



DECISION NOTICE

Mallard's Rest FAS Road Realignment Project

FWP-POR-R3-23-020

January 4, 2024

ACTION

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

With this action, FWP hereby adopts the Draft Environmental Assessment or Draft EA as final, without modification, and approves Alternative 2, the proposed action.

AUTHORITY: MONTANA ENVIRONMENTAL POLICY ACT

According to the applicable requirements of the Montana Environmental Policy Act or MEPA and its implementing rules and regulations, before a proposed action 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 for public review and comment. See *Public Participation Process* below.

Further, FWP must consider any substantive comments received in response to an EA and proceed in accordance with one of the following steps: determine the EA did not adequately reflect the issues raised by the proposed action and issue an Environmental Impact Statement or EIS; determine the EA did not adequately reflect the issues raised by the proposed action and issue a supplemental EA; or determine the Draft EA adequately addressed the issues raised by the proposed action and make a final decision, with appropriate modification resulting from the analysis provided in the Draft EA and the analysis of any substantive public comments received. See *Public Comment and FWP Response* below.

PUBLIC PARTICIPATION PROCESS

The Draft EA was made available for public review and comment December 14, 2023, through December

29, 2023. The Draft EA was posted on FWP's Public Notice webpage: <https://fwp.mt.gov/news/public-notice>. The Draft EA was also made available for public review on the Environmental Quality Council or EQC website: <https://leg.mt.gov/mepa/search/>, by individual request, and through notice to identified interested parties. FWP received comments during the public comment period.

DESCRIPTION OF PROPOSED ACTION

Fishing Access Sites (FAS) are managed by Montana Fish, Wildlife & Parks (FWP) to provide the public with access to a variety of recreational opportunities offered by the FAS. Mallard's Rest FAS provides public access to the upper Yellowstone River for outdoor activities such as floating, fishing, birding, camping, and general day use. Mallard's Rest FAS was established and has been available for public use since 1963. In June 2022, the FAS was heavily impacted by flooding of the Yellowstone River. As a result, the FAS is currently closed and there is no public access allowed due to damage sustained to the access road and a portion of the streambank during the 2022 flooding event. Under the proposed action, FWP would establish a new FAS entrance from Montana Highway 89 and reroute the access road through a right-of-way easement located on adjacent DNRC land. Relocation of the access road would serve to avoid the unstable section of the access road impacted by the 2022 flooding event. The topography of the affected area makes the public road easement requested from DNRC under the proposed action the most viable, direct, and economical access route to the existing Mallard's Rest FAS.

The proposed project consists of the following elements:

- Acquire a perpetual right-of-way easement at an estimated cost of \$9,240.00 to allow construction of the new access road on adjacent DNRC owned land. This easement proposes to encumber 0.77 acres of the total 469-acre state owned tract. The remaining acres in the eastern part of the tract are currently leased for grazing purposes and will not be included within the proposed easement (a settlement of damages agreement was signed with the grazing lessee). This is in addition to the existing 15.99 acre permanent recreational easement that FWP has been granted for Mallard's Rest FAS.
- Install a new gravel access road, a 24-inch culvert on the Park Branch Canal, signs, and fencing at an estimated cost of \$104,678.00.
- The new road would be approximately 950 feet long x 30 feet wide, and it would connect with the existing road as it descends to the FAS.
- Reclaim and close off the old approach and access road from Highway 89. FWP anticipates the proposed project would be completed by June 2024.

PURPOSE AND NEED

Because of impacts from a June 2022 flooding event, the access road to Mallard's Rest FAS is unsafe for travel and therefore not available for use by administrative personnel and/or the affected public. Improvements planned under the proposed action would mitigate impacts from the spring 2022 flooding event by relocating a portion of the access road through adjacent DNRC land that is more suitable for such purposes. The proposed action is necessary to facilitate the following essential attributes of the existing FAS:

- Safe public access to the Yellowstone River
- Limited potential for future impacts associated with flooding events, and
- Full use of Mallard's Rest FAS

ALTERNATIVES ANALYZED

Alternative 1: No Action

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 proposed project would not occur. FWP would not acquire a right of way easement through DNRC land to construct a new access road. If the "No Action" alternative were selected, the Mallard's Rest FAS would remain closed to public access due to the safety hazard of the current access road and damage sustained during the Yellowstone River flood event in 2022. Under such a scenario, the public would be adversely impacted. Mallard's Rest is a heavily used site for floater put in and take out, camping, fishing, and other recreation. An extended or permanent closure of Mallard's Rest FAS would also lead to crowding at other access points along the upper Yellowstone River.

Alternative 2: Proposed Action

Under the Proposed Action, FWP will acquire a right of way easement through DNRC to construct a new access road to Mallard's Rest FAS. Public access would be restored once the site is open after construction of the new access road. People will be able to recreate once again at the site, and other river access sites in the area should be less crowded once this site is open again.

PUBLIC COMMENT AND FWP RESPONSE

FWP received one substantive public comment on the Draft EA. A substantive public comment was defined as the identification of a specific issue or impact. The following provides the public comment received and FWP response(s).

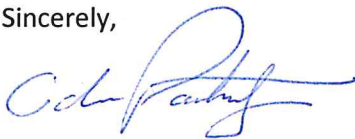
"I am all in favor of repairing and reopening the Mallard's Rest FAS. With the increase in popularity of camping/fishing and floating the Yellowstone River, it really has had an effect of not spreading more people out throughout the river system. Bringing back Mallards FAS will alleviate the pressure that Pine Creek FAS, Loch Leven FAS and Grey Owl have experienced since the flood."

FWP Response: FWP concurs.

DECISION

Based on the environmental review provided in the Draft EA, and in accordance with all applicable laws, rules, regulations, and policies, FWP determined the proposed action (Alternative 2), will not have significant adverse impacts on the human environment associated with the proposed action and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an EIS is unnecessary. FWP hereby adopts the Draft EA as final and approves the Alternative 2, the proposed action.

Sincerely,



Adam Pankratz
Acting Region 3 Supervisor