



## DECISION NOTICE

### White Bear Fishing Access Site Improvement Project FWP-CEA-POR-R4-23-011

12/4/2023

#### **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 as final, without modification, and approves Alternative 2, the proposed action.

#### **AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT**

According to the applicable requirements of the Montana Environmental Policy Act (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 (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 for public review and comment. See *Public Participation Process* below.

Further, FWP must consider any substantive comments received in response to a Draft EA and proceed in accordance with one of the following steps:

- determine the Draft EA did not adequately reflect the issues raised by the proposed action and issue an Environmental Impact Statement (EIS);
- determine the Draft EA did not adequately reflect the issues raised by the proposed action and issue a supplemental EA; or
- determine the Draft EA adequately addressed the issues raised by the proposed action and make a final decision, with appropriate modification resulting from the analysis provided in the Draft EA and the analysis of any substantive public comments received. See *Public Comment and FWP*

*Response below.*

## **DESCRIPTION OF PROPOSED ACTION**

**Background:** White Bear Fishing Access Site (FAS), managed by FWP, is located on the Missouri River approximately three miles upstream (south) of the Great Falls city limits on the northwest shoreline of the Missouri River. The FAS is accessible by driving on Fox Farm Road and then turning on either Fawn Drive, Highwood Drive, or Dune Drive. The FAS is also accessible by watercraft.

Undesirable and illegal public behavior at the FAS (underage drinking, intoxication, illegal drug use, after-hours use, etc.) and concerns raised by the public, many of which included nearby homeowners, prompted the Montana Fish and Wildlife Commission (commission) to implement a temporary, seasonal closure of the White Bear FAS. The seasonal closure was first established in 2015 and restricts public entry to the FAS from June 1<sup>st</sup> through September 30<sup>th</sup>. The commission has renewed the closure each year while FWP has worked to identify actions that would mitigate the undesirable and illegal behavior or seek an opportunity to trade or dispose of the FAS in the event satisfactory mitigation is not achievable at the affected site.

To support the proposed action, FWP developed a site improvement proposal, as outlined in the Draft EA, for the following purposes:

- improving public safety;
- reducing unwanted, undesirable, and illegal behavior at the property;
- prohibiting entry at night; and
- creating recreational opportunities that enhance desirable public use of the White Bear FAS.

FWP developed a twofold proposal to address the issues that have plagued White Bear FAS and prompted the commission to impose seasonal closures at the site. More specifically, FWP proposes the following:

- additional safety and security measures; and
- additional recreational amenities intended to attract desirable use of the site.

### **Safety and Security Measures:**

FWP proposes to install the following safety and security measures:

- an automatic electronic gate at the entrance of the White Bear FAS to increase compliance with the existing “day use only” rule. The electronic gate would prevent entry during the hours the FAS is closed (8 pm to 6 am). The gate could be programmed to allow vehicles to exit after the gate has closed.
- a light pole that would illuminate the electronic gate.
- security cameras would be positioned to capture video of the electronic gate and the parking area within the White Bear FAS.
- a graveled access road for authorized vehicle access from the existing parking area down to the river’s edge. The road would be developed behind an existing locked metal gate and open only to

authorized vehicles for law enforcement patrols, maintenance, emergency access to the river, and other authorized use.

#### Recreational Amenities:

FWP proposes to develop and install the following recreational amenities:

- a crushed-stone trail totaling approximately one mile in length that would complete a loop on the south end of the property and another loop on the north end of the property. Each loop would be approximately 0.5 miles in length. Culverts would be located and installed along the trail loops, as necessary, to enable proper drainage.
- a dog waste bag dispensing box, as well as a small garbage disposal can for those who utilize the trails to walk their dogs.
- benches along the trail that would allow visitors to sit and observe the surrounding natural area.
- signs at the parking lot entrance, within the parking lot, near the river, and along the trail that would provide visitors with information pertaining to rules and regulations, a map of the trails, and interpretive information about the natural resources and historical significance of the area.

#### **PURPOSE AND NEED**

The proposed project would provide security features and develop additional recreational amenities to mitigate undesirable and illegal public behavior that has led to the commission-imposed seasonal closure of White Bear FAS.

The proposed project would provide the following benefits:

- additional security features intended to increase public safety;
- additional recreational amenities to attract more desirable use of the FAS and increase opportunities for nature viewing, fishing, walking, biking, dog walking, and learning about the natural, cultural, and historical resources unique to the area;
- reduced undesirable and illegal use of the FAS; and
- elimination of the commission-imposed seasonal closures, thereby keeping the FAS open year-round.

#### **ALTERNATIVES ANALYZED**

##### **Alternative 1: No Action**

In addition to the proposed action, and as required by MEPA, FWP analyzed the "No-Action" alternative in the Draft 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 there would be no additional safety and security measures in place to mitigate undesirable and illegal behavior at the site. This would leave the commission with a future decision

as to whether to continue the seasonal closure that limits public opportunities to enjoy the site (which has thus far been the means for mitigating undesirable and illegal behavior), or to divest of the property to find another that is more suitable to year-round public use. There would be no additional recreational amenities and no security features at the property, and it is anticipated that without a seasonal closure, the undesirable and illegal activities would resume at White Bear FAS during the summer. Such an example occurred in June 2016, when there was no closure and previous undesirable and illegal activities quickly returned. Once realized, a closure was renewed, and the undesirable and illegal activities were quickly reduced.

#### **Alternative 2: Proposed Action**

Under the Proposed Action, FWP would implement safety and security measures and improve recreational amenities to mitigate the types of uses that occur at the site that are undesirable to the public and to the adjacent landowners.

#### **PUBLIC PARTICIPATION PROCESS**

The Draft EA was made available for public review and comment from September 12, 2023, through September 26, 2023. A legal notice was published in the Great Falls Tribune and the Draft EA was posted on FWP's Public Notice webpage: <https://fwp.mt.gov/news/public-notice>. The Draft EA was also made available for public review on the Environmental Quality Council (EQC) website: <https://leg.mt.gov/mepa/search/>, by individual request, and through notice to identified interested parties. FWP received comments during the public comment period. See *Public Comment and FWP Response* below.

#### **PUBLIC COMMENT AND FWP RESPONSE**

FWP received substantive public comments on the Draft EA. A substantive public comment was defined as the identification of a specific issue or impact. The following provides the public comments received and FWP's response(s).

1. **Comment:** I am very much in favor of having the fishing access site open year around. It has been so disappointing having the site closed during the summer months since it is such a nice hiking trail for me and the dogs. I don't believe the area is large enough for hunting activities. At least my dogs don't like gun fire so we can't enjoy Giant Springs during that hunting season. It is a shame the bad behavior of a few have deprived so many of enjoying this beautiful area. Thank-you for conducting the study and proposing the changes.

**FWP Response:** Thank you for your comment. The Draft EA analyzed potential impacts from the proposed action only. Because the action does not propose regulation changes, existing regulations related to hunting within the FAS are outside the scope of the proposed action.

2. **Comment:** Cannon, Got it / thanks. First pass reading suggests you have a good plan; not great, but good. You can't satisfy everybody and seem to have found a decent center course.

I oppose crushed rock for the proposed south and north trail improvements. Periodic mowing should suffice and is more natural.

Apologies if some of the following are in the document.

Questions:

- 1) Will there be another public meeting for this?
- 2) Will archery hunting be expressly prohibited?
- 3) Will shotgun hunting be expressly prohibited?

Thanks very much for your effort and follow-up.

**FWP Response:** Thank you for your comment. FWP proposed the crushed rock trail option to better support universal access to the affected trails, improve trail conditions, especially during wet periods of the year, and to reduce the need for continuous mowing and related maintenance of the affected trails during the summer months. According to staff observations and data obtained by FWP through a survey of nearby homeowners (see Appendix A of the Draft EA), trail walking is the most common form of outdoor recreation at the site.

As part of the public scoping process for the proposed action, FWP met with the affected Homeowners Association (HOA) (see Appendix A of the Draft EA) to identify issues prior to the release of the Draft EA for public review and comment. Further, the affected public at large had the opportunity to comment on the Draft EA during the official public comment period (see Public Participation Process above). Therefore, no additional public meetings are currently planned. As necessary, FWP will continue to meet with the affected HOA to provide information and updates on the proposed project and/or any future management actions affecting the White Bear FAS.

The Draft EA analyzed potential impacts from the proposed action only. Because the action does not propose regulation changes, existing regulations related to hunting within the FAS are outside the scope of the proposed action.

3. **Comment:** This email is in response to the White Bear Fishing Access Site draft environmental access notification. These are my public comments regarding the proposed project for this site.

I would recommend that the posted signs indicating the rules at the site include no hunting, no horseback riding and no motorized vehicles. I have observed horse droppings there several times in the past, including just this past week.

According to the survey from earlier this year, the predominant recreational activities performed at this site include walking, biking, dog walking and fishing.

The uniqueness of this site lies in the fact it is one of the few near Great Falls where the public can walk in a forest-type setting. Allowing horseback riding, motorized vehicles and hunting would undermine the quality and uniqueness of this site.

**FWP Response:** Thank you for your comment. The Draft EA analyzed potential impacts from the proposed action only. Because the action does not propose regulation changes, existing regulations related to hunting, riding horses, and the use of motorized vehicles within the FAS are outside the scope of the proposed action.

4. **Comment:** These comments are regarding the public comment period for the Draft Environmental Assessment.

It appears that this project is being justified as a solution to the past seasonal closures of the FAS. On page 5 of the Draft EA, it states, "Undesirable and Illegal public behavior at the FAS.... prompted the Commission to implement the seasonal closures." I have lived in the neighborhood of the FAS for nearly 25 years and personally experienced some of the activities that triggered the closure.

I like the improvements being proposed except for they seem to NOT be a solution to the problem that was driving the closure. At best, the project is only a small but incomplete step. In fact, I believe the package that is being proposed is going to cause the problem to recur and cause other problems as well.

There are two aspects to the proposed project, the improvements to the security gate and the proposed recreational features. Let me address each of them separately.

The proposal for the gate may be a partial solution to nighttime security. However, the boundaries of the property are very long and persons desiring to enter the site for illicit purposes could simply park along adjacent road and enter the property to bypass the new security measures.

Secondly, the idea that the problems caused in the past are contained within the FAS parcel is not correct. The problems in the past extend well beyond the parcel itself. The only land access to the site is via a few miles of roads south of Great Falls. The area is generally residential with many areas having yards with pets and small children recreating in the vicinity of the access road. The safety and security concerns also include these access roads. Most of the roads were built on private property of the landowners who granted road easements for use of the local community.

While the gate may provide a limited deterrent to the property itself, it does nothing to address the safety and security of the community that resides alongside the access road. In the past, those homeowners were a significant portion of the complaints that led to the closures. The Draft EA includes a copy of the comments from the public participation survey. Within that survey there were 11 references to traffic concerns of this nature. The EA provided made no mention of those concerns or how they were specifically being addressed as part of the Project.

On to the second portion of the Project which is described as additional "Recreational Amenities". Though these are bundled with the security features and collectively described as a solution to the past problems. The recreational amenities will be a significant countermeasure to the security features. It seems disingenuous to package these both together and suggest they are designed to address the root causes of past closures. Propose them if you will but the more features and nicer you make the FAS, the more attention and usage will be drawn to the site.

If you believe that more usage will in fact reduce the risk and hazards associated with increased traffic flowing through the local neighborhood, please provide some sources and research that will back that up. Otherwise, it seems that these improvements are more likely to cause more problems than the "do nothing" option.

The Draft EA does not adequately address the two components to this project. They should each be evaluated separately. Presenting them as a package could mislead and confuse the public regarding the combined impact.

Additionally, I would request the following specific items be addressed before moving forward with the Project:

1. Estimate the traffic impact of the FAS on the local roads. Compare the historic impact versus the projected impact based on the increased use if the Project is completed.
2. Research the history of the safety issues that have occurred along the route to the FAS. If I recall correctly, there have been a number of traffic fatalities caused by users of the FAS. Have you reviewed these records? If so, what is the data and include reference to it in the Draft EA and address how the project will impact that type of risk and mitigate it.
3. Review the Special Improvement District records with the County to ensure that the State of Montana is paying its correct proportionate share of the roads. A large RSID was imposed upon the local landowners a few years ago. Along with that work, the County assured landowners that any increased usage such as a new subdivision along the route would be assessed a fee to pay their legally obligated portion. If the State is making improvements that increase the usage of the site, they should also be paying their proportionate share of the cost of the access road and its maintenance.
4. Page 19, of the Draft EA includes a narrative of the impact of the project on the "Social Structures". While the commentary discusses the impact on the FAS site itself, it does not acknowledge the impact on the social structure of the local community residing along the access road to the site. Many comments were provided in the public comment section about this topic, yet the EA doesn't address any of the issues presented in the public comments.
5. Page 21 of the Draft EA includes a discussion on the topic, "Health and Safety". Similar to comment 3 above, the Draft EA ignores all of the public comment presented regarding the safety of the local community residing along the access road.
6. Page 26 of the Draft EA includes an evaluation of the impact to Private Property. The last sentence in the first paragraph states, "Private property shall not be taken or damaged for public use without

just compensation". The answers provided in the table on this page, do not seem to acknowledge the existence of the access road to the FAS that crosses many private landowner's parcels. And, the impact of the proposed improvements on the landowners. Prior to the FAS improvements of the mid 2000s, there was virtually no usage of the FAS site. Once the site was developed to its current condition, the usage and subsequent traffic and safety problems were triggered. With the additional improvement proposed, it seems reasonable to expect significant additional traffic. That traffic impact is not addressed in the Draft EA nor is any acknowledgement of the "damage" that is caused to private property owners along the access road.

7. If the proposed project proceeds and it triggers an increase, in traffic, illegal activities at the FAS site and / or along the route to the site, what further measures is FWS willing to take to mitigate the impacts to the local community residing in the area?

Thank you for considering these serious matters.

**FWP Response:** Thank you for your comment. The Draft EA analyzed potential impacts from the proposed action only. Because the action does not address safety issues external to the FAS property boundary, including safety issues related to the affected private access roads, these issues are outside the scope of the proposed action.

According to the Montana Department of Transportation (MDT), the annual average daily traffic (AADT) count taken on the main road leading to the White Bear FAS (near the intersection of Fox Farm Road and Dick Road, approximately 3 miles from the FAS) has remained stable over the last 10 years. In 2012, which preceded the initial 2015 commission-required seasonal closure, the AADT was 1,780 vehicles. In 2022, which followed the commission-required seasonal closure, the AADT was 1,880 vehicles.

FWP cannot determine whether traffic stops or vehicle collisions occurring on public or private roadways located outside the boundaries of the FAS property involved persons who had previously used or were planning to use the White Bear FAS. Further, the access roads to White Bear FAS are private roads with public easements administered by Cascade County. Therefore, even if visitors to the White Bear FAS are responsible for some of the identified safety issues associated with the affected access roads, FWP does not have the authority to regulate or manipulate the access roads in any way. FWP will, however, share the comments received regarding management of the affected access roads with Cascade County.

The intent of the proposed action is to mitigate ongoing and undesirable use of the White Bear FAS property by improving on-site safety and security through site improvements. Because the undesirable activities described in the Draft EA are ongoing, FWP has requested the commission continue to require seasonal closure of the White Bear FAS. In response, at its April 18, 2023, meeting, the commission approved the ongoing seasonal closure of the FAS for 2023-2024. However, anticipating the commission may not require seasonal closure in 2025-2026, the burden created by ongoing and undesirable activities within the White Bear FAS may result in FWP choosing to divest itself entirely from ownership and management of White Bear FAS. If FWP



divests itself from the White Bear FAS property, the result would be a significant loss of desired public outdoor recreational opportunities within close proximity to Great Falls, as identified through public scoping. Public scoping found a majority of respondents would be 'very dissatisfied' or 'dissatisfied' if FWP divested itself of the White Bear FAS property. Therefore, under the proposed action, various improvements would be implemented in an effort to deter undesirable and illegal use of White Bear FAS should the commission not act to require seasonal closure of White Bear FAS during 2025-2026.

FWP files taxes for White Bear FAS with Cascade County and makes payments to the Fox Farm Road Improvement District #37 for the two parcels that compose White Bear FAS. These payments are filed with the Cascade County Treasurer's Office. The Fox Farm Improvement District #37 is set up such that the costs of road improvements are to be borne by owners of the properties within the area and all affected lots are to be assessed an equal amount based on the total cost of the improvements.

5. **Comment:** To whom this concerns,

I want to say the following for all the fishing area's and all public lands with common public interest. Less is more.

The continued practice of putting in roads and construction for human ideas of convenience and ease of access/use, needing any kind oil construction is at the point it now take away from the experience, with an equivalence of a controlled trip to a city park. So I say, for whatever is left 'untouched'.... less is more. If it is not broke please don't fix it. There is a greater beauty to not having designated parking, pavement, or even an outhouse.

There is great need to halt the rapid drive to accommodate human for everything human thinks human wants. Once we change an area it is changed forever. Making the area no longer what it was we liked about it and why we go there in the first place. Our practices are killing the non-human (flora and fauna) life in our state big time, at best this changes the essence of our state faster than we can protect that essence. What is the hurry to do anything beyond the by design contest for tax money? By design is to be given to corporate via law and contract via lobbied interests and is truly ruining what the grand beauty and soul of Montana is about, for nothing more than a brainwashed idea of economy.

Less is more.

**FWP Response:** Thank you for your comment. FWP strives to preserve and protect our state's recreational heritage. Toward that objective, the FAS system including the White Bear FAS, serves to provide the affected public with a wide range of high-quality outdoor recreational opportunities. In recent years, undesirable and illegal activities taking place at the White Bear FAS have resulted in the seasonal closure of the site by the commission, at the request of FWP.

The proposed project is intended to mitigate undesirable and illegal use and attract more desirable use of the site through improvements to existing FAS infrastructure, including improvements directly related to safety and security at White Bear FAS.

Human development and population in the affected area have increased over the last decade. Further, as identified through public scoping for the proposed action, there is an ever-increasing desire for access to public lands in the affected area. By mitigating safety concerns and improving existing FAS infrastructure, FWP's objective is to provide the affected public with high-quality recreational opportunities and negate the need for seasonal closure of the White Bear FAS.

6. **Comment:** I read the EA and am in favor of NOT doing any access upgrades to the site. There are past reasons for not wanting it opened up to the public and I don't see that people have changed. With it opening up after Labor Day 2023 there has been an increase in traffic already. I have had neighbors going for walks up Hawk Drive and have had to hit the ditch because the traffic will not move into the opposite lane. Is there going to be an increase pay into the RID by the FWP to pay for all the non-landowners out here using the road? Who is going to come and move the trespassers out of the parking area after hours? Is FWP 100% sure that me and my neighbors will be safe? We do live out here full time and want peace and quiet, that is why we moved out here. The location is too close to town and is just asking to be vandalized.

It is nice to be able to walk and ride bikes and visit without constant traffic. If you build it they will come in droves. I hate to see the site improved only to have to shut it down again because of some fiasco or fatality happening. Every piece of land does not need to have public access. Why not expand somewhere in town, that way it will be easier to monitor and FWP will have a quicker response time? Sell the land and spend the money on upgrading FWP areas that are already being used.

Thanks for letting me respond and again I am in favor of NOT doing any upgrades to the site.

**FWP Response:** Thank you for your comment. Please see responses to comments #4, #5, and #6 above. The temporary and/or seasonal opening and closure of White Bear FAS is determined under authority of the commission. FWP's objective has been, and continues to be, to provide the affected public with a high-quality outdoor recreational experience at the White Bear FAS. Permanent closure of the White Bear FAS is outside the scope of the Draft EA.

Further, accessing the White Bear FAS property after legal hours is a violation of the Administrative Rules of Montana, as adopted by the commission, and is punishable by law. Law enforcement officers enforce FAS regulations, including use during prohibited hours. Violation of FWP rules and regulations can and should be reported to local law enforcement or by calling 1-800-TIP-MONT.

7. **Comment:** As a Hawk Dr. property owner, my two cents worth are I support and approve of the proposed changes and improvements to the FAS. I believe it will make the whole area better.

**FWP Response:** Thank you for your comment.

**DECISION**

Based on the environmental review provided in the Draft EA, and 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, the preparation of an EIS is unnecessary.

FWP hereby adopts the Draft EA as final and approves Alternative 2, the proposed action.

Sincerely,

A handwritten signature in cursive script that reads "Jason Rhoten".

Jason Rhoten  
Region 4 Supervisor  
Montana Fish, Wildlife & Parks