



SPA 124 PERMIT DECISION NOTICE
Augmentation of Whitefish River Trail Pedestrian Path
FWP-DN-FSH-R1-25-009

March 20, 2025

ACTION

Decision Notice (DN): Montana Fish, Wildlife & Parks (FWP) shall prepare a DN for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment prepared for the proposed action as final, and approves Alternative 1, the no action alternative (i.e., SPA 124 Permit Denial).

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

According to the applicable requirements of the Montana Environmental Policy Act (MEPA) and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose any potential impacts of the proposed action on the affected human environment. The level of environmental review will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. The agency is responsible for adjusting public review to match these factors. *Title 75, Chapter 1, Parts 1 through 3, Montana Code Annotated (MCA)*. Based on these factors, FWP determined a Checklist Environmental Assessment (Draft EA) constitutes the appropriate level of review for the proposed action. Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA.

PUBLIC PARTICIPATION PROCESS

Under usual circumstances, FWP makes the Draft EA available for public review and comment. However, in this circumstance, MEPA's required public process for projects of this nature is impacted by a competing statutory deadline. MEPA requires FWP to comply with its terms "*to the fullest extent possible.*" To fulfill the stated policy of MEPA, the agency shall conform to the applicable rules prior to reaching a final decision on proposed actions covered by MEPA. *ARM 12.2.428, Policy Statement Concerning MEPA Rules*. More specifically, *§ 87-5-504, MCA*, states:

"Within 30 days after the receipt of such plans [for a project subject to SPA 124 permitting], the department shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the department notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect."

Effectively, within 30 days after receipt of an application [for an SPA 124 Permit], FWP must make a final decision on the proposed action/project. Within the applicable 30-day timeframe, the MEPA practitioner or author of the Draft EA must conduct a rigorous process, making it difficult or impossible for FWP to accommodate a public comment period for the Draft EA within the required 30-day time-period. § 87-5-504, MCA.

Therefore, for the purposes of achieving compliance with MEPA, *"to the fullest extent possible,"* FWP prepares a Draft EA for file, sans public comment, and issues a DN identifying the agency decision, reasons for the decision, and any special conditions surrounding the decision or its implementation. Conditions applicable to the selected alternative, including recommendations or alternative plans to eliminate or diminish any adverse effects, are contained in the Draft EA.

DESCRIPTION OF PROPOSED ACTION

The City of Whitefish (City) applied for a Montana Stream Protection Act permit (SPA 124 Permit) to construct a section of the Whitefish River Trail that would connect the existing trail on BNSF property near Railway Street downstream to the existing trail terminus near the Veterans Memorial Bridge on Second Street. The proposed trail augmentation would cross two private properties and extend into the Whitefish River within the riverbed and the ordinary high-water mark. A purported easement exists between the affected private property owner(s) and the City to accommodate future establishment of the proposed Whitefish River Trail augmentation. This analysis was based on the representations made in the SPA 124 Application and does not constitute a legal opinion on easement location or validity.

The SPA 124 Permit is required because the project, as proposed, would impact the bed and banks of the Whitefish River and thereby result in adverse impacts to fish and wildlife and their associated habitats.

PURPOSE AND NEED

The purpose and need or benefit of the proposed project is to provide the residents of Whitefish, and visitors to the area, with:

- Whitefish Trail continuity by connecting the existing trail terminus located on BNSF property near Railway Street with the existing trail terminus located near the Veterans Memorial Bridge on Second Street.
- Americans with Disabilities Act or ADA-compliant trail features to support trail access for everyone, regardless of physical ability.

ALTERNATIVES ANALYZED

Alternative 1: No Action (SPA 124 Permit Denial)

In addition to the proposed action, and as required by MEPA, FWP analyzes the "No-Action" alternative in the EA. Under the No-Action alternative the proposed action would not occur. Therefore, no additional impacts to the human environment would occur. The No Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the No Action alternative, the Whitefish River Trail Pedestrian Path SPA 124 application would be denied. Therefore, impacts to the human environment analyzed under this alternative involve implementation of FWP's recommended trail location and design.

Alternative 2: Proposed Action (SPA 124 Permit Granted)

Under the Proposed Action, the City of Whitefish would connect the existing trail on BNSF property near Railway Street to the existing trail terminus near the Veterans Memorial Bridge on Second Street with an Americans with Disabilities Act (ADA) compliant pedestrian trail that would be placed in and on the banks of the Whitefish River. Construction of this trail, as proposed, would impact the bed and banks of the Whitefish River and the species that depend on them and their habitat. These impacts are expected to be long term, major and negative.

DECISION

Based on the environmental review provided in the Draft EA and, to the greatest extent possible, in accordance with all applicable laws, rules, regulations, and policies, FWP determined the proposed action (Alternative 2), will have significant adverse impacts on the human environment associated with the proposed action from degradation of fish and game habitat.

To eliminate or minimize impacts to the Whitefish River's bed and banks, FWP recommends the applicant pursue a design that avoids permanent and intensive infrastructure below the ordinary high-water mark. FWP has included, in its Draft EA, a rendering of a trail design that minimizes impacts and accomplishes the applicant's vision of a connected, ADA friendly system.

FWP hereby adopts the Draft EA as final and denies the SPA 124 permit (No Action Alternative). Per MCA 87-5-504, FWP also recommended an alternative plan to diminish the adverse effects Alternative 2 would cause.

Sincerely,

Dave Landstrom

Dave Landstrom
Acting Region One Supervisor
Montana Fish, Wildlife & Parks