Montana Fish, Wildlife & Parks

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May 14, 2003

TO: Russell Kilpatrick, c/o General Delivery, Coram, 59913
Environmental Quality Council, Capitol Building, PO Box 201704, Helena, 59620-1704
Dept. of Environmental Quality, Planning, Prevention, & Assistance, PO Box 200901, Helena, 59620-0901
Dept. of Environmental Quality, Permitting Compliance, PO Box 200901, Helena, 59620-0901
Montana Fish, Wildlife & Parks: Director's Office, Legal Unit, and Enforcement
Evaleen Starkel, Montana Dept. of Livestock, Third Floor, Scott Hart Bldg., 301 Roberts, Helena, 59620
Mt Historical Society, State Historic Preservation Office, 225 North Roberts, Veteran's Memorial Bldg., Helena 59620
Montana State Library, 1515 East Sixth Ave., Helena, 59620-1800
John Mundinger, Consulting for Creative Solutions, LLC, 1414 Hauser Blvd., Helena, 59601
Jim Jensen, Montana Environmental Information Center, PO Box 1184, Helena, 59624
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Wayne Hirst, Montana State Parks Foundation, PO Box 728, Libby, 59923
Montana State Parks Association, PO Box 699, Billings, 59103
Joe Gutkoski, Montana River Action Network, 304 N 18th, Bozeman, 59715
athead County Library, 247 First Avenue E, Kalispell, 59901
. ıathead County Library, 9 Spokane Ave., Whitefish, 59937
Flathead County Library, 130 6th Street W, Columbia Falls, 59937
Flathead County Commissioners, 800 S. Main, Kalispell, 59901
Rep. Dee Brown, PO Box 444, Hungry Horse, 59919-0444
Sen. Jerry O'Neil, PO Box 2058, Kalispell, 59903-2058

Ladies and Gentlemen:

Montana Fish, Wildlife & Parks has completed the Final Environmental Assessment and the proposed Decision Document for the Kilpatrick Roadside Menagerie license application for the proposed operation of the Great Bear Adventure facility located one mile north of Coram, Montana.

Copies of the documents are enclosed for your information.

Sincerely,

Daniel P. Vincent
Regional Supervisor

/ni
Enclosure
c: Jim Cross, 618 Leisure Drive, Kalispell, 59901
Barbara Calm, DVM, Box 14, Kila, 59920
Mick Holm, Superintendent, Glacier National Park, PO Box 128, W Glacier, 59936
ian Peck, GBF & Sierra Club, 615 Trap Road, Columbia Falls, 59912

Flathead Game Farm

c: Rod & Robin Gochenour, PO Box 130449, Coram, 59913
Rollin Harwood, 2786 Rest Haven Drive, Whitefish, 59937
Robert Willard, 100 Mallard Loop, Whitefish, 59937
Rick Hanners, Hungry Horse News, 926 Nucleus Avenue, Hungry Horse, 59919
Dorothy Kendall, 711 Columbia Avenue, Whitefish, 59937
Sandy Colvine, Box 5240 Kalispell, 59903
Glaciers' Montana Resort LLC, PO Box 130396, Coram, 59913
Don & Terri Sherrard, 280 Gladys Glen Road, Coram, 59913
Melanie & William Coahran, PO Box 130037, Coram, 59913
North American Wildlife Museum, Inc., 10630 Hwy 2 East, Coram, 59913
Rex & Iola Breneman, P O Box 131, Coram 59913
Stewart Stadler, Box 385, Kalispell, 59903
Tom Shaughnessy, 505 Foys Canyon Road, Kalispell, 59901
Susan & Paul Erickson, 329 Cougar Trail, Whitefish, 59937
Joel Vignere, P O Box 194, Lakeside, 59922
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Steve Thompson, Glacier Program Manager, National Parks Conservation Assoc., PO Box 4485, Whitefish, 59937

RUSSELL KILPATRICK
ROADSIDE MENAGERIE
DECISION DOCUMENT

May 9, 2003

Roadside Menagerie Application and MEPA Review

Montana Fish, Wildlife and Parks (FWP) received an application for a roadside menagerie license from Russell Kilpatrick on March 18, 2003 to operate a 15-acre roadside menagerie in Flathead County, Montana. The roadside menagerie is located approximately 1 mile north of Coram, Montana. While originally permitted for an 8-acre area, the menagerie now occupies an area of approximately 15 acres in Tracts 2, 3, and 3F of the NW1/4 SW1/4 of Section 21, T31N R19W. The permit application specifies that the menagerie would contain 5 black bears (*Ursus americanus*) and 5 brown bears (*Ursus arctos*).

Black bears and brown bears would be free to roam through various subunits within the menagerie. A perimeter fence consisting of 6 foot high wire mesh with an additional 2 feet of electrified elements at the top and electrified elements at the bottom surrounds the menagerie. Within the menagerie, low electrical fences (c.a., 3 feet high) are intended to restrict the bears to various areas of the menagerie. Visitors are able to travel through the menagerie in automobiles and view the free-ranging bears. One segment of the motor path has low electrical fences on either side intended to prevent bears from accessing vehicles. On this segment of the motor path visitors are able to roll down their car windows while observing bears. The applicant would live adjacent to the facility year-round.

FWP prepared a Draft Environmental Assessment (EA) pursuant to the Montana Environmental Policy Act (MEPA). This document was distributed for public review and comment on April 18, 2003, with comments accepted through May 6, 2003.

FWP received five public comment submittals (written and verbal) during the comment period. Issues raised include: an appreciation of the previous facility as a place where individuals could view bears in a semi-natural environment; an accusation that Mr. Kilpatrick is being harassed by FWP concerning operation of his facility; a lack of space for bears housed at the facility and concern for their well-being; concern for Mr. Kilpatrick's prior operation of the facility without a license and while not in compliance with state laws; public safety issues concerning traffic and advertising at the facility; and concerns that portions of the perimeter fence extend beyond Mr. Kilpatrick's property lines. These comments were collected and responses to specific issues prepared by FWP. A summary of the specific issues raised and resulting responses are included in the Final EA.

The EA evaluated four different alternatives for operation of the proposed roadside menagerie. Upon completion of the EA, it was determined that a full Environmental Impact Statement (EIS) would not be required for Alternatives B, C, or D. However, a full EIS would be required for Alternative A due to a finding of significant impacts that could not be mitigated to below the level of significance. A copy of the Final EA explaining the alternatives and the individual evaluation of each alternative is attached.

Proposed Decision:

Based upon review of the EA, the license application file, and the information noted below, FWP has determined that a license to operate the alternative livestock facility in question will be issued under alternative B, contingent upon agreement by the applicant to comply with the 12 stipulations listed below as well as the fencing requirements under Alternative B of the Kilpatrick roadside menagerie EA. The option of having this applicant agree to the 12 stipulations and and fencing requirements was deemed an approved method of "drive-in" roadside menagerie regulation by the Lewis and Clark District Court Cause No BDV-93-637 and is re-adopted here. Changes from the approved alternative must be authorized by FWP prior to implementation of any changes. An original roadside menagerie license, issued in 1991 to Mr. Kilpatrick and in effect until 1999, also had been conditioned with 11 of the same stipulations.

The Licensee must be in compliance with all roadside menagerie statutes, rules and conditions applied to the license. Current regulations are attached for the applicant's information, but it is the Licensee's responsibility to keep up with any changes in the laws or regulations.

With most roadside menagerie facilities, there is a concern for public safety and for potential environmental effects on resident wildlife populations. The EA recommends additional mitigation measures, which should assist in reducing those concerns.

The proposed facility will exclude wildlife from using approximately 15 acres of habitat. Given the total size of the enclosure, the impact from the loss of habitat was not considered significant.

Any potential impacts on water quality not addressed herein can be mitigated by the applicant's compliance with the state's water quality standards and requirements. Point source discharges, which include operations qualifying as concentrated animal feeding operations, are regulated under Title 75, Chapter 5, Part 6, MCA and ARM 16.20.1301, et. seq., and may require permits, especially if animal numbers result in significant loss of vegetation. Nonpoint source discharges are regulated under the prohibitions against the pollution and nondegradation of state waters (Title 75, Chapter 5, Parts 3 and 6, MCA and ARM 16.20.701 et. seq.). Nonpoint sources of pollution are considered non-significant sources of degradation where reasonable land, soil, and water conservation practices are applied, and existing and anticipated beneficial uses will be fully protected (ARM 16.20.713). The Montana Department of Environmental Quality (DEQ) has the authority to determine whether an activity satisfies these standards (ARM 16.20.709).

Accumulation of packed snow, tree windthrow, and other factors may increase the risk of ingress and egress associated with this roadside menagerie facility. FWP requires the immediate notification of the ingress or egress of any wild or captive carnivore in order to assess the adequacy of fencing requirements. This should help to address problems early and may result in additional modifications to fence design.

The FWP has the duty under MEPA to conduct an additional environmental review if the action approved by the agency changes, subsequent to the agency's original approval, in a manner which has impacts substantially different from those which were reviewed in the original MEPA review (Ravalli County Fish and Game Association v. Montana Department of State Lands, 273 Mont. 371, 903 P.2d 1362 (1995)). For that reason, the Department provides notice that the

MEPA review performed for this license application reviewed the impacts of a roadside menagerie facility with up 5 black bears and 5 brown bears on 15 acres. To the extent that the applicant hereafter increases the number of species of animals or makes other significant changes to the operation, a supplemental MEPA review must be conducted.

License Stipulations:

1. All bears must be sterilized.
2. All bears must be tattooed with a unique code.
3. Food storage must be in odor-proof containers as per USDA APHIS rules.
4. A veterinary-care plan must be developed and implemented, including descriptions of specific vaccination schedules if implemented.
5. No road-killed ungulates may be in the feeding program.
6. All caging provisions of the roadside zoo and menagerie regulations apply for brown bears (12.6.1302). Caging requirements for the black bears are relaxed because cars are considered a portion of the enclosure.
7. Fencing requirements:
   a. Backup fence energizer, 12-volt system, deep cycle battery.
   b. Warning signs adequate to protect public if electrical fence system approached from outside of park.
8. Additional fencing requirements (in 1991 these were identified as recommendations):
   a. Enhance existing fence per recommendations (as per memo from Mike Madel of 6/14/91), or
   b. Develop outside perimeter fence and use trained dogs to minimize or prevent bear escapement or entry and human entry or injury.
9. Permit review – annually with revocation rights.
10. Escaped bears – owner liable for damage and/or expenses incurred in capturing escaped bears.
11. Report ingress of any wild bears or egress of captive bears to the Montana FWP immediately. The report must contain the probable reason why or how ingress/egress occurred.

12. Remove bear fecal matter on a daily basis. Collected fecal material should be stored odor-proof containers until removal from the site and disposed at a site isolated from surface water and groundwater. Disposal must meet county solid waste regulations.

Recommended Mitigation Measures:

The following list of recommended mitigation measures address minor impacts identified in the Kilpatrick roadside menagerie EA.

Land Resources

- Revegetate soils disturbed by construction activities or concentrated bear activity.
- Rotate the use of areas within the menagerie, allowing vegetation to recover in rested areas. Revegetate intensely used areas.

Air Resources

- To further reduce odors, areas with accumulations of urine may be treated with water and lime.

Vegetation Resources

- Monitor the proposed roadside menagerie site for invasion of noxious weeds and treat affected areas in a timely manner.
- Rotate bear utilization areas to allow for disturbed vegetation to recover
- Revegetate disturbed areas.

Wildlife Resources

- Current fencing may be inadequate to prevent ingress of wild bears or egress of captive bears. An additional electrified fence array, both interior and exterior to the perimeter fence is recommended. Such an array would consist of alternating hot and ground wires to a height of 48 inches. This design is used by MFWP to secure orchards and apiaries. MFWP can provide details of the design.
- Remove trees within 20 feet of the perimeter fence on either side of the enclosure and secure a 3/8-inch steel cable to the top of the fence to prevent excessive fence compression should a tree fall on it.
- Inspect fences on a regular basis and immediately after events likely to damage fences to ensure integrity.
- Store all trash in odor-proof containers.
- Provide literature to visitors that describe the dangers of both wild and captive bears.

Risk/Health Hazards

- Provide rabies vaccinations to those staff working closely with bears.
- Train staff to recognize symptoms of diseases to which bears are susceptible.
- Provide literature to visitors that describe the dangers of both wild and captive bears.

Cultural Resources

- Stop work in the area of any observed archeological artifact. Report discovery of historical objects to the Montana Historical Society in Helena.

Daniel P. Vincent
Regional Supervisor

5/14/03
Date

Russell Kilpatrick
License Applicant

Date

Please sign the document and return the original to FWP to indicate your concurrence with the license stipulations and recommended mitigation measures listed above. A copy of the signed decision will be provided to you for your records.

FINAL ENVIRONMENTAL ASSESSMENT
RUSSELL KILPATRICK
ROADSIDE MENAGERIE APPLICATION

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) PROCESS

Montana Fish, Wildlife & Parks (FWP) is required to perform an environmental analysis in accordance with the Montana Environmental Policy Act (MEPA) for "each proposal for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment" (Administrative Rules of Montana [ARM] 12.2.430). FWP prepares an environmental assessment (EA) to determine whether a project would have a significant effect on the environment.

The people of Montana, through our legislature, have determined that the possession of wild animals for exhibition or attracting trade is appropriate in Montana. It is understood that this carries with it some risk that cannot be reduced to zero. The level of risk that a particular project may introduce must be evaluated by FWP (through the MEPA process) using legislative intent, the existing statutes and administrative rules concerning roadside menageries, as well as established practices that have been demonstrated to be sufficiently effective measures for similar conditions elsewhere.

If, using the above parameters, FWP determines that a project would have a significant impact that cannot be mitigated to a minor impact or which has no acceptable project alternatives, the agency will prepare a more detailed environmental impact statement (EIS) before making a decision. If the agency determines that a proposed project will not have a significant impact, or that the impact can be mitigated to minor or none, the agency may make its licensing decision based upon results of the EA and criteria established under Montana roadside menagerie statute, Montana Code Annotated (MCA) Title 87, Chapter 4, Part 8.

Project alternatives and/or mitigation measures may be considered in FWP's analysis as a means to reduce impact(s) of a roadside menagerie facility to a level below significance. FWP may also recommend mitigation measures to reduce impacts that are considered minor. FWP prepared a Draft EA for the proposed Russell Kilpatrick application for a roadside menagerie facility that presented four different alternatives, A through D. Potentially significant impacts, which could not be mitigated, were identified in Alternative A, the action proposed by the applicant. The Draft EA was released for public review and comment April 18, 2003. Public comments were accepted through May 6, 2003.

The Draft EA also provided an analysis of impacts to private property by proposed stipulations in the EA as required under 75-1-201, MCA, and the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The analysis provided in the Draft EA was conducted in accordance with implementation guidance issued by the Montana Legislative Services Division (EQC 1996).

The Draft EA, as modified herein, and this Final EA are hereby approved as the Final EA. This Final EA for the proposed Russell Kilpatrick roadside menagerie contains summaries of the four alternatives evaluated, affected environment, and potential consequences of each of the alternatives, all of which are described in additional detail in the Draft EA that is adopted in this Final EA. This document also describes stipulations and mitigation

measures, includes a summary of substantive public comments and agency responses to those comments, and provides the conclusion of the EA. The FWP preferred alternative is Alternative B with twelve stipulations and several recommended mitigation measures.

BACKGROUND

In 1991 Mr. Kilpatrick applied to be licensed by the Montana Department of Fish, Wildlife & Parks to operate a "drive-through" roadside menagerie for the display of black bears. Montana statutes make no provision for a "drive-through" roadside menagerie. An environmental assessment based on that initial application had been completed in compliance with MEPA in 1991. The present environmental assessment was conducted to evaluate a "re-licensure" of the facility that would include up to 5 black bears and 5 brown bears as well as an expansion of the facility from 8 to 15 acres.

Mr. Kilpatrick's original roadside menagerie permit was granted in July of 1991 with 11 stipulations that were added in order to tailor the concept of a "drive-through" roadside menagerie to existing Montana statutes. Those stipulations, agreed to by Mr. Kilpatrick, had been included by FWP to mitigate concerns associated with the unique circumstances under which Mr. Kilpatrick intended to operate the facility. Among those stipulations was a requirement that Mr. Kilpatrick possess black bears only at the roadside menagerie. Mr. Kilpatrick was licensed as a roadside menagerie until 1999. In 1999, FWP received information that Mr. Kilpatrick had obtained brown bears at his drive-through bear facility. A dispute arose between Mr. Kilpatrick and FWP over licensure in 1999 when department personnel were not allowed to conduct a facility inspection as required by statute. Mr. Kilpatrick had obtained brown bears and was displaying them at his facility without FWP authorization. An administrative process was initiated in 1999 to revoke Mr. Kilpatrick's roadside menagerie license. The department in May of 2001 made a final revocation decision and that permit revocation was served on Mr. Kilpatrick in June of 2001. A district court revocation hearing was scheduled in August of 2001 and District Court Judge Stewart Stadler directed that mediations take place between Mr. Kilpatrick and FWP to reach a solution on licensure. Mediation took place in March of 2002 resulting in a proposed "interim agreement" developed by FWP that would have allowed Mr. Kilpatrick to retain the brown bears temporarily if housed under conditions consistent with other licensees in Montana who also possess brown bears. During that interim period, FWP would have agreed to conduct an environmental assessment to evaluate re-licensure of the facility with the addition of brown bears. Mr. Kilpatrick did not sign that interim agreement and continued to operate his drive-through facility during the 2002 season. In February of 2003, the department obtained a temporary restraining order from the District Court to prevent Mr. Kilpatrick from operating his drive-through facility. That temporary restraining order was granted by District Court Judge Stewart Stadler and the department was instructed to conduct an environmental assessment evaluating a re-licensure of the facility to include the possession of brown bears. The following environmental assessment represents that effort by FWP.

PROPOSED ACTION

FWP received an application dated March 17, 2003 from Russell Arnold Kilpatrick to operate a roadside menagerie in Flathead County, Montana. The roadside menagerie is located approximately 1 mile north of Coram, Montana. While originally permitted for an 8-acre area, the menagerie now occupies an area of approximately 15 acres in Tracts 2, 3, and 3F of the NW1/4 SW1/4 of Section 21, T31N R19W. The permit application specifies that the menagerie would contain 5 black bears (*Ursus americanus*) and 5 brown bears (*Ursus arctos*).

Black bears and brown bears would be free to roam through various subunits within the menagerie. A perimeter fence consisting of 6-foot high wire mesh with an additional 2 feet of electrified elements at the top and electrified elements at the bottom surrounds the menagerie. Within the menagerie, low electrical fences (c.a., 3 feet high) are intended to restrict the bears to various areas of the menagerie. Visitors are able to travel through the menagerie in automobiles and view the free-ranging bears. One segment of the motor path has low electrical fences on either side intended to prevent bears from accessing vehicles. On this segment of the motor path visitors are able to roll down their car windows while observing bears.

ALTERNATIVES

Four separate alternatives were developed for evaluation of the Kilpatrick roadside menagerie. Each alternative was evaluated for potentially significant environmental effects that may result from licensing of the facility under that alternative. Under the original license issued to Mr. Kilpatrick in 1991, there were 11 stipulations, including possession of black bears only, under which the license was conditioned to mitigate potentially significant environmental impacts. Ten of those stipulations (excluding the stipulation regarding the prohibition on brown bears) would remain in effect for alternatives A and B. All 11 original stipulations would remain in place for alternative C. Two additional stipulations have been added to alternatives A, B, and C to further mitigate identified environmental impacts. The alternatives evaluated consisted of:

Alternative A - Under alternative A (the proposed action), the roadside menagerie would be licensed as proposed by the applicant with both brown bears and black bears allowed to roam through the various subunits of the menagerie. A perimeter fence consisting of 6-foot high wire mesh with an additional 2 feet of electrified elements at the top and electrified elements at the bottom on the inside surrounds the menagerie. Within the menagerie, low electrical fences (c.a., 3 feet high) are intended to restrict the bears to various areas of the menagerie. Visitors are able to travel through the menagerie in automobiles and view the free-ranging bears. One segment of the motor path has low electrical fences on either side intended to prevent bears from accessing vehicles. On this segment of the motor path visitors are able to roll down their car windows while observing bears. Ten of the 11 original license stipulations as well as 2 additional stipulations would condition the license if authorized under Alternative A.

Alternative B - Under Alternative B, Mr. Kilpatrick would be authorized to operate a roadside menagerie as a drive-through facility. Black bears would be permitted to be free ranging within the enclosed compound as per the permit conditions and stipulations. Alternative B would allow for Mr. Kilpatrick to possess and display brown bears according to the conditions specified by the Administrative Rules of Montana (ARM) 12.6.1301 – 12.6.1309, where brown bears would be confined at all times in cages of such strength and type of construction that it would be impossible for said brown bears to escape and additional fencing would be installed to prevent the public from approaching the bears. Fencing design for the brown bears would be consistent with designs used at other facilities in Montana holding brown bears; such as the Grizzly and Wolf Discovery Center in West Yellowstone, Montana, Montana Wildlife Education Inc. in Bozeman, Montana, and Triple D Game Farm in Kalispell, Montana. Those designs for open topped enclosures include 12 foot 9 gauge wire fences or cement fences supplemented with electric wires in conjunction with "viewing dry moats" which provide public viewing across a 12-foot deep dry moat. Designs for closed top enclosures include 9 gauge wire fences with a minimum of an 11-gauge roof. All enclosures are required to provide a method to prevent animals from digging through the floor to escape through the use of either buried 11-gauge wire or a cement floor continuous to the bottom edges of the exterior fence. Ten of the 11 original license stipulations as well as 2 additional stipulations would condition the license if authorized under Alternative B.

Alternative C - Under Alternative C, Mr. Kilpatrick would be authorized to operate a roadside menagerie as a drive-through facility for black bears only on a 15-acre facility. The original 11 stipulations in place on the original 1991 license would remain in place under stipulation C with two additional stipulations added.

Alternative D - A No Action alternative is evaluated in this EA. Under the No Action Alternative, FWP would not issue a license the Kilpatrick Roadside Menagerie. Therefore, no bears would be placed on the property and operation of the "drive through" roadside menagerie would not be allowed. Under the No Action alternative, any adverse environmental impacts identified in the draft EA would not be expected to occur. In terms of social impact, the general public would no longer have the opportunity to view the bears as they have in the past. Some people, however, may view the absence of the facility as a beneficial social impact. Economically, non-licensing of the facility would only have a secondary economic impact on local businesses if their clientele travel to the area primarily to visit the roadside menagerie. Mr. Kilpatrick has stated that he does not have any paid workers at the facility (all are volunteers) so individual economic impact would be limited to Mr. Kilpatrick's ability to make a profit on the roadside menagerie.

ENVIRONMENTAL CONSEQUENCES

Only potentially significant environmental impacts identified in the draft EA are summarized in this section. A detailed discussion of environmental consequences for all assessed resources is contained in the draft EA.

Wildlife Resources

Potentially significant impacts to wildlife from the Alternatives A, B, and C center on black and grizzly bears. The menagerie is situated in important habitat for both bear species. While the potential impacts from the menagerie to bear habitat are small, habitat fragmentation resulting from the combination of all development in the area may be significant. Human development in the area attracts bears that are seeking food. The habituation and food conditioning of black and grizzly bears in the area has been documented by FWP. Also, it is possible that the presence of captive bears (e.g., scent marking behavior) at the facility could serve to further attract wild bears. The individual effect the menagerie may have as an attractant to wild bears would likely be minor, but would be cumulative when taking into account the effects of development in the area as a whole. The attraction of wild bears to the vicinity of the menagerie would act to increase the risk of bear mortality. In the case of the federally threatened grizzly bear, increased mortality has significant negative implications to grizzly populations.

Ingress and egress of wild and captive bears, respectively, can have adverse impacts to wild bears. This creates the potential for interbreeding between wild and captive bears, which would compromise the genetic integrity of the wild populations. Direct contact between wild and captive bears increases the potential for disease transmission. Bears can serve as reservoirs of several diseases of importance to animal and human health. Bears are susceptible to rabies virus and there has been a documented case of a rabies-infected black bear at the menagerie in the past. Other important diseases to which bears are susceptible include trichinosis, salmonella, brucellosis, distemper, and mange. Some of these diseases also have implications to the health of livestock. Animals at the menagerie would be maintained at densities greater than those normally seen in nature. Confinement to small areas facilitates the continual seeding of the soil with parasite eggs, which serves to maintain infections. For these reasons, animals held in captivity tend to have an increased prevalence of disease. Disease acquired by wild bears from captive bears would add stress to the wild populations and can result in direct mortality of individuals.

The impacts identified above are particularly significant if affecting the threatened grizzly bear population. Some of the potential impacts of Alternative A to wildlife are lessened by Alternative B (maintaining brown bears in cages with additional fencing separating visitors from the cages) and Alternative C (no brown bears), but not eliminated. Alternatives A, B and C would require full compliance with all Required Stipulations. These stipulations include neutering captive bears, which eliminates the potential for interbreeding. Additional mitigation measures are described below.

Risks/Health Hazards

Bears can serve as reservoirs of diseases that are important to human and environmental health. There are no hazardous substances associated with the menagerie, but there is potential for the dispersal of pathogens from the facility. Livestock or alternative livestock are susceptible to several diseases found to infect black and brown bears. Brucellosis and

tuberculosis are two disease of particular significance to the livestock industry. If captive bears at the menagerie were to be infected with these diseases and escaped, they could be a threat to animal health. In addition to brucellosis and tuberculosis, bears can serve as reservoirs of rabies, salmonella, and numerous parasitic diseases. These diseases pose threats to menagerie staff and visitors. The public at large would be at risk if an infected captive animal should escape from the menagerie or if captive animals transmit diseases to wild animals. Human exposure to rabies virus from captive animals would represent a significant public health threat. Implementation of the Required Stipulations mentioned above helps to mitigate the potential risks and health hazards posed by diseases. Particularly important is implementation of a sound veterinary health plan and improved fencing to prevent ingress or egress of wild and captive bears, respectively. Additional mitigations include vaccinating staff against rabies virus and training staff to recognize symptoms of various diseases.

Captive bears at the menagerie are socialized with humans, conditioned to eat human-derived foods and maintained at densities not found in the wild. Visitors observing bears under these conditions may not appreciate the danger posed by bears, captive or wild. Providing visitors with literature describing the differences between captive and wild bears and the dangers posed by bears would mitigate this situation.

Captive bears, regardless of socialization with humans and conditioning, do pose a safety hazard to humans. Menagerie staff working with the bears and visitors are exposed to a potentially significant safety risk. Bears, especially brown bears, are very powerful animals and current fences at the menagerie pose little impediment to a bear that decides to breach a fence. The brown bears currently residing at the facility are sub-adults and have reached less than 50% of their adult size and weight. In addition, the brown bear species (*Ursus arctos)* has fundamental behavioral differences in relationship to a black bear that may increase the potential risks to human safety in some situations. In 1991, a black bear escaped from the menagerie through a hole in the perimeter fence, demonstrating that accidental escape can occur. Along the perimeter fence there is a buffer (c.a. 10 feet) sufficient to drive a pickup truck. This buffer is inadequate to prevent trees from falling and compromising the integrity of the fence. Fallen trees could allow ingress or egress of wild or captive bears, respectively, which would pose a significant risk to human safety. Any captive bears that escape the menagerie would pose a public safety hazard. Similarly, any wild bear attracted to the menagerie and/or breaching the menagerie fence would pose a hazard to public safety. Most of these safety risks can be mitigated by constructing improved fencing that minimizes the potential for contact between visitors and captive bears (see Required Stipulations below). Additional electrified fence arrays internal and external to the perimeter fence would minimize the potential for ingress and egress of wild and captive bears, respectively. However, despite the Required Stipulations and recommended mitigation measures, the potential for physical harm to staff and the public from brown bears is not sufficiently mitigated under Alternative A (the Proposed Action).

Conflict with State Law, Regulations, Standards, or Formal Plans

Current Montana Statutes and Administrative Rules require that animals maintained at a roadside menagerie be confined in "cages of such strength and type of construction that it will be impossible for said animals to escape." In licensing the Kilpatrick roadside menagerie in 1991, the FWP determined that the fencing requirements and stipulations upon which the permit was conditioned fulfilled that requirement for the holding of black bears. FWP does not, however, consider the fence design approved for the 1991 license to be adequate for the confinement of brown bears. Therefore, approval of alternative A would create a significant impact concerning conflict with State law, regulations, standards, or formal plans.

Current Montana Statutes and Administrative Rules also require that "an effective barrier, well supported, shall be constructed around cages or enclosures on the side or sides where the public may approach them to safeguard the public and the animals from injury." Again, upon initial licensure of the Kilpatrick roadside menagerie in 1991, FWP determined that the concept of the car acting as an adequate barrier was sufficient to allow the drive through concept for the black bears. Regarding alternative A, however, the placement of brown bears under the same drive through situation in which the car is the "barricade" while the brown bears are free roaming is not considered by FWP to be adequate. This situation has been identified as a potentially significant impact which cannot be mitigated under alternative A

Establishment of a Precedent or Likelihood that Future Actions with Significant Environmental Impacts would be Proposed

A significant impact was identified in the draft EA concerning approval of alternative A. Other facilities in Montana that currently house brown bears have been required to comply with the current Montana Statutes and Administrative Rules for permanent enclosures and barricades referred to in the section above. The approval of alternative A, allowing brown bears to be housed under the conditions the applicant proposes, would not only establish a precedent but could also effectively negate the enforcement of those laws and regulations at current or future roadside menageries licensed by the state of Montana wishing to exhibit brown bears.

STIPULATIONS AND MITIGATION MEASURES

The stipulations and mitigation measures described in this section address potential impacts identified for the proposed Kilpatrick roadside menagerie under alternative B, the FWP preferred alternative. FWP would require actions to ensure the protection of environmental resources and of public safety. Other potential impacts resulting from licensure under alternative B are addressed as mitigation measures that are recommended by FWP for the applicant to remain in compliance with state and federal environmental laws, but are not required.

Stipulations Specific to Alternative B

1. All bears must be sterilized.
2. All bears must be tattooed with a unique code.
3. Food storage must be in odor-proof containers as per USDA APHIS rules.
4. A veterinary-care plan must be developed and implemented, including descriptions of specific vaccination schedules if any are implemented.
5. No road-killed ungulates may be in the feeding program.
6. All caging provisions of the roadside zoo and menagerie regulations apply for brown bears (12.6.1302). Caging requirements for the black bears are relaxed because cars are considered a portion of the enclosure.
7. Fencing requirements:
   a. Backup fence energizer, 12-volt system, deep cycle battery.
   b. Warning signs adequate to protect public if electrical fence system approached from outside of park.
8. Additional fencing requirements for black bears (in 1991 these were identified as recommendations):
   a. Enhance existing fence per recommendations (as per memo from Mike Madel of 6/14/91), or
   b. Develop outside perimeter fence and use trained dogs to minimize or prevent bear escapement or entry and human entry or injury.
9. Permit review – annually with revocation rights.
10. Escaped bears – owner liable for damage and/or expenses incurred in capturing escaped bears.
11. Report ingress of any wild bears or egress of captive bears to the Montana FWP immediately. The report must contain the probable reason why or how ingress/egress occurred.
12. Remove bear fecal matter on a daily basis. Collected fecal material should be stored in odor-proof containers until removal from the site and disposed at a site isolated from surface water and groundwater. Disposal must meet county solid waste regulations.

Under Alternative B, the brown bears would be housed in a manner consistent with Administrative Rules of Montana (ARM) 12.6.1301 – 12.6.1309, where brown bears would be confined at all times in cages of such strength and type of construction that it would be impossible for said brown bears to escape and additional fencing would be installed to prevent the public from approaching the bears.

Recommended Mitigation Measures Specific to Alternative B

The following mitigation measures address minor impacts identified in the Kilpatrick Roadside Menagerie EA for resources having the most potential affects from Alternative B:

Land Resources

- Revegetate soils disturbed by construction activities or concentrated bear activity.
- Rotate the use of areas within the menagerie, allowing vegetation to recover in rested areas. Revegetate intensely used areas.

Air Resources

- To further reduce odors, areas with accumulations of urine may be treated with water and lime.

Vegetation Resources

- Monitor the proposed roadside menagerie site for invasion of noxious weeds and treat affected areas in a timely manner.
- Rotate bear utilization areas to allow for disturbed vegetation to recover
- Revegetate disturbed areas.

Wildlife Resources

- Current fencing may be inadequate to prevent ingress of wild bears or egress of captive bears. An additional electrified fence array, both interior and exterior to the perimeter fence is recommended. Such an array would consist of alternating hot and ground wires to a height of 48 inches. This design is used by FWP to secure orchards and apiaries. FWP can provide details of the design.
- Remove trees within 20 feet of the perimeter fence on either side of the enclosure and secure a 3/8-inch steel cable to the top of the fence to prevent excessive fence compression should a tree fall on it.
- Inspect fences on a regular basis and immediately after events likely to damage fences to ensure integrity.
- Store all trash in odor-proof containers.
- Provide literature to visitors that describe the dangers of both wild and captive bears.

Risk/Health Hazards

- Provide rabies vaccinations to those staff working closely with bears.
- Train staff to recognize symptoms of diseases to which bears are susceptible.
- Provide literature to visitors that describe the dangers of both wild and captive bears.

Cultural Resources

- Stop work in the area of any observed archeological artifact. Report discovery of historical objects to the Montana Historical Society in Helena.

SUMMARY OF PUBLIC COMMENTS AND FWP RESPONSES

Public comments for the Kilpatrick Roadside Menagerie EA were accepted from April 18, 2003 through May 6, 2003. FWP received five written public comment submittals during the comment period. Substantive issues and questions raised during the comment period

are summarized below, along with FWP responses. Public comments are considered substantive if they relate to inadequacies or inaccuracies in the analysis or methodologies used in the Draft EA, or identify new impacts or recommend reasonable new alternatives or mitigation measures, or involve disagreements or interpretations of impact significance. Comments, which express personal preferences or opinions on the proposal rather than on the evaluation itself, are not specifically addressed.

Issue #1: Tourists go home with many fond memories of the bears they have seen at the bear park in a pretty much natural habitat. The bears are well cared for.
Response: Comment noted.

Issue #2: I feel Mr. Kilpatrick has been picked on. I can see why he is getting upset at the rules and regulations – every year you guys torture him.
Response: Comment noted. In order to maintain a roadside menagerie in the state of Montana, a licensee must be inspected annually and must comply with the laws of the state as well as any stipulations or conditions attached to their license. No new stipulations had been added to Mr. Kilpatrick's license since his initial licensure in 1991.

Issue #3: I have seen the bears at the Bear Park and you can tell they're not happy. They need space and that's not big enough.
Response: Comment noted.

Issue #4: This person has operated in open defiance without the proper permit. He has exhibited grizzly (brown) bears in violation of his agreement with FWP. Please shut him down.
Response: Comment noted. This EA has been prepared in response to a district court order and originated from action by FWP to revoke the license for the facility due to issues of non-compliance.

Issue #5: One of our concerns is public safety. The highway department has informed the businesses on this stretch of HWY 2 that it is illegal to park or advertise on the right of way. Mr. Kilpatrick has a pick-up truck with an advertising sign in it which he parks on this right of way. This form of advertising, as well as customer parking, just off the pavement, blocks the view and creates a hazard to people re-entering the highway from his drive. He should be required to provide a safe parking environment for his customers on his own property just as other businesses must.
Response: Comment noted. FWP does not have authority to enforce the laws of the Department of Transportation. The County Sheriff or the Montana Highway Patrol has that authority.

Issue #6: Mr. Kilpatrick's current fence locations are not entirely on his property. He had been asked to re-locate a portion of the fence after that section fell down in the spring of 1999 and he refused, showing total disregard for legal property lines.
Response: Comment noted. Again, property line issues or disputes are under the jurisdiction of local law enforcement.

CONCLUSION OF THE EA

The Draft EA, as modified herein, and this Final EA are approved as the Final EA for the Kilpatrick roadside menagerie. The preferred alternative is alternative B, modified with the requirements listed in this Final EA. Based on this review, it is determined that alternative B with the required stipulation and recommended mitigation measures would not have a significant impact on the environment and that an EIS will not be required.

ANALYSIS OF IMPACT ON PRIVATE PROPERTY

MEPA requires FWP to identify and analyze environmental impacts of the Proposed Action and potential mitigation measures. MEPA, as revised by Senate Bill 231 of 1995, also requires agencies to evaluate the impact on private property of regulatory actions, such as denial of a permit or establishment of permit conditions (75-1-201, MCA). The Environmental Quality Council (EQC) has established procedural guidelines to implement these requirements. The analysis provided in the Draft EA was prepared in accordance with implementation guidance issued by the EQC.

In addition, the Private Property Assessment Act (2-10-101, MCA, et seq.) requires agencies to determine whether proposed actions by the State of Montana have "taking or damaging implications", such as to constitute a deprivation of private property in violation of the United States or Montana constitutions and, if so, to perform an impact assessment to determine the likelihood that a state or federal court would hold that the action is a taking or damaging, to review alternatives, and to determine the estimated cost of compensation. In accordance with the Act, the attorney general has prepared guidelines, including a checklist, to assist agencies in identifying and evaluating actions with taking or damaging implications.

The Draft EA contains FWP's completed checklist with respect to the stipulations recommended in the preferred alternative and has found that the preferred alternative does not have taking or damaging implications and that an impact assessment is not required.

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