

**DRAFT**  
**ENVIRONMENTAL ASSESSMENT**  
**CHECKLIST**

**LOST RIVER WILDLIFE MANAGEMENT AREA**  
**JUDITH FOSSILS LLC OPERATING PLAN APPROVAL**  
**FWP-CEA-WLD-R6-24-009**

**June 17, 2024**



## Table of Contents

I.	Compliance with the Montana Environmental Policy Act .....	3
II.	Background and Description of Proposed Project .....	3
IV.	Other Agency Regulatory Responsibilities .....	6
V.	List of Mitigations, Stipulations .....	6
VI.	Alternatives Considered .....	7
VII.	Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population ...	8
VIII.	Private Property Impact Analysis (Takings).....	25
IX.	Public Participation .....	26
X.	Recommendation for Further Environmental Analysis .....	27
XI.	EA Preparation and Review .....	27
	Attachment A: Exhibit B from the Deed, detailing archeological and paleontological reserved rights.....	28

## 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:** LOST RIVER WMA - JUDITH FOSSILS LLC OPERATING PLAN APPROVAL

In December 2012, Montana Fish, Wildlife & Parks (FWP) purchased property in Hill County (“the Property”) to be owned and managed by FWP as part of the Lost River Wildlife Management Area (WMA). As a part of the sale, the Seller reserved the paleontological and archeological rights to the Property under terms negotiated between FWP and the Seller, which are recorded in the deed to the property, hereafter Property Deed (Attachment A). Pursuant to the Property Deed, the Seller, who also constitutes the paleontological rights-holder, recently assigned the rights to explore and extract paleontological resources to Judith Fossils, LLC

("Judith Fossils"). Judith Fossils now seeks to exercise those rights and prospect for paleontological resources on the Property.

Under terms of the Property Deed, the Seller, or its designee Judith Fossils, must submit an operating plan to FWP meeting requirements of the Property Deed. Further, FWP must approve the operating plan prior to Judith Fossils initiation of prospecting for paleontological resources on the Property.

On October 24, 2023, Judith Fossils submitted a draft operating plan to FWP for approval. Since that time, FWP and Judith Fossils have negotiated terms of the draft operating plan, including any necessary mitigation, and Judith Fossils intends to begin allowable operations in 2024 should the final operating plan (2024 Operating Plan) be approved. The proposed term of the approved 2024 Operating Plan would be ten years.

The Property Deed requires FWP make a good faith effort to develop an acceptable operating plan and approval may not be unreasonably withheld. FWP believes the proposed 2024 Operating Plan satisfies all applicable requirements of the Property Deed and appropriately balances FWP's interests in maintaining the Lost River WMA's habitat and recreational values with the Seller's interest in exercising its private property right to explore and extract paleontological resources pursuant to the 2024 Operating Plan. Therefore, with this action, FWP proposes to approve the 2024 Operating Plan.

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

- Legal Description
  - Latitude/Longitude: 48.9896407, -110.4752799
  - Legal Description of Exploration Area requested in the 2024 Operating Plan:

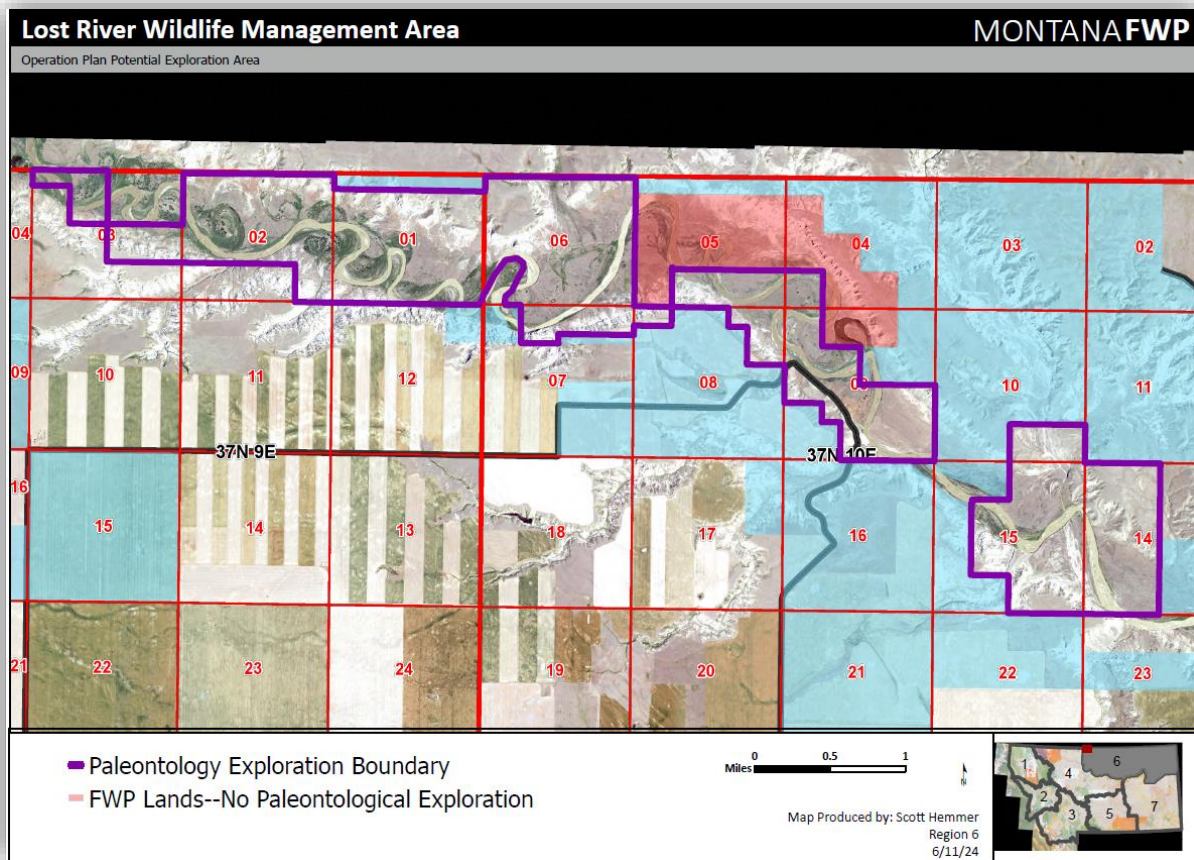
Township 37 North, Range 9 East, P.M.M., Hill County, Montana.

- Section 1: S1/2N1/2, S1/2
- Section 2: Government Lots 9, 10, 11, 12, S1/2N1/2, N1/2S1/2, SE1/4SE1/4 (Ref. Deed: Book 97 Deeds, Page 257, Document No. 391459.)
- Section 3: Government Lots 9, 10, SE1/4NW1/4, N1/2SE1/4

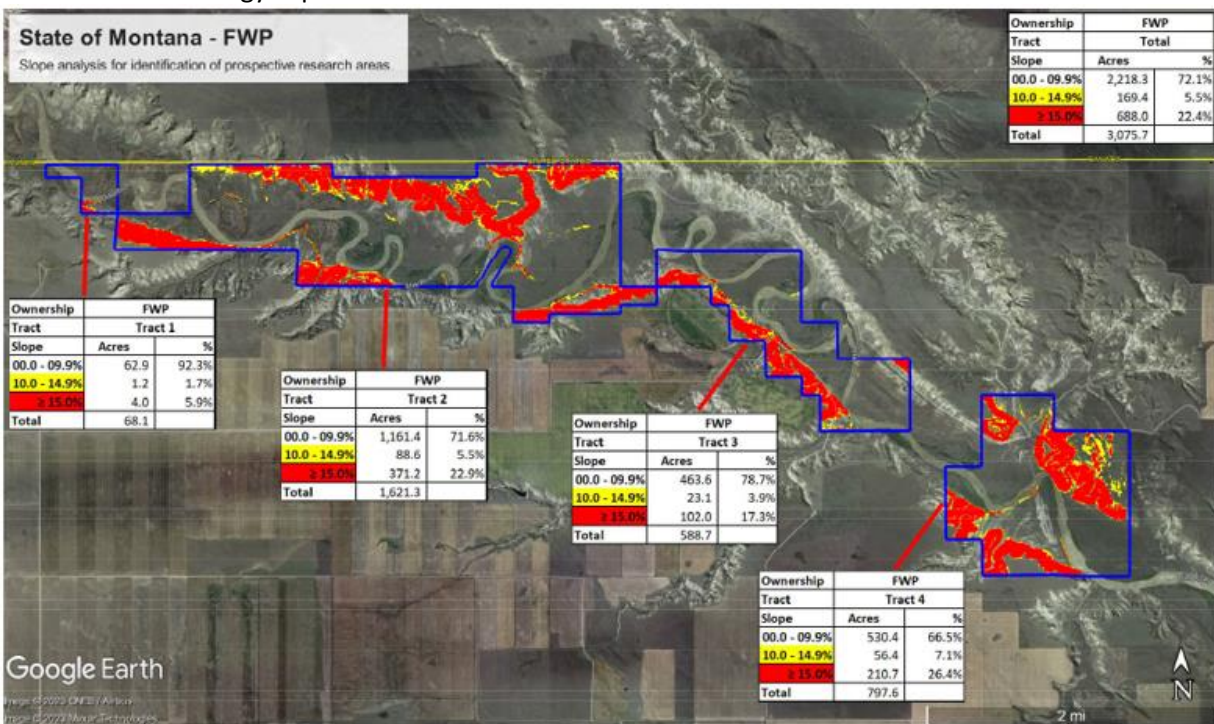
Township 37 North, Range 10 East, P.M.M., Hill County, Montana

- Section 4: SW1/4SW1/4
- Section 5: S1/2SE1/4, SE1/4SW1/4
- Section 6: Government Lot 5, that part of Government Lots 6 and 7 lying North of Milk River, Government Lots 12, 13, 14 and 15, SE1/4NW1/4, NE1/4SW1/4, S1/2SE1/4, SE1/4SW1/4, and that part of the S1/2NE1/4 lying North of Milk River and that part of N1/2SE1/4 lying North of Milk River. (Ref. Deed: Book 109 of Deeds, Page 473, Document No. 414020.) That portion of the S1/2NE1/4 and N1/2SE1/4 lying South of Milk River. (Ref. Deed: Book 117 Deeds, Page 283, Document No. 441040.)
- Section 7: N1/2S1/2NE1/4NE1/4, N1/2S1/2NW1/4NE1/4, N1/2N1/2NE1/4, NE1/4NW1/4
- Section 8: NE1/4NE1/4, N1/2SE1/4NE1/4, NE1/4NW1/4NE1/4, N1/2NW1/4NW1/4
- Section 9: W1/2NW1/4, SE1/4NW1/4, N1/2NW1/4SW1/4, NE1/4SW1/4, E1/2SE1/4SW1/4, SE1/4
- Section 10: S1/2SE1/4
- Section 14: W1/2
- Section 15: SE1/4NW1/4, NE1/4SW1/4, E1/2

- Town/City, County, Montana: 29 miles North of Hingham, Hill County, MT
- Location Map (**Figure 1 and 2**)



**Figure 1.** Portions of Lost River WMA that FWP acquired in 2012 that would be included under Judith Fossils Operation Plan for Paleontology Exploration.



**Figure 2.** High potential areas for exploration (Slope >10%) on the Lost River WMA, provided by Judith Fossils

III. Purpose and Need

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

The purpose of the Draft EA is to evaluate, identify, and disclose potential impact(s) (beneficial and/or adverse) to the Lost River WMA (i.e., WMA surface resources) should the 2024 Operating Plan be approved and to determine if additional mitigation strategy(s), and associated negotiations between FWP and the Seller are necessary to limit potential adverse impacts. The need or benefit of approving the 2024 Operating Plan would be to ensure approved activities do not result in unacceptable impacts to wildlife, vegetation, and public recreational use of the Lost River WMA and that any ground disturbing activities are adequately mitigated through reclamation following such activities.

The 2024 Operating Plan would be in effect for 10 years following approval.

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

IV. Other Agency Regulatory Responsibilities

*FWP must list any federal, state, and/or local agencies that have overlapping or additional jurisdiction, or environmental review responsibility for the proposed project, as well as permits, licenses, and other required authorizations. ARM 12.2.432(3)(c).*

*A list of other required local, state, and federal approvals, such as permits, certificates, and/or licenses from affected agencies is included in **Table 1** below. **Table 1** provides a summary of requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed for the proposed project. Agency decision-making is governed by state and federal laws, including statutes, rules, and regulations, that form the legal basis for the conditions the proposed project must meet to obtain necessary permits, certificates, licenses, or other approvals. Further, these laws set forth the conditions under which each agency could deny the necessary approvals.*

Table 1: Federal, State, and/or Local Regulatory Responsibilities

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
NA		

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	
Approved limits and mitigation strategies: <ul style="list-style-type: none"> <li>• Size and nature of dig(s)</li> <li>• Noxious weed management</li> <li>• Reclamation</li> <li>• Public use</li> </ul> See 2024 Operating Plan	FWP	2024 Operating Plan	Limit and otherwise mitigate potential adverse impacts to the Lost River WMA from approved paleontological exploration and extraction activities.	
Required consultation and actions addressing size of paleontological exploration and extraction activities and locations, topsoil, noxious weed control, timing of activities, and reclamation bond. See Attachment A (Exhibit B of the Property Warranty Deed)	FWP and Local Weed Board	Property Deed	Limit and otherwise mitigate potential adverse impacts to the Lost River WMA from approved paleontological exploration and extraction activities.	
Notification and Consultation regarding preservation and disposition of human remains	FWP, MT Burial Preservation Board, Hill County Coroner	§ 22.3.801, <i>et. seq.</i> , MCA. Human Skeletal Remains and Burial Site Protection Act; FWP's <i>Unexpected Discovery Plan</i>	If human remains or grave goods are discovered during paleontological exploration and extraction activities, all work will cease immediately, and all finds reported to local law enforcement and FWP's heritage specialist, who will confer with MT's Burial Preservation Board and any affiliated tribes on appropriate mitigation	

## VI. Alternatives Considered

*In addition to the proposed project, and as required by MEPA, FWP analyzes the "No-Action" alternative in this EA. Under the "No Action" alternative, the proposed project would not occur. Therefore, no additional impacts to the physical environment or human population in the analysis area would occur. The "No Action" alternative forms the baseline from which the potential impacts of the proposed Project can be measured.*

No Action Alternative—Under the No Action alternative, the 2024 Operating Plan would not be approved and the Seller, and or its designee Judith Fossils, would not have approved access to their paleontological resources located within the Lost River WMA. Under the terms of the Property Deed, FWP must make a good faith effort to work with the Seller,



and/or its designee Judith Fossils, to develop an approvable operating plan. The need for development of a new operating plan for approval would delay exploration activities.

	Yes*	No
Were any additional alternatives considered and dismissed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

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

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

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

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

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

The severity of an impact is measured using the following:

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

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

- Avoiding an impact by not taking a certain action or parts of a project;
- Minimizing impacts by limiting the degree or magnitude of a project and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or



- *Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project or the time period thereafter that an impact continues.*

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

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

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

Under the “No Action” alternative, the proposed project would not occur. Therefore, no additional impacts to the physical environment or human population in the analysis area would occur. FWP would be required to work with the Seller, and or its designee Judith Fossils, to develop an approvable operating plan.

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

The proposed action would approve the 2024 Operating Plan. The 2024 Operating Plan would allow conditioned exploration and extraction of private paleontological resources on the property listed in Figure 1. Any potential impacts (beneficial and adverse) to the affected human environment are detailed in Table 3 and Table 4, below.

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

PHYSICAL ENVIRONMENT		Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource		None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Terrestrial, avian, and aquatic life and habitats	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>No significant adverse impacts to terrestrial, avian, and aquatic life and habitats would be expected because of the proposed action. Wildlife and cattle located within or using the affected area include grassland birds, waterfowl, raptors, nongame and game fish species, small mammals, reptiles, amphibians, upland game birds, swift fox, porcupine, deer, elk, moose, antelope and various other nongame and predator species. This list is representative of wildlife in the affected area but does not constitute a complete list of species present in the affected area. Paleontological exploration activities may adversely impact domestic livestock and wildlife species and their habitats through disturbance of their habitats and associated human activity and presence. Exploration and extraction activities associated with the proposed project may prevent livestock and wildlife from using the affected area. Further, the proposed project would displace a limited amount of existing wildlife habitat that would otherwise be available for affected species. The 2024 Operating Plan limits the area of the Lost River WMA available for exploration to 5 acres at any one time, which would limit the extent of such adverse impacts. Exploration activities would primarily target badlands habitats with &gt;10% slope, where vegetation is limited, and wildlife use and impact would be reduced. Vegetation disturbance would be mitigated by enforceable conditions of the 2024 Operating Plan. Further, the required reclamation of exploration sites would limit any long-term adverse impacts to affected species and their habitats. Therefore, any adverse</p>

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	
									impacts would be short-term, minor, and mitigated by requirements of the 2024 Operating Plan.
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"/>	No significant adverse impacts to water quality, quantity, and distribution would be expected because of the proposed action. No existing or new water resources would be required for implementation of the proposed action; therefore, no impacts to water quantity or distribution would be expected. The Lost River WMA is located within the Milk River drainage. Therefore, exploration and extraction activities would result in ground disturbance, which could lead to minor additional sediment in overground water runoff into the Milk River. Enforceable limitations on the amount of ground disturbance and associated reclamation requirements would reduce the severity and extent of the impact on water quality. Any adverse impacts water quality would be short-term, minor, and mitigated by requirements of the 2024 Operating Plan.
Geology	<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 geology would be expected because of the proposed action. Some geologic disturbance would occur from exploration and excavation activities. Excavation would be limited to up to a maximum 18"-30" deep and would range from up to 2'x 3' up to 20' x 30' in size. After excavation sites would be reclaimed and returned to a condition similar to the original contour of the site. Therefore, any adverse impacts would be short-term, negligible, and mitigated by requirements of the 2024 Operating Plan.
Soil quality, stability, and moisture	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to soil quality, stability and moisture would be expected because of the proposed action. Exploration for and excavation of

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	
									fossils would result in the removal of soil and thus impact soil quality, stability, and moisture. The 2024 Operating Plan would require storage any removal of topsoil in a manner to reduce erosion and maintain soil quality and moisture. After fossil exploration at a site is completed, any areas excavated would be returned to their approximate original contour using the original topsoil. These practices would help reduce the severity of impacts to soil quality, stability, and moisture. Therefore, any adverse impacts would be short-term, minor, and mitigated by requirements of the 2024 Operating Plan.
Vegetation cover, quantity, and quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts to the vegetation cover, quantity, and quality would be expected because of the proposed action. The 2024 Operating Plan would limit the allowable occupied area of exploration to 5 acres at any one time, which would limit the extent of the impact. Most exploration activities would target areas of the Lost River WMA with >10% slope, which are mostly badlands habitat that have lower vegetative cover than areas with lesser slope, thus minimizing the potential for any impacts to vegetation. Development of new roads would not be allowed under the 2024 Operating Plan and vehicle travel would utilize existing roads and trails located on the Lost River WMA. If Judith River Fossils identifies a need for vehicle access to critical points off existing roads, they must notify FWP for consultation, and any new trails approved through consultation with FWP would be fully reclaimed following such exploratory activities. Limitations on the amount of area disturbed, required reclamation, reseeding of larger disturbance areas, and noxious weed control by FWP staff and

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	
									Judith River Fossils would reduce the extent and severity of impacts to native vegetation. FWP weed control will be consistent with FWP's Integrated Noxious Weed Management Plan ( <a href="https://fwp.mt.gov/conservation/habitat/noxious-weed-management">https://fwp.mt.gov/conservation/habitat/noxious-weed-management</a> ). Ongoing exploration and extraction activities (10-year term) would increase the potential for the spread of noxious weeds. However, any potential establishment or spread of noxious weeds would be mitigated by annual weed monitoring followed by chemical and/or biological treatment according to weed management practices contained in FWP's Integrated Noxious Weed Management Plan. Therefore, any adverse impacts would be short-term, minor, and mitigated by requirements of the 2024 Operating Plan and FWP's Integrated Noxious Weed Management Plan.
Aesthetics	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. During excavation activities, increased noise and increased human and vehicle presence on the Lost River WMA would occur. The required addition of signage to alert the affected public to the presence of these sites and voluntary placement of materials to protect the excavation sites from erosion may adversely impact the aesthetic nature of the Lost River WMA. Exploration and extraction activities would be restricted during periods of high use, which would primarily occur during the general hunting season (Late October through December). However, some exploration sites may not be fully reclaimed before the general hunting season begins, thus required signage and disturbed soil may be present. Reclamation requirements and the

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	
									limiting the area of occupation to 5 acres at any one time would reduce the extent and duration of any adverse impact. Therefore, any adverse impacts would be short-term, minor, and mitigated by requirements of the 2024 Operating Plan.
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 would be expected because of the proposed action. Air quality in the area affected by the proposed project is currently unclassifiable or in compliance with/attainment for the applicable health- and welfare-based national ambient air quality standards (NAAQS). Existing sources of air pollution in the area are limited and generally include fugitive dust associated with high wind events and exposed ground, vehicle travel on unpaved roads (fugitive dust), vehicle exhaust emissions, and various agricultural practices (vehicle exhaust emissions and fugitive dust). No significant point-sources of air pollution exist in the area affected by the proposed project. Fugitive dust emissions resulting from exploration and extraction activities associated with the proposed project may adversely impact air quality. However, limitations on the allowable area of disturbance to no more than 5 acres at any one time would limit the extent and severity of such fugitive dust emissions; therefore, the proposed project would not be expected to cause or contribute to a violation of the applicable NAAQS for particulate matter (fugitive dust). Any impacts would be short-term, negligible, consistent with existing impacts, and mitigated by requirements of the 2024 Operating Plan.
Unique, endangered,	<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 would be expected because of the proposed action. There are no known

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	
Resource									
fragile, or limited environmental resources									<p>threatened or endangered species in this area or fragile or limited environmental resources present on the WMA. Species of concern observations reported to the Natural Heritage Program on or near the Lost River WMA include Brewers Sparrow, Loggerhead Shrike, Greater Short-horned Lizard, Iowa's Darter, Northern Redbelly Dace, Sauger, and Sand-dwelling Mayfly. This does not constitute a complete list of species of concern that may be present in the affected area. Paleontological exploration activities may adversely impact wildlife species and their habitats through disturbance of their habitats and associated human activity and presence. Exploration and extraction activities associated with the proposed project may prevent species of concern from using the affected area. The proposed project would also directly disturb a limited amount of existing wildlife habitat that would otherwise be available for affected species. The 2024 Operating Plan limits the area of the Lost River WMA available for exploration to 5 acres at any one time, which would limit the extent of such adverse impacts. Exploration activities would primarily target badlands habitats, which are not habitats generally used by the listed species of concern, with the exception of Greater Short-horned lizard. Vegetation disturbance would be mitigated by enforceable conditions of the 2024 Operating Plan. Further, the required reclamation of exploration sites would limit any long-term adverse impacts to affected species and their habitats. Therefore, any adverse impacts would be short-term, minor, and mitigated by requirements of the 2024 Operating Plan</p>



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	
Historical and archaeological sites	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. How Judith Fossils accesses the privately held heritage resources is the subject of the state action, not what the Seller does with their privately held heritage resources. Therefore, the Draft EA cannot consider potential impacts to the privately held heritage resources. FWP acknowledges the potential for adverse impacts to privately held heritage resources; however, impacts to the privately held heritage resources are outside the scope of the Draft EA. The applicable requirements of § 22.3.801, MCA, will protect burial remains in the event any are discovered. Also, FWP has informed the State Historic Preservation Office (SHPO) and the affected Tribal Historic Preservation Offices (THPO) of the work. FWP is working with the Seller to develop voluntary strategies to mitigate potential adverse impacts to paleontological and archaeological resources, in consultation with the SHPO and any THPOs with an interest in the region.
Demands on environmental resources of land, water, air, and energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. Fuel would be required to operate equipment used for exploration and extraction activities. However, any such activity would be limited to 5 acres of disturbance at any one time, thereby limiting the duration and size of each exploration and extraction activity and subsequently the amount of fuel necessary to accomplish the objectives of the proposed action. Therefore, the amount of fuel used would be relatively minimal and any resulting impacts to the demands for energy

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	
									would be short-term and negligible. No other impacts to energy would be expected because of the proposed action. Also, as identified previously through the analyses of potential impacts to water quality, quantity, and distribution; soil quality, stability, and moisture; vegetation cover, quantity, and quality; and air quality; some impacts to the environmental resources of land water, and air may occur because of the proposed project. However, no such adverse impacts would be significant (see identified analyses above). Further, the 2024 Operating Plan limits the timing and size of the area of disturbance and requires reclamation after exploration. Therefore, any adverse impacts to demands for the environmental resources of land, water, and air would be short-term, minor, and mitigated by applicable requirements of the 2024 Operating Plan.

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

HUMAN POPULATION	Duration of Impact			Severity of Impact					Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	
Social structures and mores	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. WMAs protect important wildlife habitat that might otherwise disappear from the Montana landscape. More specifically, a primary objective of the WMA land use designation is to emphasize the occurrence of highly productive, diverse plant communities that provide high quality forage and cover for native wildlife species. Many Montanans and those visiting the state for outdoor recreational purposes hold high

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	
										regard for conservation and recreational use of public lands, such as WMAs. The proposed project would impact these WMA objectives by temporarily disturbing portions of the affected area for the purpose of paleontological exploration and extraction if such resources are discovered. While the proposed project would change current land use and human activities in the affected area, the 2024 Operating Plan would ensure the affected area would be returned to its pre-project status following each allowed exploration and extraction activity. Also, fossil exploration activities already occur in the vicinity of the proposed project. Therefore, any adverse impacts to pre-project social structures, customs, values, and conventions in the affected area (i.e., pre-project social structures and mores) would be short-term, minor, consistent with current activities and associated impacts in the affected area and mitigated by the applicable requirements of the 2024 Operation Plan.
Cultural uniqueness and diversity		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. The proposed project would not be expected to result in the immigration or emigration of people. Therefore, no impacts to existing demographics, including no impacts to pre-project cultural uniqueness and diversity in the area affected by the proposed action would be expected because of the proposed project.
Access to and quality of recreational and wilderness activities		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed project. No wilderness areas exist in the impacted area; therefore, no impacts to congressionally designated wilderness areas would occur because of the proposed action. However, some adverse impacts to visitors using the Lost River WMA may occur. The Lost River WMA would remain open to the public for

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	
									recreational use during fossil exploration and extraction activities. However, the affected public would not be allowed to use areas immediately adjacent to or within areas where exploration or extraction activities are actively occurring. Because the affected areas would be limited to less than 5 acres at any one time and all exploration and extraction activities would occur outside of the identified high-use season(s), i.e., general hunting season, any adverse impacts would be short-term, minor, and mitigated by the applicable requirements of the 2024 Operating Plan.
Local and state tax base and tax revenues	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. FWP and the Seller would maintain and continue to accommodate their existing federal and state tax burden. Some adverse impacts to tourism, and by default the local economy and associated tax revenue, may occur because of the proposed project. However, any such impacts would be limited because the proposed project would occur outside of high use periods (i.e., general hunting season) and the majority of the Lost River WMA would remain open to d public use during the proposed project. Further, some beneficial impacts to the local economy and associated tax revenue from the sale of supplies or services to the exploration crew and necessary to facilitate the proposed project may occur. Fossils collected on the property could be sold, which may result in a minor increase in state tax revenue. Therefore, any adverse or beneficial impacts would be short-term and negligible.
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 because of the proposed action. Industrial production does not occur on the Lost River WMA. Therefore, no impacts to industrial

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	
										production would be expected because of the proposed project. Existing livestock grazing activities and associated production on the Lost River WMA would be maintained throughout implementation of the proposed project. More specifically, grazing activity and associated production on the Lost River WMA would not be restricted and thus would be expected to continue in a manner and at a level consistent with existing and past practices, including the number of livestock grazed. Therefore, no impacts to agricultural production would be expected because of the proposed project.
Human health and safety		<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 would be expected because of the proposed action. The proposed action would approve the 2024 Operating Plan to mitigate potential adverse impacts to surface resources from the exploration and excavation of paleontological resources. The proposed action would not change how FWP currently manages the property and associated surface resources. However, exploration and excavation activities would increase the risk of noxious weed infestation on the Lost River WMA and thus may increase the need for FWP staff weed management activities. The use of chemical and/or biological treatment to control noxious weeds would occur on the WMA regardless of whether the 2024 Operating Plan is approved. Therefore, FWP would continue monitoring and treatment of noxious weeds including those potentially spread by the paleontological exploration and excavation activities. The increased use of weed treatments, storage, and the mixing of chemicals would be accomplished according to the guidelines provided by FWP's Integrated Weed Management Plan, which includes safety precautions. Judith Fossils LLC would be responsible for installing and maintaining signage

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	
										identifying active paleontological exploration and excavation sites. Therefore, any adverse impacts would be short-term, negligible, consistent with existing impacts, and mitigated by safety precautions outlined in FWP's Integrated Weed Management Plan.
Quantity and distribution of employment		<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. The proposed action would not change how FWP currently manages the property and thus no increase or decrease in FWP staffing resources would be expected because of the proposed action. The Judith River Fossils exploration and excavation crew would consist of 1-6 employees in the affected area, which could increase the quantity and distribution of employment over the term of the approved 2024 Operating Plan. However, because the associated work would be sporadic and limited to between 1 and 6 staff at any given time, any impacts would be short-term, and negligible.
Distribution and density of population and housing		<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. The proposed action would not change how FWP currently manages the property and thus no increase or decrease in FWP staffing resources would be expected because of the proposed action. Judith River Fossil's exploration and excavation crew would consist of 1 to 6 staff at any given time over the term of the approved 2024 Operating Plan. Therefore, the proposed action may result in the limited movement of new population to the affected area. No new housing would be expected because of the proposed action as the use of existing accommodation/housing resources would be expected to house Judith River Fossils staff, as

HUMAN POPULATION	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
									necessary. Therefore, any impacts would be short-term and negligible.
Demands for government services	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. The proposed action would not change how FWP currently manages the property. FWP staff would continue to manage Lost River WMA as part of their typical duties, with the potential for increased control of noxious weeds. Therefore, routine maintenance costs, including monitoring and control of noxious weeds, would continue under the proposed action. No additional demands for government services would be required. Therefore, any adverse impacts would be short-term, negligible, and consistent with existing impacts.
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"/>	No significant adverse impacts would be expected because of the proposed action. Because no industrial activity occurs on the WMA, no impacts to industrial activity would occur because of the proposed action. The proposed action would allow for exploration and excavation of paleontological resources, which may displace certain activities currently occurring on the Lost River WMA, such as hunting or leased cattle grazing operations. However, any activity would be limited to no more than 5 acres of land disturbance at any given time. Therefore, while the proposed action may temporarily displace as much as 5 acres of land currently supporting cattle grazing operations, and which may support hunting activities, most land making up the Lost River WMA would remain available for such activities. Grazing activity would continue to be managed in a manner and at a level consistent with past grazing practices, including the number of livestock grazed in the affected area. Therefore, no impacts to existing agricultural production



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	
									would be expected because of the proposed project. Approval of the 2024 Operating Plan would allow for the commercial exploration and sale of fossils found on the Lost River WMA for a term of 10 years. Therefore, any adverse impacts from such commercial operations would be short-term, minor, and mitigated by the approved 2024 Operating Plan.
Locally adopted environmental plans and goals		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. The primary objective of WMAs is to protect important wildlife habitat that might otherwise disappear from the Montana landscape. The affected property is currently, and would remain, a designated WMA throughout the 10-year term of the 2024 Operating Plan and ongoing. The proposed 2024 Operating Plan would mitigate against any adverse impacts from exploration and excavation activities. Therefore, any adverse impacts would be short-term, minor to moderate, and mitigated by the terms of the 2024 Operating Plan. FWP is unaware of any other locally adopted environmental plans or goals that may be impacted by the proposed project.
Other appropriate social and economic circumstances	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No significant adverse impacts would be expected because of the proposed action. FWP is not aware of any other social or economic circumstances associated with approval of the 2024 Operating Plan; therefore, no impacts would be expected because of the proposed action.

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

If the EA identifies impacts associated with the proposed project FWP must determine the significance of the impacts. ARM 12.2.431. This determination forms the basis for FWP's decision as to whether it is necessary to prepare an environmental impact statement. An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required. An EIS is required if an impact has a significant adverse effect, even if the agency believes that the effect on balance will be beneficial. ARM 12.2.431.

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

**Criteria Used to Determine Significance**

1	<p>The <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

## VIII. 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)**

PRIVATE PROPERTY ASSESMENT ACT (PPAA)			
Does the Proposed Action Have Takings Implications under the PPAA?	Question #	Yes	No
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action deprive the owner of all economically viable uses of the property?	3	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 4a and 4b and continue with question 5)	4	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	<input type="checkbox"/>	<input type="checkbox"/>
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	<input type="checkbox"/>	<input type="checkbox"/>
Does the action deny a fundamental attribute of ownership?	5	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action have a severe impact of the value of the property?	6	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the impact of government action direct, peculiar, and significant?	7a	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	<input type="checkbox"/>	<input type="checkbox"/>
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	<input type="checkbox"/>	<input type="checkbox"/>
<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 **YES** is checked in response to Question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to question 4a or 4b.

If taking or damaging implications exist, the agency must comply with MCA § 2-10-105 of the PPAA, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

#### **Alternatives:**

The analysis under the Private Property Assessment Act, §§ 2-10-101 through -112, MCA, indicates no impact. FWP does not plan to impose conditions that would restrict the regulated person's use of private property to constitute a taking.

## **IX. Public Participation**

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

- *An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to FWP. If the document is out-of-print, a copying charge may be levied (ARM 12.2.433(2)).*
- *Public notice will be served on the Montana Fish, Wildlife and Parks website at: <https://fwp.mt.gov/news/public-notice>*
- *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.*

<b>Newspaper / Periodical</b>	<b>Date(s) Public Notice Issued</b>
Havre Weekly Chronical	June 19, 2024
Great Falls Tribune	June 19, 2024

- *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:** June 17, 2024

**Public Comment Period Ends:** July 1, 2024

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

- ***Where to Mail or Email Comments on the Draft EA:***  
Name: SCOTT THOMPSON  
Email: [sthompson@mt.gov](mailto:sthompson@mt.gov)

Mailing Address:  
Montana Fish Wildlife and Parks  
Attn: Lost River WMA- Judith Fossils Operating Plan  
1 Airport Rd.  
Glasgow, MT 59230

## X. 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"/>

## XI. EA Preparation and Review

	<b>Name</b>	<b>Title</b>
<b>EA prepared by:</b>	Scott Hemmer and Scott Thompson	Havre Area Wildlife Biologist and R6 Wildlife Manager
<b>EA reviewed by:</b>	Eric Merchant	MEPA Coordinator

Attachment A: Exhibit B from the Deed, detailing archeological and paleontological reserved rights

**EXHIBIT** ~~A~~ *B D.E. by J. G.*

The archaeological and paleontological rights ("Reserved Rights") reserved by the Seller, its successors or assigns, are further conditioned and limited, as follows:

1. The reserved rights described herein do not include commercial exploitation of the gemstone ammolite.
2. Prior to commencing any surface disturbing activity on the Property conveyed herein, Seller, its successors or assigns, shall submit to the DNRC or DFWP, as applicable, an Operating Plan describing the proposed:

location, size, and boundary of disturbance or excavation area;  
size of footprint for all associated activities;  
access routes;  
timing of excavation season;  
reclamation plan that includes methods, materials, and timeline;  
and compatibility with hunting and other public use of the Property.

Before any surface disturbance occurs upon the Property conveyed herein, the Seller, its successors or assigns, must obtain the written approval of the Operating Plan by, as applicable, DFWP's Chief of Wildlife or DFWP's Director, or the NELO Area Manager, DNRC's Trust Lands Management Division Administrator, or DNRC's Director. Such approval shall not be unreasonably withheld. In the event that the Operating Plan is not approved by DNRC or DFWP, DNRC or DFWP shall make good faith efforts to work with Seller its successors or assigns to develop an acceptable Operating Plan.

3. At any one time, Seller, its successors or assigns, shall not occupy more than five (5) acres of the Property. No surface disturbing activity shall be operated in the same location for more than three continuous years. The DNRC or DFWP, as applicable, may waive such restrictions pursuant to the Operating Plan.

4. Prior to any surface disturbance of the Property, Seller, its successors or assigns, shall segregate and store the top 18 inches of all available topsoil.

5. Seller, its successors or assigns, shall be responsible for control of noxious weed infestations that result from archeological and paleontological activities until infestation no longer exists. Seller shall exercise reasonable care in the conduct of its research activities to reduce the

likelihood or impact of noxious weed infestation. Seller shall further comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 MCA et. seq., as follows:

Seller, its successors or assigns, shall notify the local weed board that is responsible for that geographical area in which the archaeological or paleontological project is located. If Seller disturbs vegetation upon the above-described Property for any reason, Seller shall be required to reclaim and revegetate the disturbed area. Seller shall submit to the local weed board and the DNRC or DFWP, as applicable, a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding; fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be executed by the chairman of the weed board and by the DNRC or DFWP, as applicable. Seller shall re-grade any disturbed lands to their approximate original contour, apply topsoil, and revegetate all disturbed areas with an approved seeding mixture to the satisfaction of the DNRC or DFWP, as applicable. If the first seeding of compatible grass species does not germinate to the satisfaction of the DNRC or DFWP, as applicable, Seller shall reseed those areas remaining open to erosion and weeds.

6. No archeological or paleontological activities shall be conducted during the Montana general big game (rifle) hunting season without the express written consent of DFWP. Such consent may occur pursuant to the Operating Plan.

7. Prior to any surface disturbing activity, Seller, its successors and assigns, shall submit a reclamation bond to be held by the DNRC or DFWP, as applicable, to ensure the reclamation of the disturbed lands as described herein. The bond shall be equal to the inflation-adjusted appraised value of the acres to be disturbed by Seller and shall be specified in the Operating Plan.

8. The Reserved Rights described herein shall not prohibit DNRC from authorizing any ground disturbing projects proposed by DNRC, its current and future lessees, licensees, easement holders, or permittees, provided that such projects do not substantially alter the value of said Reserved Rights to Seller or unreasonably restrict the exercise of research activities conducted under said Reserved Rights by Seller. DNRC shall comply with the Montana Environmental Policy Act and the Montana State Antiquities Act (22-3-421 et seq. M.C.A.), and its implementing administrative rules (A.R.M. 36.2.801-813) in authorizing such projects. Prior to commencing ground disturbing activity on the Property, DNRC shall consult with both the State Historic Preservation Office and the Seller, its successors or assigns, regarding the impact such activity will have on archaeological/paleontological resources and the Reserved Rights described herein.