

**DRAFT**

**ENVIRONMENTAL ASSESSMENT**

**CHECKLIST**

**FWP-CEA-FSH-R5-24-023**

**Grey Bear Fishing Access Site Bank Stabilization**

**08/07/2024**



## Table of Contents

I.	Compliance with the Montana Environmental Policy Act .....	3
II.	Background and Description of Proposed Project .....	3
III.	Purpose and Need.....	4
IV.	Other Agency Regulatory Responsibilities .....	5
V.	List of Mitigations, Stipulations.....	6
VI.	SPA 124 Permit Action .....	7
VII.	Alternatives Considered.....	7
VIII.	Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population .....	8
IX.	Private Property Impact Analysis (Takings).....	19
X.	Public Participation .....	20
XI.	Recommendation for Further Environmental Analysis.....	21
XII.	EA Preparation and Review.....	21
	Attachment 1 .....	22
	SPA 124 Permit General Conditions.....	22

## 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

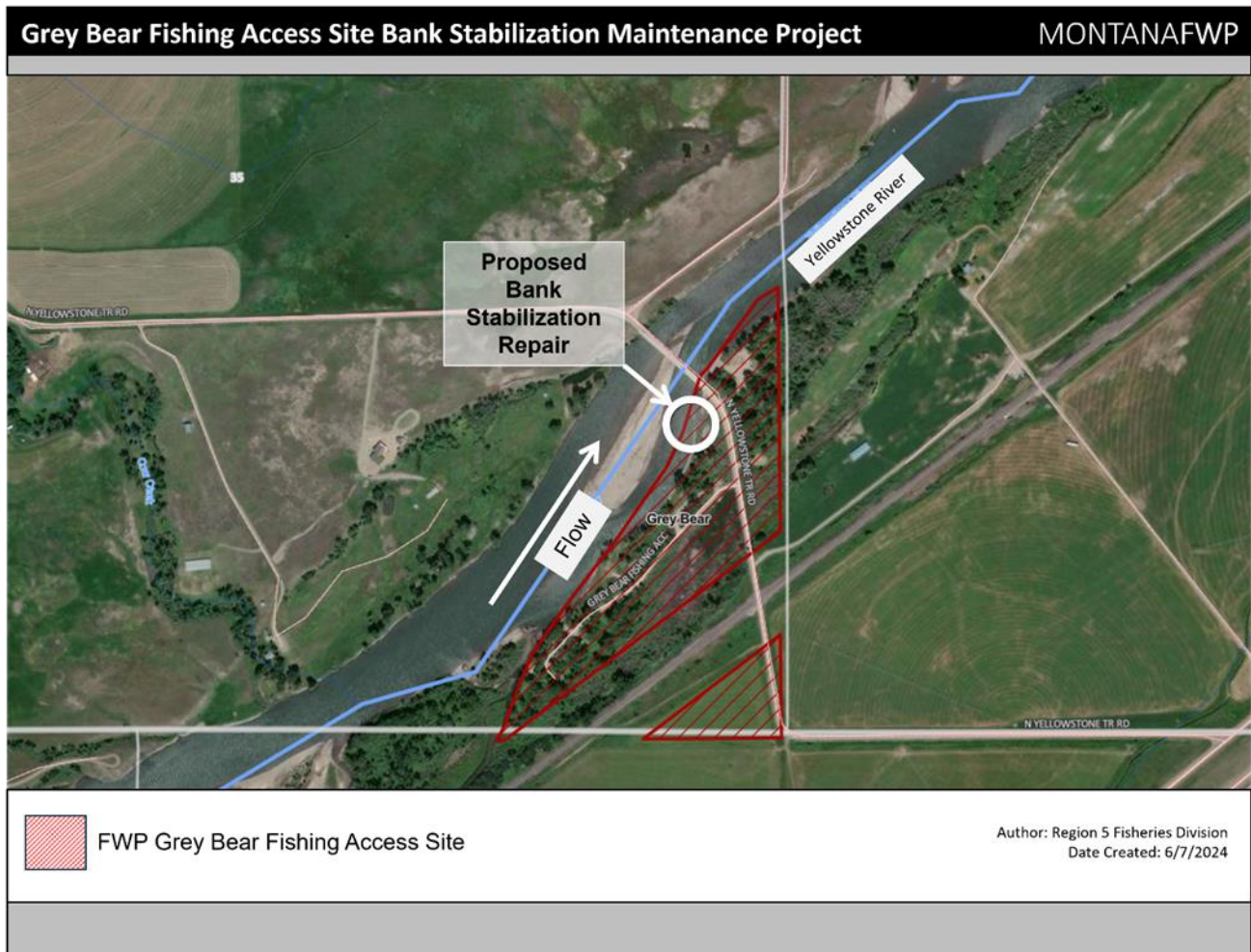
**Name of Project:** Grey Bear Fishing Access Site Bank Stabilization Project

**Background and Description of Proposed Project:** Montana Fish, Wildlife & Parks (FWP) proposes to repair approximately 80-feet of bank armoring on the Yellowstone River at the Grey Bear Fishing Access Site (FAS) in Sweet Grass County, Montana. In 2022, high magnitude spring flows on the Yellowstone River flanked a significant portion of rip rapped riverbank upstream of the Sweet Grass County Yellowstone Trail Bridge, which included rip rap located in the Sweet Grass County right-of-way and the Grey Bear FAS. Sweet Grass County completed their right-of-way rip rap repairs in 2023. If left exposed, the remaining 80-foot of riverbank on the Grey Bear FAS may facilitate further erosion and damage rip rap near the bridge. Thus, FWP proposes to place

class III rip rap to restore the bank to near pre-2022 flood conditions. To complete the project, contractors will use heavy machinery (e.g., excavators, road graders, dump trucks) and expects equipment to be operated from the road approaches and upper bank terrace. FWP would begin the bank stabilization repairs late August 2024 and complete the project end of September 2024.

**Affected Area / Location of Proposed Project:**

- Legal Description
  - Latitude/Longitude: 45.78896, -110.06576
  - Section, Township, and Range: 35 1N 13E
  - Town/City, County, Montana: Big Timber, Sweet Grass County, Montana
- 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.*

FWP proposes to repair and replace 80-feet of class III rock rip rap along the Yellowstone River at the Grey Bear FAS to restore the bank to pre-2022 flood conditions. This repair and maintenance will tie-in with rip rap placed by Sweet County in 2023 and mitigate further bank erosion which could put the Yellowstone Trail Road and bridge at risk as the river continues to migrate towards the south bank. The Yellowstone Trail Road is a county access road to the north side of the river and allows more immediate access for residents living in the greater Springdale and Big Timber area.

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
Montana Department of Environmental Quality (MDEQ)	318 Authorization Short-Term Water Quality Permit	Short-term narrative water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects.
U.S. Army Corps of Engineers	Section 10 & 404, NWP 3	404 - Regulate the discharge of dredged or fill material into navigable waters of the United States, including wetlands. 10- for all structures and construction work on navigable waters of the U.S. NWP 3 – (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification.
DNRC – Local Floodplain Administrator	Floodplain Permit	For work that will include implementing projects within the 100-year floodplain and what impacts the project may have.
DNRC – Land Office	Land-Use License or Easement on Navigable Waters	The construction, placement, maintenance, or modification of a structure or improvements in, over, below, or above a navigable river.

<b>DNRC – Montana Sage Grouse Habitat Conservation Program/U.S. Fish and Wildlife Service</b>	<b>Consultation</b>	<b>Required for work that may occur in Greater Sage Grouse general and critical habitat.</b>
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## 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**

<i>Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.</i>			<b>Yes <input checked="" type="checkbox"/></b>	<b>No <input type="checkbox"/></b>
<i>If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below</i>			<b>Yes <input checked="" type="checkbox"/></b>	<b>No <input type="checkbox"/></b>
<b>Enforceable Control</b>	<b>Responsible Agency</b>	<b>Authority (Rule, Permit, Stipulation, Other)</b>	<b>Effect of Enforceable Control on Proposed Project</b>	
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.	
Water quality	DEQ	318 Authorization	Reduce the effects of turbidity on the area of impact.	
Discharge of fill material in navigable waters of the United States or wetlands	USCOE	Section 404	Reduce the placement of fill materials into the navigable waters of the United States.	
Construction Activity on within navigable waters of the United States	USCOE	Section 10	Can limit the amount of construction on a navigable waterway.	
Floodplain	DNRC/Local Administrator	Floodplain Permit	Reduce impacts associated with the deposition of fill and/or modification of the streambank that would be within the 100-year floodplain.	
The construction, placement, maintenance, or modification of a structure or improvements in, over, below, or above a navigable river	DNRC/Land Office	Land-Use License or Easement on Navigable Waters	Reduce the impacts of construction activity near a navigable river.	
Impact to Greater Sage Grouse habitat	DNRC – Montana Sage Grouse	Consultation	Reduce impacts to either general or critical, core area habitat for Greater Sage Grouse.	

	Conservation Program		
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## 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. Failure to comply could result in violations.	Clearly defining expectations that work should follow scope established by project proponent in joint application.
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 checked="" type="checkbox"/>	<input type="checkbox"/>

\* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review is included below

### Other Alternatives Not Carried Forward for Detailed Analysis

#### Alternative 3:

##### *Soft Bank Stabilization*

This alternative considered the use of woody materials and willow soil lifts to stabilize the bank with more natural materials. However, the proposed section for repair is among a well-established section of class III rip rap and the county expressed concerns about effectively tying existing rip rap into willow lifts. Using soft bank stabilization techniques are likely to be more effective if the entire rip rapped bank was replaced with a well-established toe and willow soil lifts. However, this alternative is not cost effective as a selected contractor would need to remove approximately 550 linear

feet of class III rip rap and re-establish the bank with soft bank stabilization techniques, both of which would require extensive heavy machinery and manual labor. As such, this alternative was not selected.

## 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 Alternative 2: Proposed Project on the Physical Environment**

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Terrestrial, avian, and aquatic life and habitats	<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 staff do not expect any significant impacts to the terrestrial, avian, aquatic life, and habitats because of this project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank armoring, which would cumulatively add to a loss of natural bank and aquatic life and habitats. Bank stabilization using rock rip rap negatively affects fish communities by increasing floodplain isolation, altering main channel habitats, and reducing the availability of diverse lateral habitats such as side channels and backwaters. Although the impacts would contribute to the long-term loss of terrestrial and aquatic habitats, the area has been previously rip rapped and impacts are likely minor. This project is necessary to protect the existing county road and bridge <sup>1</sup> .
Water quality, quantity, and distribution	<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"/>	FWP staff expects minor impacts to water quality, quantity, or distribution because of the project in the short- and long-term. The replacement and installation of class III rip rap will occur during low flow periods, which would result in a short-term and minor increase in water turbidity lasting only as long as the project; however, turbidity will not exceed what naturally occurs in the river during high flows. Although the project is aimed to mitigate bank erosion, there will be long-term, minor water temperature increases near the rip rapped bank

<sup>1</sup>Montana Natural Heritage Program. Environmental Summary Report for Latitude 45.75556 to 45.81988 and Longitude -110.02310 to -110.11064. Retrieved on 5/23/2024.

									associated with the placement of 267 cubic yards of rock placed below the OHWM and lack of natural riparian habitat <sup>1</sup> . Additionally, rip rap is attributed to decreased channel movement and floodplain turnover. This project is not anticipated to cause flooding issues up or downstream as rip rap will be installed to match pre-June 2022 conditions.
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"/>	There are no unique geologic features in the project location or that would be cumulatively impacted because of this project. FWP staff do not expect any significant impacts to the geology because of this project.
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"/>	FWP staff do not expect significant, long-term impacts to the soil quality, stability, and moisture because of the project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank to prevent additional erosion. The surrounding soil is composed of coarse-loamy over sandy and gravelly alluvium <sup>2</sup> which can lead to rip rap being flanked during high flows. Although soil disturbance would occur with the installation of the rip rap, it would be short-term and limited to the immediate project area. There would be long-term, minor, and beneficial impacts associated with the reduced erosion near the rip rapped riverbank.
Vegetation cover, quantity, and quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FWP does expect significant impacts to vegetation cover, quantity, or quality of vegetation because of this project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank, which would necessitate the removal of less than 0.05 acres of grasses and woody vegetation. Thus, there will be moderate, long-term impacts to vegetation associated

<sup>2</sup>USDA Natural Resources Conservation Service. Custom Soil Resource Report for Sweet Grass County Area, Montana. Retrieved on 6/9/2024.

									with installation of the rip rap material. In addition, rip rap does not provide a suitable environment for vegetation to reestablish, and thus there will be long-term, cumulative impacts associated with the loss of natural riparian area vegetation.
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"/>	FWP staff do expect significant impacts to the aesthetics because of this project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization using class III rip rap, which would minimize the occurrence of more natural aesthetics, like woody vegetation and native rock and soil. Although rip rap can be long-lasting material, FWP anticipates reseeding and promoting revegetation where possible, and thus expects the impacts to aesthetics to be minor.
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"/>	FWP does not expect significant impacts to air quality because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization and, when completed, would not result in additional new land, air, or water disturbance in the area. Fugitive dust and vehicle exhaust emissions resulting from the movement of heavy equipment and maintenance materials for the proposed project may directly impact air quality in the area in the short term. Any impacts would be 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 any impacts to unique, endangered, fragile, or limited environmental resources in the affected area. There are designated wetlands in the nearby area (<1 mile). However, the proposed activities would be limited to the installation of the rip rap material and not extend to the wetland area. Surveys have noted bald

									eagles and golden eagles in the greater project area. Other threatened species that could occur near the proposed project include the North American wolverine, prairie falcon, and monarch butterfly but the project area does not contain any critical habitat for these species. There may be short-term, negligible impacts to any nearby bald or golden eagles associated with the use of heavy machinery, but would be short-term and negligible, lasting only as long as the 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 any impacts to historical or archaeological sites because of this project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization, which is in an already disturbed area associated with the previous rip rap installation project completed by Sweet Grass County in 2020. In addition, because the project footprint is minimal and involves only the installation of rip rap material in a small section of riverbank, FWP does not expect any adverse impacts to historical or archaeological sites in the immediately affected 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 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 Alternative 2: Proposed Project on the Human Population**

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Social structures and mores	<input 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 mores because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank, which would not disrupt land use. Therefore, the proposed project would not impact any pre-project social structures, customs, values, and conventions in the affected area.
Cultural uniqueness and diversity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant impacts to culture uniqueness and diversity because of the proposed project. The proposed project rip rap maintenance activities are at an existing Fishing Access Site (FAS). FAS and the fish and wildlife habitats they support are culturally important to most Montana residents as well as individuals from across the country and world. When completed, the proposed project would provide protection and longevity to the North Yellowstone Trail Road and bridge, which are used by locals to access properties on the north side of the river. Any impacts to cultural uniqueness and diversity in the affected area would be long-term and negligible.
Access to and quality of recreational and wilderness activities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant impacts to the access to and quality of recreational and wilderness activities. The proposed project includes rip rap maintenance activities at an existing Fishing Access Site (FAS). FAS provide direct access to the Yellowstone River for fishing and recreational activity and are important for many Montana residents and individuals from across the country and world. When completed, the proposed project would

									prevent high flows from damaging the road and preventing future access to the Yellowstone River, which would have long-term and minor beneficial impact. There may be short-term, moderate impacts associated with the closure of Grey Bear FAS to complete the rip rap repairs but would only last as long as the proposed project.
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 impacts to the local and state tax base and tax revenues because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization and, when completed, would not result in changes to local or state taxes. The proposed project would be expected to increase state and local tax revenues from the sale of fuel, supplies and/or equipment to complete the project. Any impacts to the local and state tax base and tax revenue would be short-term and negligible, lasting only as long as the proposed project.
Agricultural or Industrial production	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant impacts to agricultural or industrial production because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization, which would provide protection to the bridge and road. Thus, there may be long-term, minor, and beneficial impacts for local producers using the road for agricultural or industrial production.
Human health and safety	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	FWP does not expect significant impacts to the human health and safety because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization, which would provide protection to the bridge and road. There will be both short-term and long-term, beneficial, and minor effects to human health and

									safety by repairing the rip rap damage, which would prevent erosion to the road and bridge during high flow events.
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"/>	FWP does not expect impacts to the quantity and distribution of employment in the affected area because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization, when completed, would not impact the quantity and distribution of employment in the affected area. Short-term and minor 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 significant impacts to the distribution and density of population and housing in the affected area because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization and, when completed, would not impact the distribution and density of population and housing in the affected area.
Demands for government services	<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 the demands for government services in the affected area because of the proposed project. The actions of the proposed project include repair and maintenance of an 80 linear foot section of bank stabilization and, when completed, would not impact demands for government services.

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 actions of the proposed project include repair and maintenance of an 80 linear foot section of bank, and the affected area is not currently used for industrial, agricultural and/or commercial activities. Therefore, there are no expected impacts to industrial, agricultural, or commercial activity because of the proposed project.
Locally adopted environmental plans and goals	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FWP expects minor, long-term impacts to locally adopted environmental plans and goals. The proposed project to repair and maintain an 80 linear foot of bank armoring upstream of a bridge and road fits in the scope of the Sweet Grass County's Long-Range Plan <sup>3</sup> . Natural resource concerns such as flood and erosion damage are addressed by the actions of the proposed project and Sweet Grass County acknowledges that the "Yellowstone River riparian area has been impacted by the railroad, highways, streambank stabilization structures, and residential development and it will be difficult to mitigate these effects."
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**

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

<sup>3</sup>USDA Natural Resource Conservation Services. 2023. Sweet Grass County Long Range Plan. 51 pp.

none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial. ARM 12.2.431.

According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.

#### Criteria Used to Determine Significance

1	<p>The <b>severity, duration, geographic extent, and frequency</b> of the occurrence of the impact</p> <p><b>“Severity”</b> describes the density of the potential impact, while <b>“extent”</b> describes the area where the impact will likely occur, e.g., a project may propagate ten noxious weeds on a surface area of 1 square foot. Here, the impact may be high in severity, but over a low extent. In contrast, if ten noxious weeds were distributed over ten acres, there may be low severity over a larger extent.</p> <p><b>“Duration”</b> describes the time period during which an impact may occur, while <b>“frequency”</b> describes how often the impact may occur, e.g., an operation that uses lights to mine at night may have frequent lighting impacts during one season (duration).</p>
2	The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur
3	Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts
4	The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values
5	The importance to the state and to society of each environmental resource or value that would be affected
6	Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions
7	Potential conflict with local, state, or federal laws, requirements, or formal plans

## IX. Private Property Impact Analysis (Takings)

*The 54<sup>th</sup> 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"/>	
<b>PRIVATE PROPERTY ASSESMENT ACT (PPAA)</b>			
<b>Does the Proposed Action Have Takings Implications under the PPAA?</b>	<b>Question #</b>	<b>Yes</b>	<b>No</b>
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action deprive the owner of all economically viable uses of the property?	3	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 4a and 4b and continue with question 5)	4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input type="checkbox"/>

Does the action deny a fundamental attribute of ownership?	5	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action have a severe impact of the value of the property?	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the impact of government action direct, peculiar, and significant?	7a	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	<input type="checkbox"/>	<input type="checkbox"/>
<b>Does the proposed action result in taking or damaging implications?</b>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Taking or damaging implications exist if <b>YES</b> 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 <b>NO</b> 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.			
<b>Alternatives:</b> 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)).*
- *FWP will issue public notice in the following newspaper periodical(s) on the date(s) indicated.*

Newspaper / Periodical	Date(s) Public Notice Issued

- *Public notice will announce the availability of the EA, summarize its content, and solicit public comment.*
  - **Duration of Public Comment Period:** *The public comment period begins on the date of publication of legal notice in area newspapers (see above). Written or e-mailed comments will be accepted until 5:00 p.m., MST, on the last day of public comment, as listed below:*

**Length of Public Comment Period:** 15 days  
**Public Comment Period Begins:** 08/07/2024  
**Public Comment Period Ends:** 08/21/2024

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

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

Name: SHANNON BLACKBURN  
Email: shannon.blackburn@mt.gov

Mailing Address:  
Lake Elmo State Park  
Attn: Grey Bear FAS Bank Stabilization  
2300 Lake Elmo Drive  
Billings, MT 59105

## XI. Recommendation for Further Environmental Analysis

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

## XII. EA Preparation and Review

	<b>Name</b>	<b>Title</b>
<b>EA prepared by:</b>	Demi Blythe	R5 Fisheries Biologist
<b>EA reviewed by:</b>	Shannon Blackburn	R5 Fisheries Manager

# Attachment 1

## SPA 124 Permit General Conditions

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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.