

**CINNABAR TRACT ADDITION
(GREY OWL FISHING ACCESS SITE)
ENVIRONMENTAL ASSESSMENT**

DECISION NOTICE

**Montana Fish, Wildlife & Parks
Region Three, Bozeman
February 13, 2006**

This Decision Notice summarizes the public comment received on the proposed Cinnabar Tract Addition to the Grey Owl Fishing Access Site; presents the decision reached on this proposed action by the Region Three Supervisor for Montana Fish, Wildlife & Parks; and provides the rationale for that decision.

Original Proposed Action

On January 28, 2005, Montana Fish, Wildlife & Parks (FWP) released a draft Environmental Assessment (EA) for the Cinnabar Tract Addition, Grey Owl Fishing Access Site, located along the Yellowstone River in Park County. The EA proposed that FWP acquire a 5-acre tract by donation from the Cinnabar Foundation, and add this tract to the existing Grey Owl Fishing Access Site (FAS).

As presented in the EA, the purposes of the proposed acquisition are to provide public recreational access along an additional approximately one-half mile of the Yellowstone River and to conserve riparian habitat. FWP anticipated that the site would be used for walk-in angling from the Grey Owl FAS and as a landing, resting and fishing spot for boaters. The site was not envisioned as providing a public boat launch.

Public Participation under the Montana Environmental Policy Act

The 25-page Environmental Assessment provided the public with the details of the proposed Cinnabar Tract Addition and its effects on the natural and human environment, in compliance with the requirements of the Montana Environmental Policy Act (MEPA). Public notification of the proposed action was facilitated with the distribution of legal notices printed in the Bozeman Daily Chronicle, and The (Ennis) Madisonian. In addition, the EA was posted on the Fish, Wildlife & Parks webpage: <http://fwp.state.mt.us>.

An initial 30-day comment period was opened through February 28, 2005. The public comment period was extended by public notice through March 15, and then again through April 15. FWP held a public hearing in Emigrant on April 5, allowing attendees to ask questions and discuss the proposal with FWP officials and then providing an opportunity for formal public comment.

FWP also held an onsite meeting at the Cinnabar Tract on June 2, providing an opportunity for the interested public to see the Cinnabar tract boundaries; review the manner in which existing access easement holders are making use of the tract; and exchange ideas on the project.

Summary of Public Comment

FWP received 27 written comments in response to the Environmental Assessment. Eighteen of the comments were in support of the Preferred Alternative B, which called for FWP to accept the donation of the Cinnabar tract. Six comments opposed the acquisition, and three raised issues, but did not directly support or oppose the acquisition.

Comments in favor of the Preferred Alternative generally expressed support for public access, angling opportunity and keeping the land undeveloped.

Comments in opposition to the Preferred Alternative focused on the potential negative impacts of public ownership on existing private rights to use the Cinnabar Tract. Commenters noted that the environmental assessment stated that FWP might close the access road to the northern portion of the tract and manage the land for walk-in only use. This possibility was deemed unacceptable by several commenters, who referenced their reserved easement (provided by deed in the late 1980s to the purchasers of lots in three neighboring subdivisions) that allows them to access and park on the northern 200 feet of the tract. They said that FWP closure of highway access, or limitation of the access to walk-in, would be in contradiction to these pre-existing rights and would reduce the value of their properties tied to this river access. Some commenters suggested that, if FWP did acquire the entire tract, FWP should provide a private signed and locked gate to maintain the ability of existing access-rights holders to access the property by vehicle.

The Cinnabar Foundation's representative noted that Cinnabar's granting of the property to FWP would not, and legally could not, impair the existing access and parking right held by the subdivision lot owners. He added, however, that the lot owners' right of access is not exclusive, so that any current or future owner of the tract could allow the general public to use the land. And he stated that the existing access and parking right applies only to the northern 200 feet of the tract, so that a future owner might seek to limit the subdivision lot owners' use to

this portion of the tract only. At present, use of the Cinnabar tract by the lot owners appears to extend considerably to the south of the northern 200 feet.

Several of the comments addressed weed control, indicating that FWP should limit vehicle use to reduce weed problems and that FWP should dedicate adequate resources to control weeds at the site.

The Montana Historical Society responded that a cultural resource inventory is not necessary for the acquisition.

Comments and discussion at the April 5 public hearing in Emigrant reiterated both the support for the project and the concerns expressed in the written comments. FWP representatives acknowledged that the department would fully respect the existing access rights of the subdivision owners with respect to the northern part of the property.

At the June 2 onsite meeting, participants reviewed site considerations in relation to the 200-foot access and parking easement and how the property is currently used by the access rights holders. Discussion then focused on the possibility that FWP might pursue a transaction structure that would result in FWP ownership of the southern portion of the tract only. This potential course of action was seen as a way to allow the existing drive-in access to remain as it is now, serving the access/parking rights holders, but not serving the general public. Discussion noted that, if FWP were to own the entire tract, there would be an increased likelihood that the Montana Department of Transportation (MDT) would evaluate the suitability of the existing driveway for public access from Highway 89 and might close the driveway to all use. A further comment by FWP staff noted that, whoever owned the northern portion; area residents need to recognize the possibility that MDT might take action to close the driving access if it determined it to be unsafe. Discussion followed about who might take ownership of the northern portion of the tract, and a neighboring landowner agreed to investigate the possibility of setting up a legal entity that could fill this role.

Subsequent additional discussion with a representative of the Cinnabar Foundation indicated that the foundation was committed to disposing of the tract in a single transaction, rather than splitting the tract into northern and southern parcels for separate conveyances.

Decision and Rationale

In consideration of the environmental assessment, the record of public comment, the onsite review, the land donor's position, and the existing easement reservation, it is my decision that Montana Fish, Wildlife & Parks (FWP)

accept by donation the 5-acre Cinnabar Tract along the Yellowstone River in Park County, but that it retain title only to the southern approximately 3.5 acres. This portion of the Cinnabar Tract will be surveyed and added to the existing Grey Owl Fishing Access Site, extending that fishing access site for about one-third of a mile to the north. Acquisition of the 3.5 acres will be accomplished by FWP acceptance of a quitclaim deed from the Cinnabar Foundation for the entire 5 acres and a simultaneous conveyance by FWP quitclaim deed of the northern 1.5 acres to the River Access Maintenance Group, Inc., (see below) subject to a reserved right of way of administrative access for FWP, as discussed below.

FWP's decision to acquire the southern approximately 3.5 acres is based on the additional public recreational opportunities and open-space wildlife habitat that this tract will provide in FWP ownership. Public access to this acquired portion of the Cinnabar Tract will be from the river or by walking onto the property from the adjacent Grey Owl FAS. Neighboring private landowners will also be able to walk onto the FWP property. There will be no public road access to this portion of the Cinnabar Tract.

FWP will not retain ownership of the northern approximately 1.5 acres of the Cinnabar Tract. Part of this northern portion is encumbered by the river access and parking easement in favor of multiple private landowners in three nearby subdivisions. FWP ownership of this portion of the Cinnabar tract would increase the likelihood that the Montana Department of Transportation might close or require upgrading of the access road to public-use standards. FWP does not wish to take an action that would adversely affect the ability of existing rights holders to continue to use the property consistent with their access and parking easement.

Because the Cinnabar Foundation is divesting itself of the entire Cinnabar Tract, and desires to do so in a single transaction, a separate nonpublic entity was needed to take ownership of the land that FWP will not retain. To fill this need, several neighboring landowners have incorporated a new nonprofit organization, River Access Maintenance Group, Inc., to manage and maintain the 1.5 acres in a manner consistent with the provisions of the existing river access and parking easement. According to River Access Maintenance Group's articles of incorporation, membership in the organization is open to all subdivision landowners who hold the access and parking rights to the Cinnabar Tract; however, persons holding these rights do not have to join River Access Maintenance Group to exercise their access rights.

As part of the transaction, FWP will retain an administrative access easement across the northern 1.5 acres to reach the northern boundary of the Grey Owl FAS. This access easement will facilitate FWP management of the fishing access

site for purposes such as weed control, property maintenance and public safety. There will be no public right of use or access across this northern portion of the Cinnabar tract, which will be under the ownership of River Access Maintenance Group, Inc.

Overall, the transaction as proposed in this Decision Notice should have no adverse effect on the holders of the pre-existing access and parking rights on part of this northern portion of the tract. These rights will stay fully intact and, after the land conveyances, will apply to lands owned by the nonprofit River Access Maintenance Group, rather than by the Cinnabar Foundation. Moreover, the extent of the northern portion of the tract will substantially exceed the 200-foot distance prescribed in the parking/access easement, and will thus ensure adequate property to accommodate the existing use patterns and parking needs of the easement holders.

In summary, in consideration of the public benefits of FWP land acquisition of the Cinnabar Tract and in further consideration of the existing private rights to use a portion of the Cinnabar Tract, I have determined that the appropriate balance of interests is for FWP to accept donation of a quitclaim deed to the entire 5-acre Cinnabar Tract, but that it retain ownership of only the southern approximately 3.5 acres, including about 1/3 of a mile of Yellowstone River frontage, and that FWP simultaneously convey the remaining northern approximately 1.5 acres of the tract to the River Access Maintenance Group, Inc., subject to a reserved right of way easement providing FWP with administrative access across the 1.5 acres to the northern boundary of the Grey Owl FAS.

Compliance with the Montana Environmental Policy Act

The draft Environmental Assessment noted no adverse impacts to the natural or human environment in the event that Montana Fish, Wildlife & Parks were to acquire the entire Cinnabar tract. The EA further noted that FWP acquisition would yield positive impacts for habitat and public recreational use.

Subsequent to the release of the EA and as discussed in this Decision Notice, FWP has determined that public ownership of the entire tract has the potential to adversely effect the interests of those parties with existing river access and parking easement rights to the northern portion of the tract.

As proposed herein, FWP will accept a quitclaim deed to the entire 5-acre tract but will only retain title to the southern 3.5-acre portion of the tract. This partial acquisition will provide the conservation and recreational benefits noted above on the lands acquired. The northern 1.5-acre portion of the tract, under ownership of River Access Maintenance Group, Inc., will also remain in an

undeveloped condition, continuing the status quo as open space and as available recreational land for those individuals with access/parking rights.

Based on this evaluation, along with the analysis in the Environmental Assessment and in consideration of applicable laws, regulations, and policies, I have determined that this action proposed in this Decision Notice will not have a significant effect on the natural or human environment. Therefore, an Environmental Impact Statement will not be prepared. The EA and this Decision Notice will serve as the final Environmental Assessment, completing FWP's process of compliance with the Montana Environmental Policy Act.

Completion of the Proposed Action

The Montana Fish, Wildlife and Parks Commission must approve this proposed action before FWP can conclude its acquisition of the approximately 3.5 acres of the Cinnabar Tract. The Cinnabar Tract acquisition is expected to be on the agenda of the Commission's April 2006 meeting. For more information about this meeting, please call FWP at (406) 444-7826 or check the FWP website: <http://fwp.mt.gov/insidefwp/department/commission/default.html>

If you have questions regarding this Decision Notice, please contact Pat Flowers, Regional Supervisor, Montana FWP, 1400 South 19th Avenue, Bozeman, MT 59718; phone (406) 994-4042; email pflowers@mt.gov.

Patrick J. Flowers, Supervisor
Region Three
Montana Fish, Wildlife & Parks