

**FINAL
ENVIRONMENTAL ASSESSMENT
CHECKLIST**

FWP-CEA-FSH-R5-24-022

**MI-12-24 Turkey Creek Berm Removal and Bank
Stabilization EWP**

5/31/2024



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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

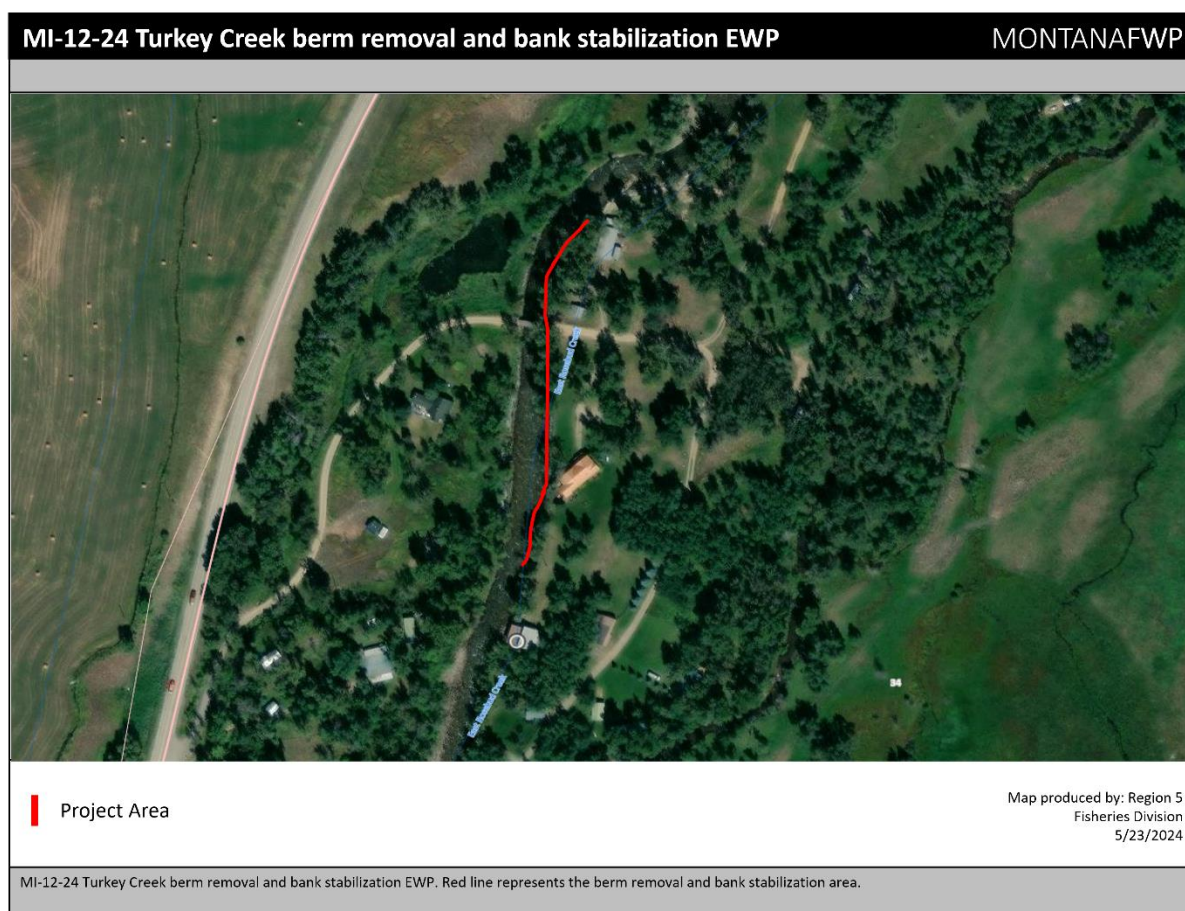
Name of Project: MI-12-24 Turkey Creek Berm Removal and Bank Stabilization EWP

The Stillwater County Conservation District has proposed a project consisting of removing approximately 600 cubic yards (CY) of stockpiled streambed material upstream and downstream of the existing Turkey Creek Drive Bridge that was placed as “Emergency Protection” during and following the June 2022 flood. After removal of the existing streambed material, approximately 280 linear feet (LF) of revetment will be installed between the existing Turkey Creek Drive Bridge and private deck. Of the 280 LF of planned revetment, approximately 200 LF will be constructed using tree trunks placed parallel to the creek with an MDT Class III D100 stone toe. As part of the wooden revetment, biofabric will be installed underneath the stone toe and over top the trees to prevent displacement. Some of the existing streambed material will be retained and used to cap the stone toe, wooden revetment for extra protection and aesthetic purposes.

The bank above the revetment will then be graded and seeded and all existing trees will be preserved. Standard 2:1 sloped MDT Class II riprap revetment will be installed upstream and downstream of the stone toe, wooden revetment to protect the existing Turkey Creek Drive Bridge and private deck structures. Both sections of the standard 2:1 sloped riprap revetment will be keyed into the bank to prevent scouring.

Affected Area / Location of Proposed Project:

- Legal Description
 - Latitude/Longitude: 45.355853, -109.492259
 - Section, Township, and Range: 5S 18E 34
 - Town/City, County, Montana: Roscoe, Carbon County, MT
- Location Map



III. Purpose and Need

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

This project is necessary to reinforce the streambank of the property, which was heavily eroded in the historic June 2022 flooding on East Rosebud Creek. The “Emergency Protection” installed during and following the flood is not suitable rock to protect the bank from future flooding and the stockpiled material extends above the original bank elevation. The existing Turkey Creek Drive Bridge and private deck on the property is at risk of erosion due to its proximity to the creek.

Specific: The goal should target a specific area of improvement or answer a specific need

- **M** measurable: The goal should be quantifiable, or at least allow for measurable progress
- **A**chievable: The goal should be realistic, based on available resources and existing constraints
- **R**elevant: The goal should align with other Agency objectives
- **T**ime-bound: The goal must have a deadline or defined-end

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 state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. 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 |
|-----------------------------|---|--|
| US COE | Nationwide 13 permit | Bank stabilization |
| Montana DEQ | 318 Authorization | Reduce the effects of turbidity on the area of impact |
| MT DNRC – County Floodplain | Floodplain permit | Determine if fill will be placed in floodplain and if project will cause a significant rise in floodplain elevation. |

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 checked="" type="checkbox"/> | No <input type="checkbox"/> |
| If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |

| Enforceable Control | Responsible Agency | Authority (Rule, Permit, Stipulation, Other) | Effect of Enforceable Control on Proposed Project |
|--|--------------------------|--|---|
| SPA 124 Permit - General Requirements (see Appendix 1) | FWP | SPA 124 | SPA 124 Permit, General Conditions, provide best management practices in the form of enforceable controls to limit potential adverse impacts from the proposed project. Fines may be levied for violating these general requirements and/or corrective action may be required to remedy non-compliance. |
| 318 Authorization – Short-Term Water Quality Permit | DEQ | 318 Authorization | Short-term narrative water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects. |
| Limiting Fill in a Navigable Waterway | US COE | NW Permit 13 | Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques. |
| Floodplain Permit – General Requirements | DNRC/Local Administrator | Floodplain | Limiting the amount of fill deposited into the floodplain. Description of how project will contain a ‘no-rise’ effect. See DNRC Permitting information. |

VI. SPA 124 Permit Action

Any applicable Montana stream work that is not otherwise excluded from MEPA review under the applicable requirements of ARM 12.2.454, Actions that Qualify for a Categorical Exclusion, and has the potential to alter the stream channel or bank, requires a project-specific 124 Stream Protection Act Permit or SPA 124 Permit prior to the start of work. The SPA 124 permit is issued by FWP’s Fisheries Division and includes both the general conditions described in Attachment 1 and any additional Special Conditions deemed necessary to protect and preserve the affected waterway. Additional conditions deemed necessary to protect and preserve the affected stream from potential impacts associated with the proposed project are listed in Table 4 below.

Table 3: SPA 124 Permit Conditions the Department Will Require to Issue Permit.

| Activity | Special Condition | Description |
|---------------|---|--|
| Work activity | Work shall not occur outside of the project scope outlined in permit; any changes that result in additional work need to be documented, photographed, communicated, and approved by FWP immediately. Failure to comply could result in violations and the permit revoked. | Clearly defining expectations that work should follow scope established by project proponent in joint application. |

| | | |
|-----------------|--|--|
| Construction | No dredging of the river shall occur. | Dredging the channel is not part of this project and can cause negative impacts to the stream. |
| Construction | No organic woody materials like trees or vegetation, living or dead, shall be removed with this project. | Woody material has been removed throughout the system to a detrimental degree. This has included unpermitted work. It has negatively impacted stream function. |
| Overall project | No trees will be removed to establish egress/ingress or to access debris. | Live trees have been removed throughout the system to a detrimental degree. This has included unpermitted work. It has negatively impacted stream bank stability and riparian habitat. |
| Overall project | If channel crossing is necessary, equipment should access at the glide rather than riffle to the debris site and cross perpendicular to the flow. | Crossing at a riffle can compact gravel and increase turbidity. This negatively impacts spawning habitat and success. |
| Overall Project | The river shall not be used as a travel corridor; crossing will occur at designated locations. | Traveling down the river in the channel can compact gravel and increase turbidity. This negatively impacts spawning habitat and success. |
| Overall Project | Written permission from FWP Fish Division must be obtained before any equipment enters the river. If heavy operating machinery (i.e., skid steer, excavator) are to be use, access routes will be at single locations per site to minimize overall impacts to vegetation and the bank. | Applicants have continued to operate outside of the scope of the permitted project. If SOW and area changes from the initial permit, FWP needs to be notified and approve the expansion. |
| Overall project | Project can be extended beyond expiration date; however, will be subject to spring timing restrictions for spawning fish. | Timing of the project is unknown at the time. Condition is included for natural resource protection (i.e., fisheries). |
| FWP Right | FWP reserves the right to revisit, modify, deny, issue an amendment or violation to a previously approved permit. | Clearly defines expectations in the event an amendment and/or modification is required from either the project proponent or FWP staff. |

VII. Alternatives Considered

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

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.

| | 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

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

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

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

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

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

The severity of an impact is measured using the following:

- **No Impact:** there would be no change from current conditions.
- **Negligible:** an adverse or beneficial effect would occur but would be at the lowest levels of detection.
- **Minor:** the effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate:** the effect would be easily identifiable and would change the function or integrity of the resource.
- **Major:** the effect would irretrievably alter the resource.

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

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

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

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

- **Alternative 1: No Action. Evaluation and Summary of Potential Impacts on the Physical Environment and Human Population**

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.

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

See **Table 4** (Impacts on Physical Environment) and **Table 5** (Impacts on Human Population) below.

Table 4 - Potential Impacts of the 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 |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|---|
| | 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 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 project will have minor and short-term impacts because of construction activities and minimal in-stream work. To offset impacts, work shall occur during periods of low flow and when fish are not spawning. Long-term, minor effects of the project may increase fish habitat with the woody material in places rather than rock riprap. |
| Water quality, quantity, and distribution | <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"/> | FWP does not expect significant adverse impacts to water quality, quantity, and distribution because of the proposed project. The project will have short-term, minor effects because of temporary increases in turbidity and minor excavation in the stream channel during riprap installation. Construction will occur during low flows and stormwater BMPS will be installed and maintained to control water runoff and erosion. The project will be installed to match the existing floodplain and will not significantly alter the existing flow conditions of East Rosebud Creek. A HEC-RAS model was built for the existing and proposed conditions of the project and shows a maximum water surface elevation rise of 0.05 feet with a minor change in water velocity. The proposed project should allow for better passage of sediment through the river and access to its floodplain. No long-term adverse changes to water quality, quantity and distribution are anticipated. |
| 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"/> | FWP does not expect any significant impacts to the geology because of this project. There are no known unique geologic features, and the project is occurring is a |

| 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 | |
| | | | | | | | | | relatively small area that would not pick up any geologic impact. |
| Soil quality, stability, and moisture | <input type="checkbox"/> | <input checked="" 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 in the affected area would be expected because of the proposed project. The proposed project is taking place in a previously disturbed area. |
| Vegetation cover, quantity, and quality | <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 vegetation cover, quantity and quality in the affected area would be expected because of the proposed project. The proposed project is taking place in a previously disturbed area and during the project and negligible effects may occur. A total of less than 0.1 acres of land will be disturbed by the project. Existing vegetation will be protected and/or reseeded and riparian areas will be avoided. All equipment and materials will be inspected to ensure they are free of weeds. Long-term, minor effects include better establishment of native vegetation upon project completion. Final stabilization of disturbed areas will be considered complete when vegetation establishment is 70 percent of background. All materials will be inspected prior to installation to ensure they are free of deleterious material and weeds. |
| Aesthetics | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | No significant adverse impacts to aesthetics are expected because of the proposed project. The proposed project is taking place in a previously disturbed area and will not have many visible changes. This project would remove the berm that was placed under temporary emergency which will have minor, long-term improvements to aesthetics. |
| Air quality | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | No significant adverse impacts to air quality in the affected area would be expected because of the proposed project. The proposed project constitutes stream improvement and bridge replacement activities, and when completed, would not result in additional new air |

| 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 | |
| | | | | | | | | | disturbance in the area. Typical dust control techniques would be applied (i.e., wetting disturbance areas) but fugitive dust and vehicle exhaust emissions resulting from the movement of heavy equipment and materials for the proposed project may directly impact air quality in the area. Any impacts would be short-term, and negligible, lasting only as long as the proposed project. |
| Unique, endangered, fragile, or limited environmental resources | <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"/> | FWP does not expect significant impacts to unique, endangered, fragile, or limited environmental resources because of the proposed project ¹ . Surveys suggest bald eagles and ospreys are present and possibly nesting in the area. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Great blue herons, boblink, Clark's nutcracker, grizzly bear, wolverine, monarch butterfly and Yellowstone cutthroat trout may be in the area; however, will likely not be impacted by the project. FWP expects short-term, negligible impacts to any unique or endangered species/habitats because work will last only as long as the proposed project. |
| 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"/> | FWP does not expect significant impacts to historical and archaeological sites because of this project. There are no known historic sites in the immediate project area. |
| 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 type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | FWP does not expect significant adverse impacts to demand on the environmental resources of land, water, and air because of the proposed project. Fuel would be required to operate heavy machinery and vehicles used for the proposed project. There are no other demands on the environmental resources of land, water, air, and energy because of the proposed project. Therefore, any |

¹ Montana Natural Heritage Program. Environmental Summary Report. for Latitude 45.33940 to 45.37161 and Longitude -109.47661 to -109.50850. Retrieved on 5/23/2024.

| 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 | |
| | | | | | | | | | impacts to demands on environmental resources of land, water, air, and energy in the affected area would be short-term and negligible. |

Table 5 - Potential Impacts of the 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 |
|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--|
| Resource | None | Short-Term | Long-Term | None | Negligible | Minor | Moderate | Major | |
| Social structures and mores | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | FWP does not expect significant impacts to social structures and more because of this project. The project area is on private property and long-term |
| 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"/> | FWP does not expect significant impacts to cultural uniqueness and diversity because of this project. This does not have any cultural site. |
| Access to and quality of recreational and wilderness activities | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | FWP does not expect significant impacts to access to and quality of recreational and wilderness activities because of the proposed project. The proposed project only impacts the local landowner's access. |
| 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"/> | FWP does not expect significant adverse impacts to the local and state tax base and tax revenues because of the proposed project. FWP anticipates the proposed project would 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 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 agricultural or industrial production would be expected. The project does not have any agricultural or industrial production. |
| Human health and safety | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | FWP does not expect significant to the human health and safety because of this project. The project constitutes |

| 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 | |
| | | | | | | | | | installing bank stabilization in East Rosebud Creek to promote a better functioning stream corridor through the proposed reaches, which are in a rural, and serve a limited amount of people. Long-term minor effects include better protection for a private bridge that allows access for the landowner. |
| Quantity and distribution of employment | <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"/> | There are no significant adverse impacts to the quantity and distribution of employment in the affected area because of the proposed project. The proposed project constitutes removing a high berm and installing bank stabilization along the stream to promote a better functioning stream corridor, which would not impact the quantity and distribution of employment in the affected area. Short-term impacts to the local quantity and distribution may be realized because of the need for contracted services to complete maintenance activities. Any impacts the quantity and distribution of employment in the affected area would be short-term and negligible. |
| Distribution and density of population and housing | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | FWP does not expect any significant impacts to the distribution and density of population and housing in the affected area because of the proposed project. The proposed project constitutes installing bank stabilization for a private landowner and would not impact the distribution and density of population and housing in the affected area. |
| Demands for government services | <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"/> | FWP does not expect significant adverse effects to the demands for government services because of this project. There may be short-term, negligible effects to transportation associated with vehicle use to transport equipment near the proposed reaches; however, this will be limited to the immediate area and likely will not be within the roadway. |

| 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 | |
| Industrial, agricultural, and commercial activity | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | FWP does not expect significant impacts to industrial, agricultural, and commercial activity because of the proposed project. The projects entails bank stabilization adjacent to a private residence where no known industrial, agricultural and commercial activity occur. |
| Locally adopted environmental plans and goals | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | FWP does not expect significant effects to the locally adopted environmental plans and goals. Carbon County has no locally adopted environmental plans or goals. |
| 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"/> | FWP is unaware of any other appropriate social and economic circumstances that may be impacted by the proposed project. |

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

| <p>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.</p> <p>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.</p> | |
|---|---|
| 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> |

| | |
|---|--|
| | “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). |
| 2 | The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur |
| 3 | Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts |
| 4 | The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values |
| 5 | The importance to the state and to society of each environmental resource or value that would be affected |
| 6 | Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions |
| 7 | Potential conflict with local, state, or federal laws, requirements, or formal plans |

IX. Private Property Impact Analysis (Takings)

The 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)

| | Yes | No | |
|--|--------------------------|-------------------------------------|-------------------------------------|
| Is FWP regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| Does FWP have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| If so, FWP must determine if there are alternatives that would reduce, minimize, or eliminate the restriction on the use of private property, and analyze such alternatives. Have alternatives been considered and/or analyzed? If so, describe below: | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| 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 checked="" type="checkbox"/> |
| Is the government requirement roughly proportional to the impact of the proposed use of the property? | 4b | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

| | | | |
|--|----|--------------------------|-------------------------------------|
| Does the action deny a fundamental attribute of ownership? | 5 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Does the action have a severe impact of the value of the property? | 6 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.) | 7 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Is the impact of government action direct, peculiar, and significant? | 7a | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded? | 7b | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question? | 7c | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 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. | | | |

X. Public Participation

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

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

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

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

Name: BRYAN GIORDANO

Email: bryan.giordano@mt.gov

Mailing Address:

2300 Lake Elmo Dr

Billings, MT 59105

XI. 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"/> |

XII. EA Preparation and Review

| | Name | Title |
|------------------------|-------------------|------------------------------|
| EA prepared by: | Bryan Giordano | Region 5 Fisheries Biologist |
| EA reviewed by: | Shannon Blackburn | Region 5 Fisheries Manager |

Attachment 1

SPA 124 Permit General Conditions

FWP.MT.GOV



THE **OUTSIDE** IS IN US ALL.

Stream Protection Act 124 Permit General Conditions

1. Complete work affecting a streambed or stream bank in an expeditious manner to avoid unnecessary impacts to the stream.
2. Limit the clearing of vegetation to that which is absolutely necessary for construction of the project. Take precautions to preserve existing riparian vegetation. Salvage and reuse native vegetation where possible.
3. Install and maintain erosion control measures where appropriate to protect aquatic resources. Do not clear and grub land adjacent to streams prior to installing proper erosion and sedimentation controls. Conduct all work in a manner that minimizes turbidity and other disturbances to aquatic resources.
4. Plan temporary construction facilities to:
 - a. Minimize disturbance to stream banks, stream bank vegetation, and the streambed by locating staging or storage facilities at least 50' horizontally from the highest anticipated water level during construction;
 - b. not restrict or impede fish passage in streams; and
 - c. not restrict any flow anticipated during use.
5. Provide sediment controls for drainage from topsoil stockpiles, staging areas, access roads, channel changes, and instream excavations.
6. Isolate work zones from flowing and standing waters to prevent turbid water and sediments from being discharged into streams or other drainages that flow directly into the stream. Divert flowing waters around the work zone.
7. Do not spill or dump material into streams. Store and handle petroleum products, chemicals, cement and other deleterious materials in a manner that will prevent their entering streams.
8. Do not permit wash water from cleaning concrete-related equipment or wet concrete to enter streams.
9. Do not operate mechanized equipment in any stream or flowing water unless special authorization is obtained. If special authorization is granted, the following conditions apply:
 - a. Power-wash all equipment allowed in a stream prior to entering the stream channel.
 - b. Clean and maintain all equipment so that petroleum-based products and hydraulic fluids do not leak or spill into the waterway.
10. Reclaim streambeds and stream banks as closely as possible to their pre-disturbed condition.
11. Restore disturbed stream banks to their natural or pre-disturbed configuration to match adjacent ground contours or as specified in the project plans. Stabilize, reseed, and re-vegetate disturbed areas. Install and maintain long-term biodegradable erosion-control measures to protect these areas until adequate vegetation has been established.
12. Restore temporary access routes and any temporarily disturbed areas to original conditions, including original contours and vegetation.
13. Dispose of any excess material generated from the project above the ordinary high-water mark and in an area not classified as a wetland.