



DECISION NOTICE

Elk Island WMA Land Trade

June 19, 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 the Proposed Action, to trade 1.07 acres of department-owned land for 2.61 acres of private land adjacent to Elk Island Wildlife Management Area (WMA).

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 can 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 7, Parts 7 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 Checklist EA for public review and comment.

Further, FWP must consider any substantive comments received in response to an EA and proceed in accordance with one of the following steps: determine the EA did not adequately reflect the issues raised by the proposed action and issue an Environmental Impact Statement or EIS; determine the 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 public comment received.

With consideration for all public comments received, FWP determined the level of environmental review provided by the Draft Checklist EA is adequate, without modification, and an EIS is not required.

PUBLIC PARTICIPATION PROCESS

The Draft EA was made available for public review and comment beginning on May 17, 2023, through June 1, 2023. On May 17, 2023, 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 or EQC website: <https://leg.mt.gov/mepa/search/>, by individual request, and through notice to identified interested parties.

FWP received 4 comments during the public comment period (see *Public Comment and FWP Response* below).

DESCRIPTION OF PROPOSED ACTION

Under the proposed action FWP would trade 1.07-acres of department-owned land for 2.61 acres of private land adjacent to Elk Island Wildlife Management Area (WMA). The 1.07-acre parcel was purchased in 2008 as part of a larger, approximately 163-acre purchase. The parcel consists of an old farmstead located across the county road from the rest of the 2008 purchase and the WMA. The landowner did not intend to sell this parcel to FWP; however, it had been surveyed with the land to the south of the road in 2007 (COS 27-770, Richland County), prior to FWP's initial endorsement of the project.

All transactional documents available to FWP field staff and the landowner simply stated a legal description, without any accompanying map, and thus the survey error was not readily apparent in documents available for their review prior to the 2008 purchase:

"Township 20 North, Range 58 East P.M.M, Richland County, Montana. Tract 2 of COS 27-770, in Envelope No 506A, located within Sections 22 and 27, including possible accretion assigned to Lot 9 (Section 22) and Lot 1 (Section 27)"

The 1.07-acre parcel proposed for trade is occupied by a tenant living in a trailer. Both the tenant and the adjacent landowner have been under the incorrect understanding that the property was under private ownership. With current mapping technologies, FWP and the landowner recently became aware of the survey mistake. The landowner maintains they never intended to offer the parcel to FWP in the original sale, and regional staff involved in the transaction (both retired) concurred that it was not included in negotiations. The Land Agent who handled the project is deceased. If FWP does not move forward with the land-trade, the existing tenant would necessarily be evicted from the property, the trailer would be removed from the parcel, and the former landowner would be prevented from renting the site. Further, FWP could incur significant clean-up costs for the site.

Given that all available parties involved in the original transaction agree that the 1.07-acre parcel was not intended to be included in the 2008 purchase, the landowner requested that FWP explore the possibility of correcting this mistake. The landowner offered to trade a 60-foot wide, approximately 2.69-acre piece of land which contains some excellent winter cover for upland game birds and white-tailed deer, that is adjacent to the WMA. Acquisition of this piece would enhance the habitat value of the adjacent WMA for wildlife and provide increased hunting opportunity. The proposed acquisition is immediately adjacent to the WMA, whereas the proposed disposition is across county roads from the

WMA. The proposed acquisition would alleviate a potential trespass issue, as it is tempting for hunters and bird dogs to venture into woody cover immediately adjacent to the WMA.

The 1.07-acre parcel offers little habitat or hunting value given its small size and that it is bounded by county roads to the south and west, and farm fields to the north and east. Therefore, this project represents an opportunity to fix a mistake to the satisfaction and benefit of the landowner, to maintain a long-standing positive relationship with the neighboring landowner, and to enhance the WMA with a piece of land that is immediately adjacent and offers better habitat value and hunting opportunity.

PURPOSE AND NEED

FWP is proposing to trade 1.07 acres of department-owned land for 2.61 acres of private land adjacent to the Elk Island WMA. The 1.07-acre parcel was unintentionally acquired by FWP in 2008 as part of a larger, approximately 163-acre purchase. The proposed land trade would rectify an error dating back to the 2007 survey and 2008 WMA addition. The landowner did not intend to sell the 1.07-acre proposed disposition to FWP, and FWP did not intend to purchase it.

Acquisition of the 1.07-acre parcel would result in the following benefits:

- Enhance the habitat value of the WMA for wildlife and provide increased public hunting opportunity.
- Alleviate a potential trespass issue.
- A trailer is located on the affected 1.07-acre parcel of land currently owned by FWP and proposed for trade under the proposed action. If the proposed action is not approved the existing tenant would necessarily be evicted from the property, the trailer would be removed from the parcel, and skirting and other appurtenances on the trailer could be irreparably damaged. Further, FWP could incur significant clean-up costs for the site. Neither the proposed nor the initial action (land acquisition) intended to result in FWP's acquisition of the affected parcel, as this element of the acquisition was unknown to all affected parties at the time of the initial action.
- Opportunity to fix a mistake to the satisfaction and benefit of the landowner and existing tenant, to maintain a long-standing positive relationship with the neighboring landowner, and to enhance the WMA with a piece of land that is immediately adjacent and offers better habitat value and hunting opportunity.

ALTERNATIVES ANALYZED

In addition to the proposed Project, and as required by MEPA, FWP analyzed the "No-Action" alternative. Under the "No-Action" alternative, FWP would not do the proposed project. A trailer is located on the affected 1.07-acre parcel of land currently owned by FWP and proposed for trade under the proposed action. Under the No Action alternative, the existing tenant would necessarily be evicted from the property, the trailer would be removed from the parcel, and the landowner would thereby be prevented from renting the site. Further, FWP could incur significant clean-up costs for the site.

PUBLIC COMMENT AND FWP RESPONSE

All comments received during the public comment period were supportive of the proposed action. The following provides the public comments received and FWP response(s).

- 1) After comparing the land on the corner to the land we will gain, I think we would gain 100% perfect game habitat for land that's 10% as good our game! Flat ground next to the busy road—ground that we would trade is much less valuable that the ground we would acquire! Richland County Pheasants Forever is a thousand percent in favor of this trade. Keep up the good work.

Dave Harris RCPF
Tim Fine Pres.

FWP Response: Thank you for your comment.

- 2) Dear Fish Wildlife & Parks Commission,

I support the Elk Island WMA Land Trade. This is by far, the fairest way to solve this misunderstanding.

Bert Otis

FWP Response: Thank you for your comment.

- 3) Thank you for the heads up! I reviewed the EA and it all looks good.

George Biebl

FWP Response: Thank you for your comment.

4)



Protecting Montana's wildlife, land, waters, and
hunting & fishing heritage for future generations.

1 June 2023

Montana Wildlife Federation

40 West Lawrence Street
PO Box 1175
Helena, MT 59624

Department of Montana Fish, Wildlife, and Parks

% Elk Island Land Trade
PO Box 1630
Miles City, MT 59301

RE: Elk Island Wildlife Management Area Land Trade Draft EA

Dear Ms. Foster,

The Montana Wildlife Federation (MWF) is the state's oldest hunter and angler advocacy organization consisting of thousands of Montanans who value sound fish and wildlife management and our storied hunting and outdoor legacy. Together with our nineteen (18) affiliated clubs, we ensure that wildlife conservation dollars and efforts are efficiently spent on wildlife-related activities, promote sound biology in managing our state's wildlife, and safeguard our hunting heritage.

After reviewing the prepared Draft Environmental Access (EA) regarding the Elk Island Wildlife Management Area (WMA) Land Trade, MWF strongly recommends the adoption of **Alternative 2: Proposed Project Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population.**

As outlined in the EA, this trade will rectify an inadvertent error from fifteen years ago. Thanks to the excellent work of Fish, Wildlife, and Parks (FWP) and the goodwill of the landowner, the public will gain more than double the land (1.07 acres in exchange for 2.61 acres) we currently enjoy; however, this land will hold significantly more value in terms of wildlife habitat and access. Additionally, the proximity to the WMA is much more desirable and will help curtail potential trespass issues that could arise. Finally, this deal is a good-faith effort and will help to maintain a positive working relationship with FWP, hunters, and the landowner. This is another example of the many opportunities for "win-win" collaboration between public and private interests in Montana.

PO Box 1175 | Helena, Montana 59624 | t: 406-458-0227 | e: mwf@mtwf.org | montanawildlife.org

We thank FWP for this opportunity to comment. This land trade would be a win for all Montanans. We support strong protection for robust wildlife, quality habitat, and meaningful access for outdoors people through strategic land exchanges. We appreciate FWP's efforts to seek public input. We look forward to partnering with landowners, hunters, wildlife enthusiasts, and FWP to find the best solution for the resource and all Montanans and urge the speedy completion of this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'MS', with a long horizontal stroke extending to the right.

Marcus Strange
Director of State Policy and Government Relations
Montana Wildlife Federation

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 will not have significant adverse impacts on the human environment and constitutes a reasonable and appropriate strategy to achieve the identified objectives. Therefore, preparation of an EIS is unnecessary. FWP hereby adopts the Draft EA as final and approves the proposed action.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Schmitz', with a stylized flourish at the end.

Brad Schmitz
Region 7 Supervisor