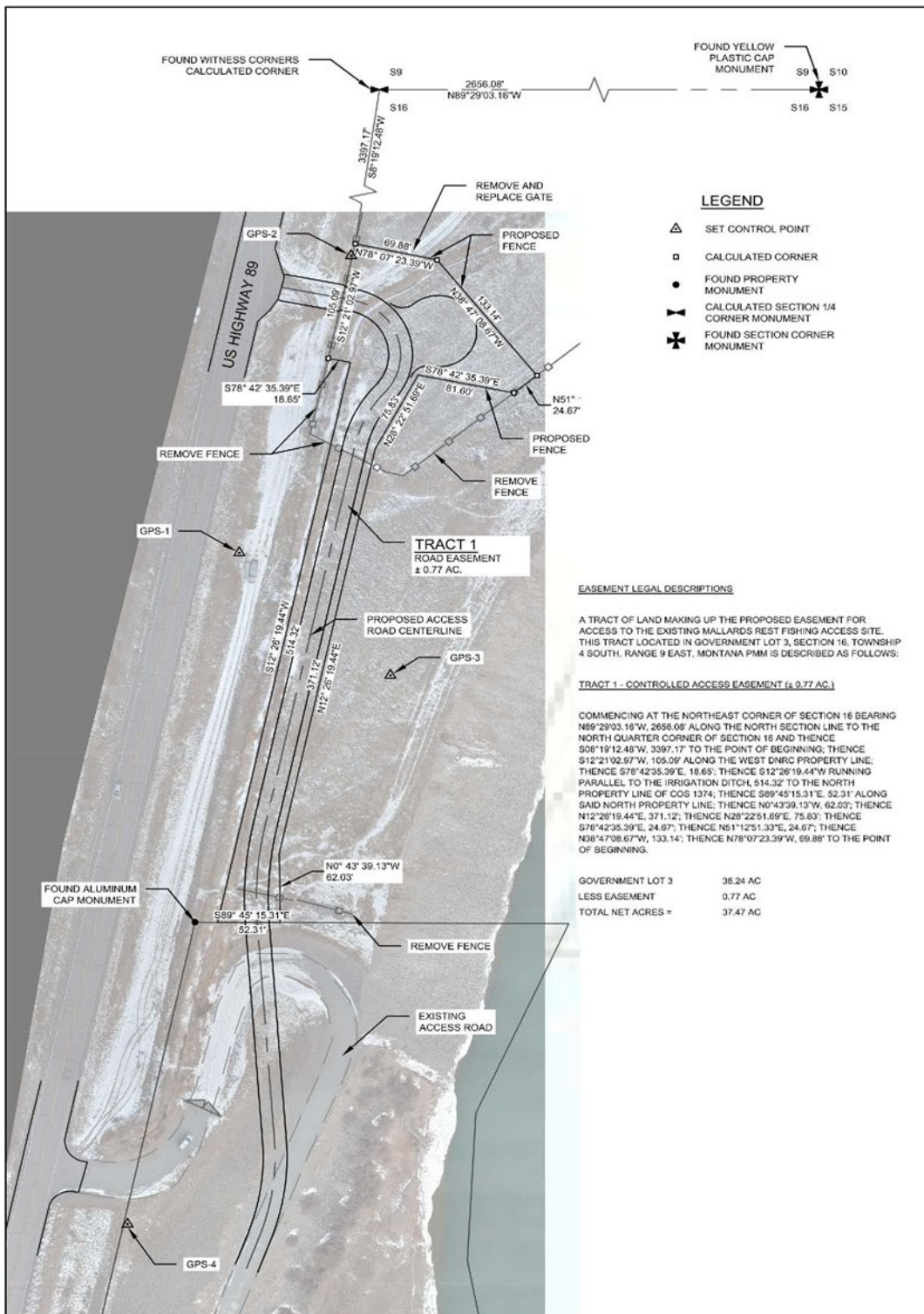
X. Recommendation for Further Environmental Analysis

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

XI. EA Preparation and Review

	Name	Title
EA prepared by:	Mark Filonczuk	FWP Recreation Manager
EA reviewed by:	Eric Merchant	FWP MEPA Coordinator





**MONTANA FISH,
WILDLIFE & PARKS**

MALLARDS REST EASEMENT EXHIBIT

J. MANGUM
DRAWN BY: DATE: JUNE 2023

K. PETERSON
CHECKED BY: DATE: JUNE 2023

APPROVED BY: DATE:

APPROVED BY: DATE:

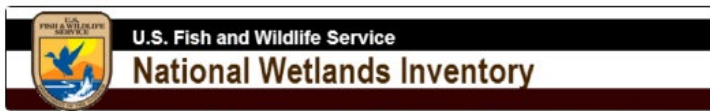
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0' 100' 200'



SHEET: 1 OF 1

Appendix B – US Fish and Wildlife Service National Wetlands Inventory



Mallard's Rest FAS NWI Designations



August 2, 2023

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland

- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond

- Lake
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

National Wetlands Inventory (NWI)
This page was produced by the NWI mapper

Appendix C: Species of Concern; Bald Eagle and Golden Eagle

8/3/23, 9:36 AM

mtnhp.org/MapView/SOReport.aspx



Latitude
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45.51285

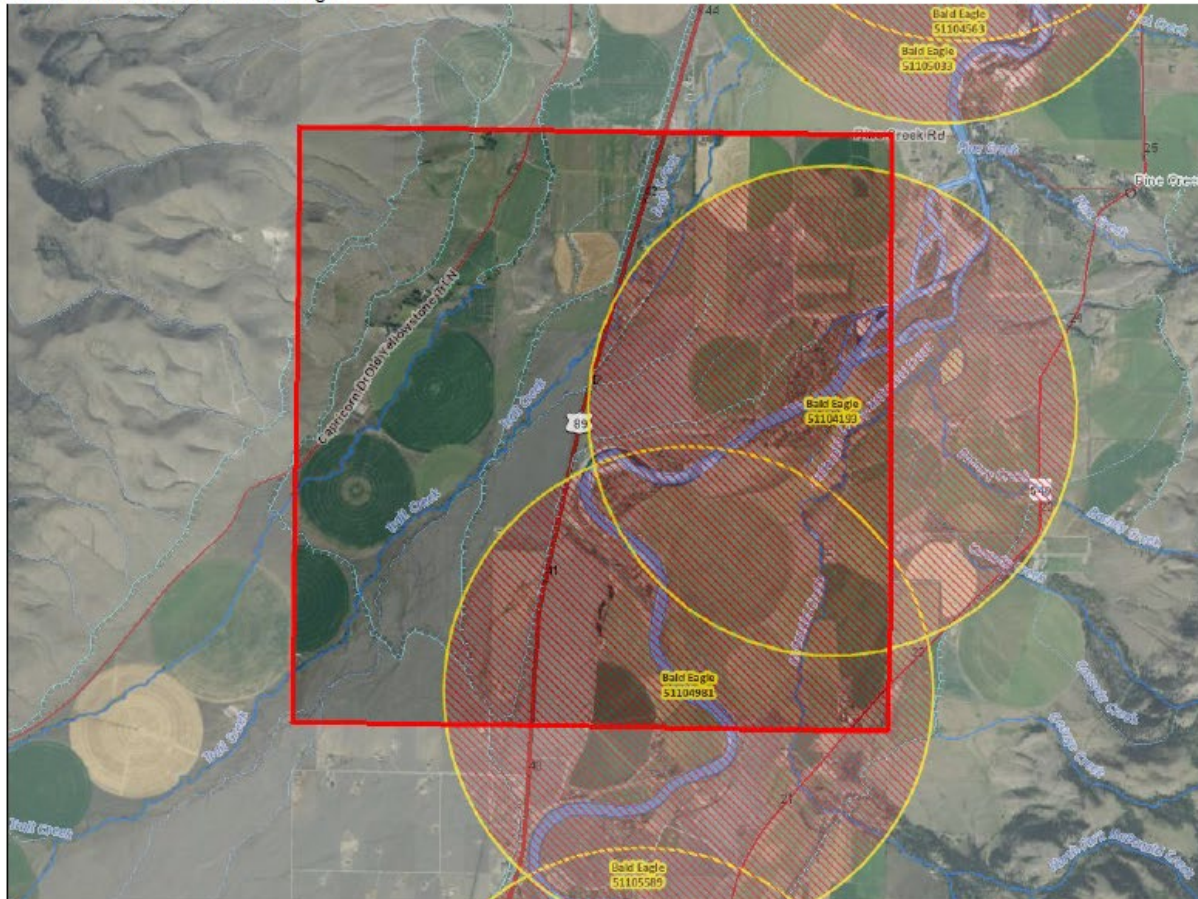
Longitude
-110.54752
-110.68954



Montana SOC Occurrences Report

SOC Occurrences for Birds = Bald Eagle

Report generated 8/3/2023 9:36:41 AM



Birds - Bald Eagle (*Haliaeetus leucocephalus*)

SO Count: 3 Obs Count: 26 Earliest Obs: 1994 Recent Obs: 2018

Special Status Species
Native Species
Global Rank: G5
State Rank: S4

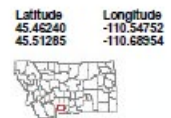
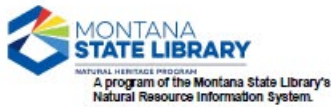
Agency Status
USFWS: BGPEA; MBTA
USFS: Sensitive - Known In
Forests (BD, BRT, KOOT,
LOLO)
BLM: SENSITIVE
FWP SWAP:
PIF: 2

Delineation Criteria
Confirmed nesting area buffered by a minimum distance of 2,000 meters in order to be conservative about encompassing the breeding territory and area commonly used for re-nesting. Only nesting observations with a locational uncertainty of 1,000 meters or less will be used to delineate a nesting area.

Last Updated
Jun 28, 2023

SO ID	Acres	Obs Count	Earliest Obs	Recent Obs
SO ID: 51104193	Acres: 3,095	Obs Count: 19	Earliest Obs: 1994	Recent Obs: 2016
SO ID: 51104981	Acres: 3,105	Obs Count: 2	Earliest Obs: 1994	Recent Obs: 1995
SO ID: 51105033	Acres: 3,095	Obs Count: 5	Earliest Obs: 2011	Recent Obs: 2018

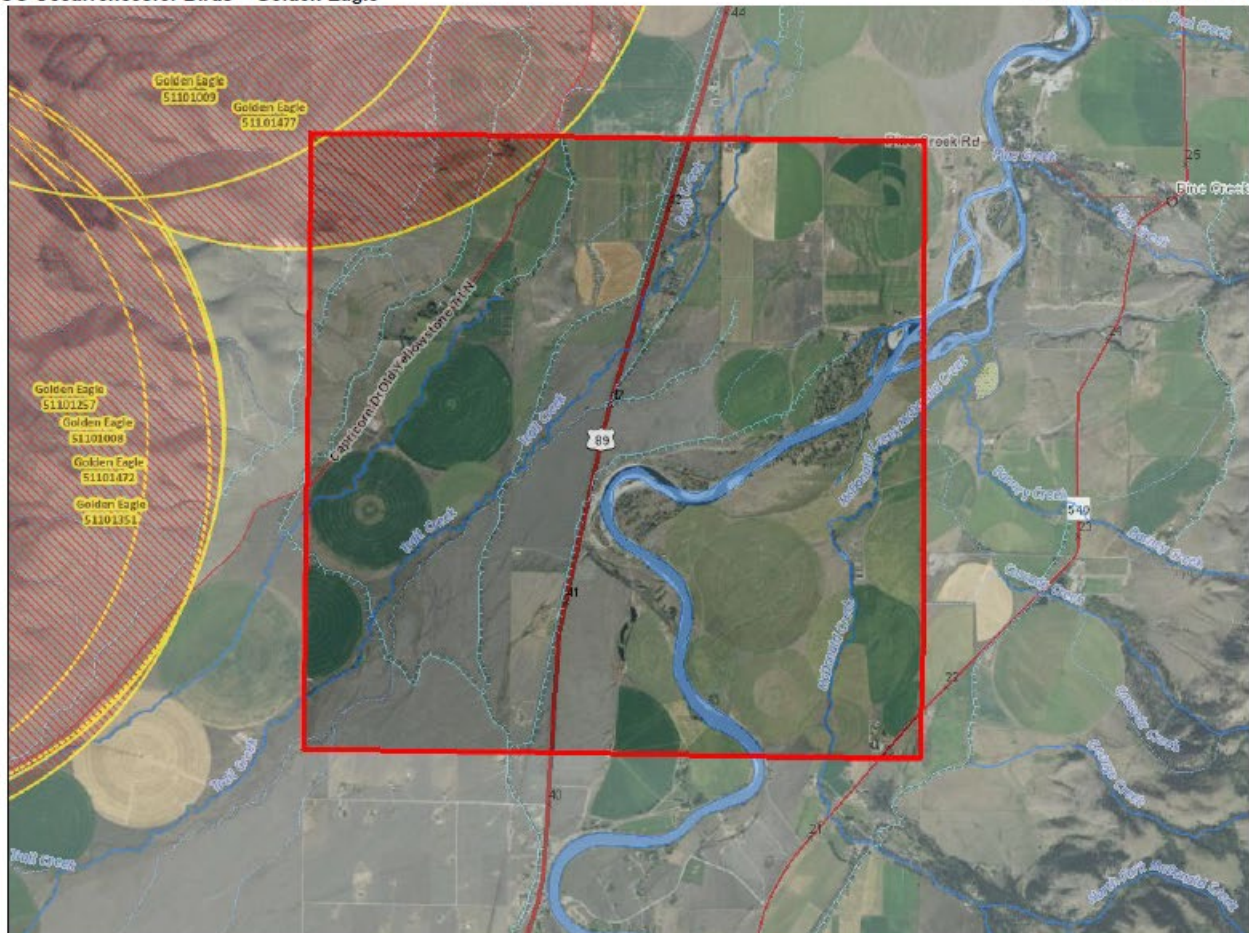
Citation for this report:
Montana SOC Occurrences Report
SOC Occurrences for Birds = Bald Eagle
Within Lat/Long: (45.46240,-110.54752) to (45.51285,-110.68954)
Natural Heritage Map Viewer. Montana Natural Heritage Program.
Retrieved on August 3, 2023, from <https://mtnhp.org/MapView/SOReport.aspx>



Montana SOC Occurrences Report

SOC Occurrences for Birds = Golden Eagle

Report generated 8/3/2023 9:39:56 AM



Birds - Golden Eagle (*Aquila chrysaetos*)

SO Count: 6 Obs Count: 11 Earliest Obs: 2010 Recent Obs: 2015

Species of Concern	Agency Status	Delineation Criteria	Last Updated
Native Species	USFWS: BGEP, MBTA	Confirmed nesting area buffered by a minimum distance of 3,000 meters in order to be conservative about encompassing the entire breeding territory and area commonly used for re-nesting and otherwise buffered by the locational uncertainty associated with the observation up to a maximum distance of 10,000 meters.	Jun 27, 2023
Global Rank: G5	USFS:		
State Rank: S3	BLM: SENSITIVE		
	FWP SWAP: SGCN3		
	PIF:		

SO ID	Acres	Obs Count	Earliest Obs	Recent Obs
SO ID: 51101008	6,987	2	2010	2011
SO ID: 51101009	6,987	1	2013	2013
SO ID: 51101257	6,987	2	2011	2013
SO ID: 51101351	6,987	1	2014	2014
SO ID: 51101472	6,987	3	2011	2013
SO ID: 51101477	6,972	2	2014	2015

Citation for this report:
 Montana SOC Occurrences Report
 SOC Occurrences for Birds = Golden Eagle
 Within Lat/Long: (45.46240, -110.54752) to (45.51265, -110.68954)
 Natural Heritage Map Viewer. Montana Natural Heritage Program.
 Retrieved on August 3, 2023, from <https://mtnhp.org/MapView/SORReport.aspx>

Common Name	Scientific Name	Habitat	Distribution
Yellowstone Cutthroat Trout	Oncorhynchus clarkii bouvieri	Mountain streams, rivers, lakes	Resident Year Round
Great Blue Heron	Ardea herodias	Riparian forest	Resident Year Round
Bald Eagle	Haliaeetus leucocephalus	Riparian forest	Resident Year Round
Bobolink	Dolichonyx oryzivorus	Moist grasslands	Migratory Summer Breeder
Little Brown Myotis	Myotis lucifugus	Generalist	Resident Year Round
Clark's Nutcracker	Nucifraga columbiana	Conifer forest	Resident Year Round
Hoary Bat	Lasiurus cinereus	Riparian and forest	Migratory Summer Breeder
Long-eared Myotis	Myotis evotis	Forest	Resident Year Round
Cassin's Finch	Haemorhous cassinii	Drier conifer forest	Resident Year Round
Golden Eagle	Aquila chrysaetos	Grasslands	Resident Year Round
Green-tailed Towhee	Pipilo chlorurus	Shrub woodland	Migratory Summer Breeder
Grizzly Bear	Ursus arctos	Conifer forest	Resident Year Round
Rehn's Slow Grasshopper	Argia cris rehni	Montane steppe/ poorly described	Resident Year Round
Alberta Snowfly	Isocapnia integra	Mountain Streams to Rivers	Resident Year Round