



Montana Fish, Wildlife & Parks **RECEIVED**

1400 South 19th Avenue
Bozeman, MT 59718

MAY 17 2006

LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE, June 6, 2006

To: Governor's Office, Mike Volesky, State Capitol, Room 204, P.O. Box 200801, Helena, MT 59620-0801
Environmental Quality Council, State Capitol, Room 106, P.O. Box 201704, Helena, MT 59620-1704
Dept. of Environmental Quality, Metcalf Building, P.O. Box 200901, Helena, MT 59620-0901
Dept. of Natural Resources & Conservation, P.O. Box 201601, Helena, MT 59620-1601
Montana Fish, Wildlife & Parks:

Director's Office FWP Commissioners Fisheries Division Parks Division
Lands Section Legal Unit Wildlife Division Design & Construction
MT Historical Society, State Historic Preservation Office, P.O. Box 201202, Helena, MT 59620-1202
MT State Parks Association, P.O. Box 699, Billings, MT 59103
MT State Library, 1515 E. Sixth Ave., P.O. Box 201800, Helena, MT 59620
James Jensen, Montana Environmental Information Center, P.O. Box 1184, Helena, MT 59624
Janet Ellis, Montana Audubon Council, P.O. Box 595, Helena, MT 59624
George Ochenski, P.O. Box 689, Helena, MT 59624
Jerry DiMarco, P.O. Box 1571, Bozeman, MT 59771
Montana Wildlife Federation, P.O. Box 1175, Helena, MT 59624
Wayne Hurst, P.O. Box 728, Libby, MT 59923

Ladies and Gentlemen:

Montana Fish, Wildlife & Parks (FWP) proposes to accept the donation of a fishing access easement, providing the public with permanent walk-in access to a mile-long, 50-foot-wide strip of land along the upper Madison River. The easement, to be granted to FWP by the owner of the underlying property, would connect two existing FWP fishing access sites, Raynolds Pass and Three Dollar Bridge, on the north side of the Madison River. Acceptance of this easement by FWP will allow the public to walk between these fishing access sites, and also to fish along the river throughout the length of the easement area.

This draft EA is available for review from FWP at the address provided above or viewed on FWP's Internet website: <http://www.fwp.mt.gov/publicnotices>.

Montana Fish, Wildlife & Parks invites you to comment on the attached proposal. Public comment will be accepted until 5:00 pm June 16, 2006. Comments should be sent to the above address, c/o Raynolds Pass EA or e-mailed to: brrich@mt.gov.

Sincerely,

Patrick J. Flowers
Region Three Supervisor

Attachment

Environmental Assessment

RAYNOLDS PASS FISHING ACCESS EASEMENT

May 2006



***Montana Fish,
Wildlife & Parks***

Raynolds Pass

Fishing Access Easement

ENVIRONMENTAL ASSESSMENT

PART I. PROPOSED ACTION DESCRIPTION

1. **Type of proposed state action:** Montana Fish, Wildlife & Parks (FWP) proposes to accept the donation of a fishing access easement, providing the public with permanent walk-in access to a mile-long, 50-foot-wide strip of land along the upper Madison River. The easement, to be granted to FWP by the owner of the underlying property, would connect two existing FWP fishing access sites, Raynolds Pass and Three Dollar Bridge, on the north side of the Madison River. Acceptance of this easement by FWP will allow the public to walk between these fishing access sites, and also to fish along the river throughout the length of the easement area. Acceptance of the fishing access easement by FWP will provide an exceptional recreational fishing opportunity, by allowing the public to walk along and fish a three-mile stretch of the Madison River, consisting of the existing fishing access sites and this proposed fishing access easement.

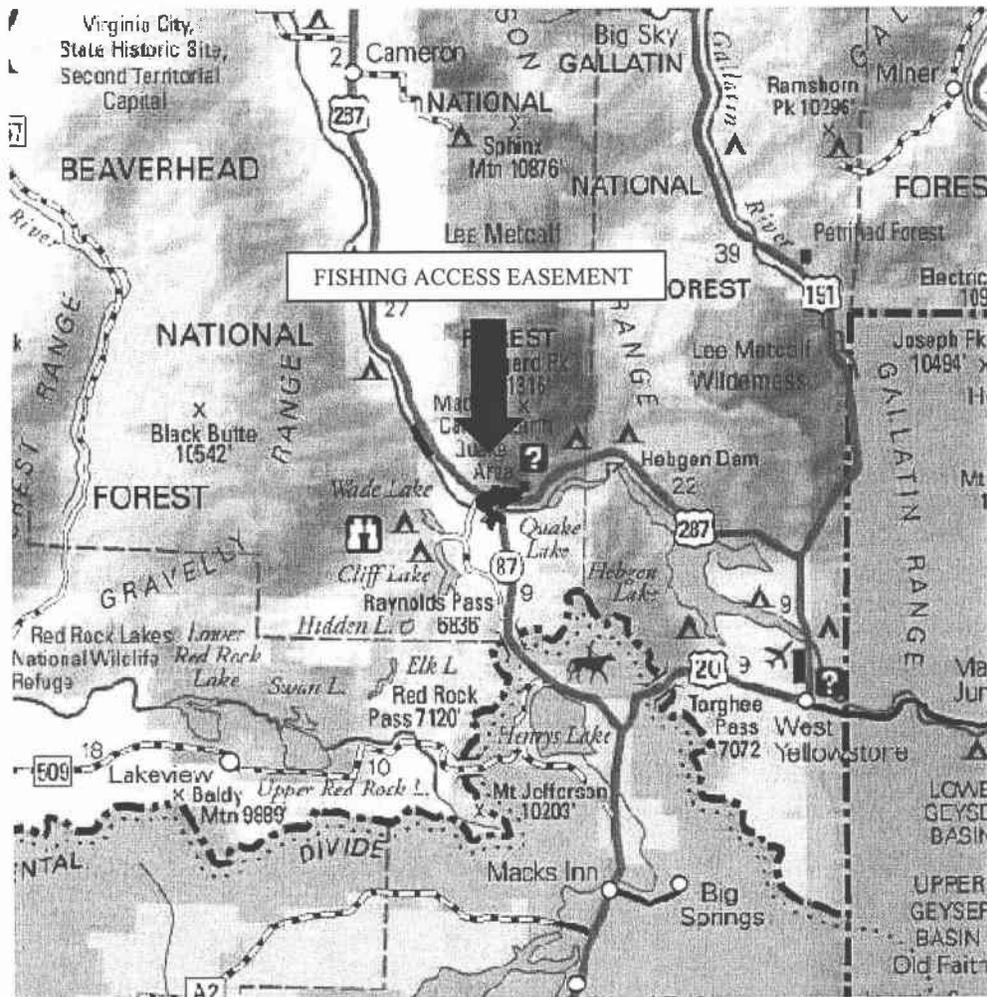
2. **Agency authority for the proposed action:** The 1977 Montana Legislature enacted Section 87-1-605, Montana Code Annotated (MCA), which directs FWP to acquire, develop and operate a system of fishing accesses. The legislature established a funding account to ensure that this function would be accomplished. Sections 12-8-213, 23-1-105, 23-1-106, 15-1-122, 61-3-321, and 87-1-303, MCA, authorize the collection fees and charges for the use of state park system units and fishing access sites, and contain rule-making authority for their use, occupancy and protection.

Section 23-1-110, MCA, prescribes public notice and reporting requirements for any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns. Procedures for implementing this law are provided in Title 12, Chapter 8, Sub-chapter 6, Administrative Rules of Montana (ARM). FWP has determined that the proposed acceptance of this donated fishing access easement will not change fishing access site features or historical use, and thus does not trigger the notice and reporting provisions of Section 23-1-110, MCA. FWP's determination reflects the existing situation on the ground, as the owners of the proposed easement property have allowed public fishing access for decades. Thus, the granting of the easement will simply maintain the status quo in terms of site features and use patterns.

3. **Name of project:** Raynolds Pass Fishing Access Easement

4. **Project sponsor:** Montana Fish, Wildlife and Parks

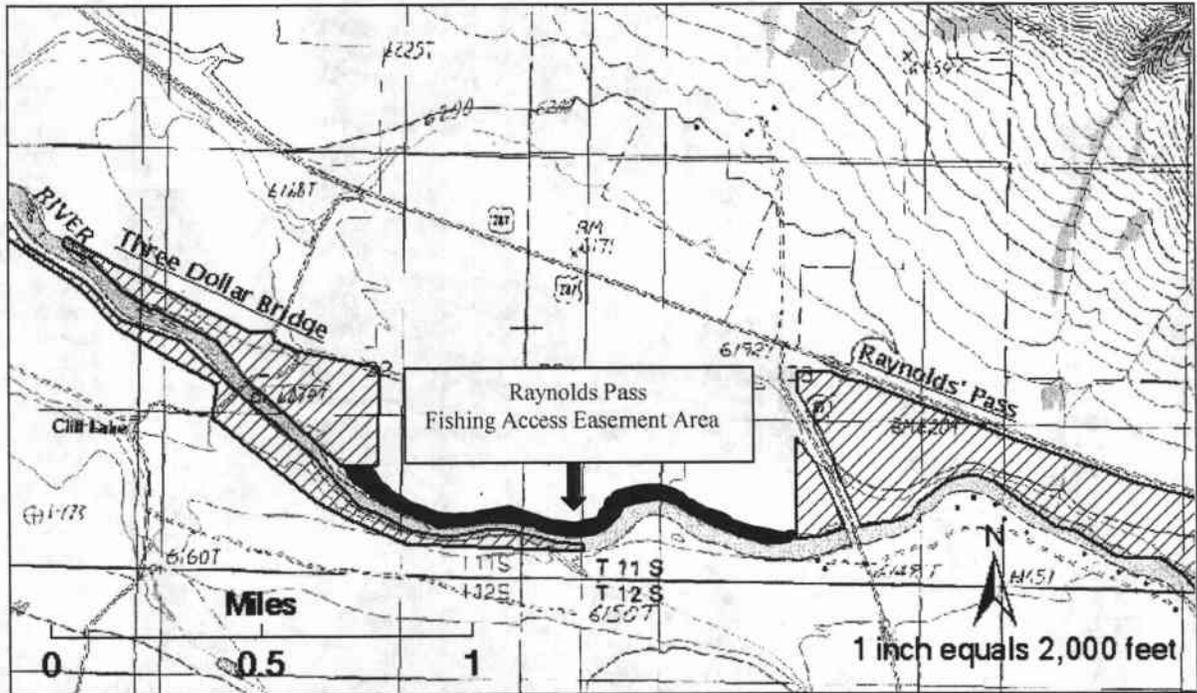
5. **Project location:** The Raynolds Pass Fishing Access Easement is located in southern Madison County, approximately 30 miles west of West Yellowstone near the junction of U.S. Highway 287 and Montana Highway 87. The project includes lands in Sections 32 & 33, Township 11 South, Range 2 East. The mile-long easement would connect the southwest part of the Raynolds Pass Fishing Access Site (FAS) with the northeast part of the Three Dollar Bridge FAS. The easement can be reached only by walking from these existing FASs, each of which is owned by FWP and each of which has a large established parking area and a latrine.



**Area Map Showing Location (Fish Outline) of
Raynolds Pass Fishing Access Easement**

- 6. Purpose and Terms of the Fishing Access Easement:** As stated in the grant of easement (see Exhibit B), “The Easement provides perpetual nonmotorized and nonmechanized public access on and across the Easement Area for the purpose of allowing the public to access the Madison River bordering Grantor’s land for fishing and for the purpose of allowing the public to travel across the Easement area to access Grantee’s [FWP] lands that border the Easement Area to the east and west.” The easement area is defined as a strip of land 50-foot-wide and approximately one mile long along the north shore of the Madison River.

The Easement allows FWP to develop a pedestrian trail as might be necessary to manage and direct foot traffic within the Easement area. The trail may not be more than two feet wide. FWP can also place informational signs, and can work with the landowner to modify any fencing in the area to accommodate public use while meeting the landowner’s needs to manage livestock movement. The Easement does not provide public access for hunting or camping.



Area Map Showing Proposed Fishing Access Easement Connecting the Existing Fishing Access Sites

- 7. **Transaction Details and Costs:** The landowner, Olliffe LLC, has executed the easement by notarized signature, and has placed the document in escrow with a Madison County title company. The landowner executed the easement coincident with the closing of a conservation easement purchase by the U.S. Forest Service on an upland portion of the Olliffe ranch. Although the property covered by the fishing access easement is not part of the Forest Service conservation easement, the landowner cooperated with the nonprofit Trust for Public Land to incorporate the donation of the fishing access easement to FWP as part of the overall project. The landowner’s agreement to provide the fishing access easement was based on the family’s personal interest in keeping land open for public recreation. No compensation was given or will be paid to the landowner for the fishing access easement, aside from the ceremonial “one dollar” mentioned in the document.

- 8. **Site Characteristics and Land Use:** The proposed Reynolds Pass Fishing Access Easement covers approximately six acres in a mile-long, 50-foot-wide strip that generally runs in an east-west direction along the north shore of the Madison River. The land slopes from higher ground on its north edge (elevated about 10 to 15 feet above river level) down to river level on its southern boundary. Vegetation consists of a mixture of sagebrush, grasses and forbs on the drier upland sites, with riparian shrubs (willow, alder, birch) bordering the river. The riparian area hosts occasional marshy areas that are fed by spring seepage from the hill slope. Spotted knapweed is present on the easement area and vicinity. FWP controls spotted knapweed on its adjacent fishing access sites through an annual spraying program. Weed control on the easement area will remain the responsibility of the landowner but, to the extent that resources allow, FWP will cooperate in locating weed patches and instituting control actions.

The land is used for livestock grazing, with a limited numbers of cows and horses pasturing in the 200-acre pasture that includes the easement area. The landowner has permitted open public fishing

access to the Madison River for decades. Trails have developed on the property from use by livestock and anglers, but no trail construction has been undertaken on the property.

The Madison River in the vicinity of the easement provides outstanding fishing for brown and rainbow trout, and is heavily used throughout the summer and fall. It is not uncommon for the Three Dollar Bridge Fishing Access Site, just downstream from the easement area, to host 10 or more angler cars, with a similar number parked two miles east at the Raynolds Pass Fishing Access Site, which forms the upstream boundary of the easement area. The fishing season on this section of river runs from the third Saturday in May through the end of February, and is catch-and-release for anglers over 14 years of age, with one trout allowed for younger anglers.

9. **Use and Management of the Fishing Access Easement:** If FWP accepts the Raynolds Pass Fishing Access Easement, current land uses would continue. Grazing management will remain at the discretion and control of the landowner, and weed control will remain the responsibility of the landowner. Public fishing use is currently allowed by the landowner. The property is neither signed nor posted, and anglers are allowed to use whatever routes they choose to access the river or walk through the property. FWP does not anticipate any change in this situation in the foreseeable future. Also, because the land is already open to public use, FWP acceptance of the easement should not have the effect of increasing the amount of public use.

FWP will keep in periodic communication with the landowner to learn if public use of the easement area is presenting any problems or concerns. If use conflicts are occurring, or if the landowner desires to strictly limit public access to the area within the 50-foot-wide easement, FWP will place signs on the property as needed to indicate the boundaries of public use. Additionally, FWP could review the need for any potential trail improvements that might alleviate public use conflicts or environmental damage and, consistent with the easement's limitation of a two-foot-wide trail, could undertake trail improvement to manage and direct public use. FWP is also authorized by the easement to install fence-crossing structures or pedestrian gaps if necessary to ensure that the landowner's livestock fencing still allows public walking use of the easement area.

PART II. ALTERNATIVES

1. Alternative actions available to Montana Fish, Wildlife & Parks include the following:

Alternative A: No Action

If no action is taken, FWP would not acquire the Raynolds Pass Fishing Access Easement. Public access along this mile of Madison River bank would be at the discretion of the landowner. Although the current landowner has a history of providing for such access, if land ownership is transferred by sale or other means in the future, the new landowner could prohibit public use of this land above the normal high-water mark. In this situation, anglers could continue to exercise their rights to walk along the Madison River, consistent with the Montana Stream Access Law which allows for public use on the streambed and up to high-water mark. However, this section of the upper Madison River is characterized by swift water, strong current and slippery boulders and thus provides difficult walking conditions. Also, this section of river is closed to angling from boats. Thus, the practical effect of FWP's refusal to accept the Easement could be to severely limit future public fishing use of this mile-long section of the north bank of the Madison River.

Alternative B: Purchase the Property

The landowner has not offered the property for sale to FWP, so this alternative is not reviewed further in this environmental assessment. FWP operates on a "willing seller" basis, and would not move forward on a property purchase in any situation in which the landowner does not wish to sell the property.

Preferred Alternative C: Accept the Donation of the Raynolds Pass Fishing Access Easement

The preferred alternative is for FWP to accept the donation of the Raynolds Pass Fishing Access Easement, providing the public with a permanent right to access the Madison River to fish in the easement area and to travel on foot between the two existing FWP fishing access sites that adjoin the easement area to the west and east. The result of FWP acceptance of the fishing access easement will be to provide an exceptional recreational fishing opportunity, by allowing the public to walk along and fish a three-mile stretch of the Madison River, consisting of the existing fishing access sites and this proposed fishing access easement. While FWP would have the right to develop a trail, present conditions for anglers walking in the easement area are adequate. As a result, FWP is not proposing trail development at this time.

PART III. NARRATIVE REVIEW OF ENVIRONMENTAL IMPACTS

Analysis did not reveal any significant impacts to the human or physical environment from FWP's proposed acceptance of the Raynolds Pass fishing access easement. Land uses and environmental conditions within the easement area and on surrounding lands will continue as they are now.

The easement grants to FWP the right to undertake trail development and improvement, but limits any constructed trail to a two-foot width. FWP may place signs in the easement area as might be necessary to direct public use. The easement area already has numerous informal trails created by use of anglers and livestock, so the purpose of any future FWP trail work or signage would be to improve conditions on the ground by addressing any site-specific erosion problems and by appropriately directing public use within the easement area. If FWP determines the need to construct a trail through the easement area, FWP would ensure that potential impacts on cultural resources are evaluated prior to construction.

The Montana Natural Heritage Program reports the presence of the following rare and wide-ranging species in the vicinity of the property: bald eagle, gray wolf and, in the neighboring mountain ranges, grizzly bear and Canada lynx. The proposed action, by continuing the current pattern of seasonal, low-intensity recreational use of the property, will not adversely impact these species.

Based on an evaluation of impacts of the proposed action to the physical and human environment under MEPA, this environmental assessment reveals no significant impacts from the proposed action. Therefore, an Environmental Impact Statement is not necessary and this environmental assessment is the appropriate level of analysis.

PART IV. ENVIRONMENTAL CHECKLIST

Table 1. Potential impact on physical environment.

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Provided
1. Unique, endangered, fragile, or limited environmental resources				X		
2. Terrestrial or aquatic life and/or habitats				X		
3. Introduction of new species into an area				X		
4. Vegetation cover, quantity and quality			X			
5. Water quality, quantity and distribution (surface or groundwater)				X		
6. Existing water right or reservation				X		
7. Geology and soil quality, stability and moisture			X			
8. Air quality				X		
9. Historical and archaeological sites				X		
10. Demands on environmental resources of land, water, air & energy				X		
11. Aesthetics				X		

Comments

The proposed action will continue the current practice of allowing walk-in public fishing access along the north shore of the Madison River. This use may result in some soil erosion and minor vegetation impacts. FWP manages noxious weeds on its lands to the east and west of the easement area, and will continue to do so. The landowner remains responsible for weed management on the easement area and the adjacent land under this private ownership. However, FWP may cooperate with the landowner in weed identification and control efforts on the easement area, if resources permit.

Table 2. Potential impacts on human environment.

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Provided
1. Social structures and cultural diversity				X		
2. Changes in existing public benefits provided by wildlife populations and/or habitat				X		
3. Local and state tax base and tax revenue				X		
4. Agricultural production				X		
5. Human health				X		
6. Quantity and distribution of community and personal income				X		
7. Access to and quality of recreational activities				X		
8. Locally adopted environmental plans & goals (ordinances)				X		
9. Distribution and density of population and housing				X		
10. Demands for government services				X		
11. Industrial and/or commercial activity				X		

Comments

The proposed action will maintain the current pattern of land use and public recreation, so no impacts on the human environment are anticipated.

Does the proposed action involve potential risks or adverse effects which are uncertain but extremely harmful if they were to occur? No.

Does the proposed action have impacts that are individually minor, but cumulatively significant or potentially significant? No.

PART V. PUBLIC PARTICIPATION

1. **Describe the level of public involvement for this project:** The public will be notified by way of press releases in local newspapers and by public notice on the Fish, Wildlife & Parks webpage: <http://fwp.mt.gov/publicnotices>
2. **Duration of comment period:** The public comment period will extend for thirty days following the release of the EA. Comments will be accepted until 5:00 pm June 16, 2006.

Comments may be e-mailed to brrich@mt.gov (please use the subject line: Raynolds Pass Easement) or mailed to the following address:

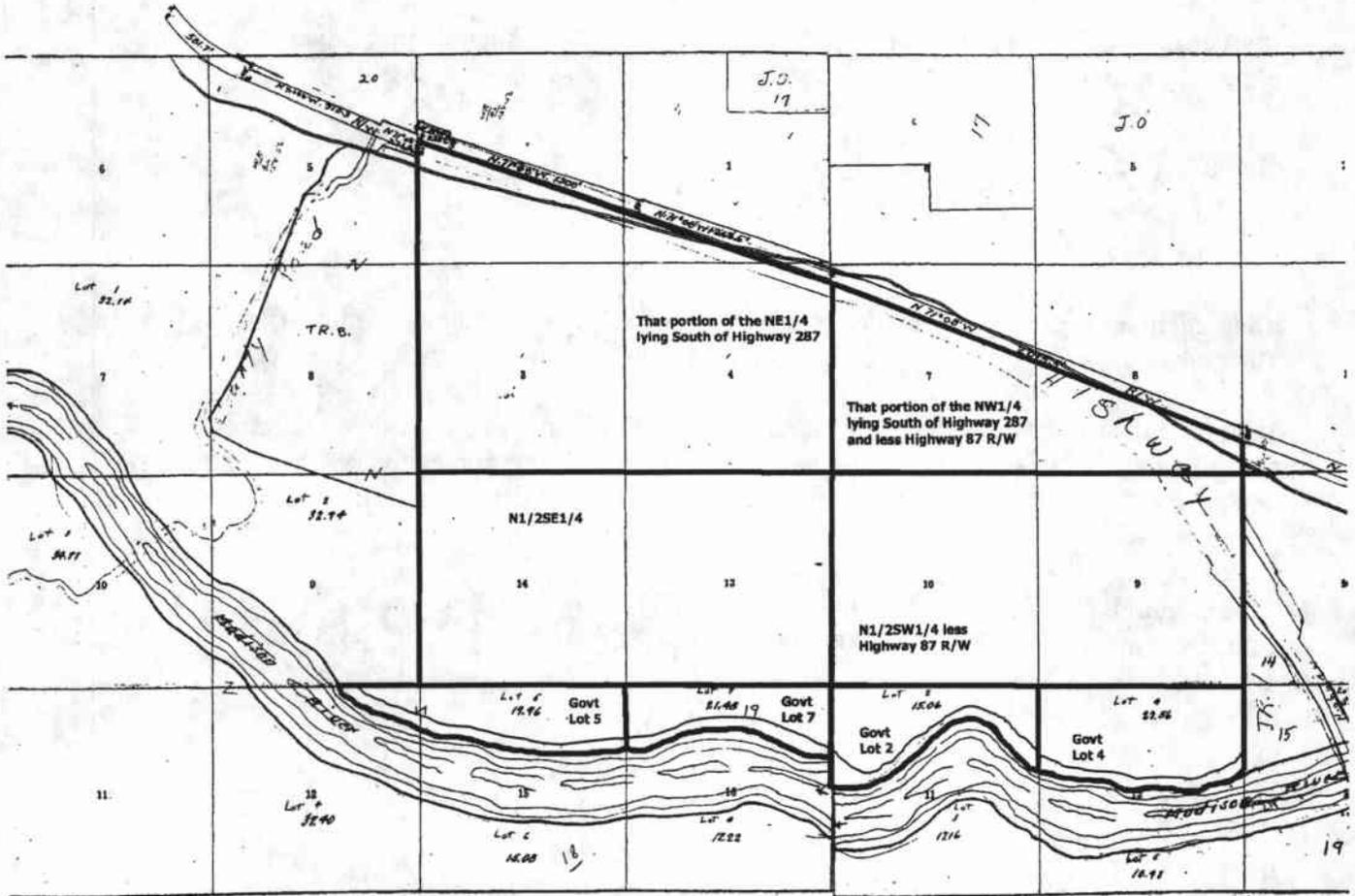
Montana Fish, Wildlife & Parks
Attn: Raynolds Pass Easement EA
1400 South 19th Avenue
Bozeman, MT 59718

3. **Other agencies with jurisdiction or review responsibility:** FWP is not aware of any state, federal or local agency with overlapping jurisdiction or review responsibility for this project.
4. **Agencies consulted:** The Montana Natural Heritage Program was contacted to determine the presence of rare species. The Montana Historical Society will be contacted regarding potential impacts to cultural resources in the event that FWP decides to develop a trail through the Easement area.
5. **Preparation of this Environmental Assessment:** This EA was prepared by Hugh Zackheim, Land Section, Montana FWP, P.O. Box 200701, Helena 59620.

EXHIBIT A – MAP OF THE EASEMENT AREA

SECTION 32 TOWNSHIP 11 SOUTH RANGE 2 EAST

SECTION 33 TOWNSHIP 11 SOUTH



Easement Area is a strip of land extending north for a distance of fifty feet from the north bank of the Madison River in Sections 32 (Lots 5 & 7) and 33 (Lots 2 & 4), T11S, R2E.

EXHIBIT B – PUBLIC ACCESS EASEMENT

THIS GRANT OF EASEMENT, is made this _____ day of _____, 200_, by and between **Olliffe LLC, a Montana limited liability company**, 850 US Highway 287 N, Cameron, MT 59720-9728, hereinafter called the “Grantor”, and the **Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana**, P.O. Box 200701, Helena, MT 59620-0701, hereinafter called the “Grantee”.

WITNESSETH

Grantor, for and in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, does grant and convey unto Grantee, its successors and assigns, for the benefit and use of the public, a perpetual access easement (the “Easement”) for the purpose of allowing the public to have pedestrian access on, over and across an approximately one-mile-long, fifty-foot-wide strip of land, hereinafter termed the “Easement Area”, which is located within and consists of a portion of the following described real property in Madison County, Montana:

Township 11 South, Range 2 East, Principal Meridian Montana:

Section 32, Lots 5 and 7

Section 33, Lots 2 and 4

The Easement Area is shown in Exhibit A, and is further described as the area contained within the following borders:

Beginning at the point at which the eastern boundary line of Government Lot 4, Section 33, meets the Madison River, head in a northward direction along this boundary line for a distance of fifty feet; then head generally west for approximately one mile across the length of Lots 4 and 2 in Section 33 and Lots 7 and 5 in Section 32 along a line that runs parallel to and fifty feet north of the north bank of the Madison River until this line intersects with the east-to-west segment of the western boundary of Lot 5; then head west along this boundary line to its intersection with the north bank of the Madison River; then head east along the north bank of the Madison River for approximately one mile to the point of beginning. As used in this description, the “north bank of the Madison River” shall extend to and include the southern extent of Grantor’s ownership in the Easement Area.

1. PURPOSES OF THE EASEMENT

This Easement provides perpetual nonmotorized and nonmechanized public access on and across the Easement Area for the purpose of allowing the public to access the Madison River bordering Grantor’s land and for the purpose of allowing the public to travel across the Easement Area to access Grantee’s lands that border the Easement Area to the east and west.

2. ADMINISTRATION OF THE EASEMENT

Grantee may develop a pedestrian trail within the Easement Area, or portions thereof, as necessary to manage and direct pedestrian traffic, provided that the width of the developed pedestrian trail does not exceed three feet. As a part of its establishment or maintenance of a trail, Grantee may cut and remove vegetation within the Easement Area, but shall keep any such activity to the minimum necessary. Grantee may place signs within the Easement Area as necessary to provide the public with information regarding the Easement, including but not limited to indicating the boundaries of public use, keeping the public from entering onto Grantor's land outside the Easement Area, and indicating any trail to be used by the public. Grantee may not fence any portion of the Easement Area without prior written permission from Grantor.

Grantor agrees not to develop, construct or place any fixed improvements within the Easement Area that would prevent or unduly interfere with the public's use of the property for pedestrian travel or for access to the Madison River; provided, however, that Grantor reserves the right to place fences on the easement area as necessary to manage livestock movement. If such fences interfere with public pedestrian use of the Easement Area or public access to the Madison River, Grantee may place fence-crossing structures on the land, or may modify fences to provide pedestrian gaps through fences, provided that the fence is modified in a way that continues to restrict livestock movement as intended by Grantor. Grantee must notify Grantor prior to modifying any fence on the Easement Area.

Grantee shall indemnify and defend Grantor, its successors and assigns, from any claim, loss, damage or expense in any way resulting from Grantee's operations under and use of the Easement, including public use, except to the extent such losses, damage or expense is caused or contributed to by Grantor's negligence or other wrongful act or omission.

The Easement is for the access purposes defined herein, and does not convey to the Grantee or to the public the right to hunt, to use motorized or mechanized vehicles or to otherwise recreate on the Easement Area.

3. ADDITIONAL PROVISIONS

The Easement constitutes a servitude on the land and runs with the land.

The Easement is assignable by Grantee, but only with the written consent of the Grantor, which consent shall not be unreasonably withheld.

The terms, covenants, and provisions of this Easement shall extend to and be binding upon the administrators, successors, and assigns of the parties hereto.

It is expressly understood that neither Grantee, nor its successors or assigns, by this grant, acquires any interest in or to the land involved, except the right to use and maintain the Easement Area for purposes of public pedestrian use as specified in this Easement.

Grantee may have the Easement Area surveyed, and may record the survey in the records of Madison County, all at Grantee's expense. Grantor agrees to sign or otherwise execute the

survey as necessary for the purposes of having the survey recorded, provided that the boundaries of the surveyed area are consistent with the boundaries of the Easement Area as defined herein.

IN WITNESS WHEREOF, Olliffe LLC and the Montana Department of Fish, Wildlife and Parks have set their hands on the day and year first above written.

GRANTOR:

Olliffe LLC,
a Montana limited liability company

By: _____

Its: _____

Date: _____

ACCEPTED BY:

Montana Department of Fish, Wildlife and Parks

By: _____

Its: _____

Date: _____

EXHIBIT C

Project Qualification Checklist for Fishing Access Site Improvement or Development

Raynolds Pass Fishing Access Easement

Description of Proposed Project: Montana Fish, Wildlife & Parks proposes to accept a fishing access easement that will allow the public to walk on a 50-foot-wide strip of land along the north bank of the Madison River. This easement represents a continuation of current use at the site. No construction or development is included in this proposal.

The following checklist is a guide for determining whether a proposed action, development or improvement is of enough significance to be subject to rules promulgated under the authority of 23-1-110, Montana Code Annotated. (Please check all that apply and comment as necessary.)

- [] A. New roadway or trail built over undisturbed land?
Comments: *No new roads are proposed.*
- [] B. New building construction:
Comments: *No new building construction is proposed.*
- [] C. Any excavation of 20 cubic yards or greater?
Comments: *No excavation is being proposed.*
- [] D. New parking lots built over undisturbed land or expansion of existing lot that increases parking capacity by 20% or more?
Comments: *No parking lots are proposed.*
- [] E. Any new shoreline alteration that exceeds a doublewide boat ramp or handicapped fishing station:
Comments: *No shoreline will be altered.*
- [] F. Any new construction into lakes, reservoirs, or streams?
Comments: *None*
- [] G. Any new construction in an area with National Registry quality artifacts (as determined by State Historical Preservation Office)?
Comments: *None*
- [] H. Any new above ground utility lines?
Comments: *None*
- [] I. Any increase or decrease in campsites of 25% or more of an existing number of campsites?
Comments: *No campsites are planned.*
- [] J. Proposed project significantly changes the existing features or use pattern; including effects of a series of individual projects?
Comments: *Historical patterns of use will not be altered.*

Reviewer: Hugh Zackheim
Land Section, FWP Helena

Date: March 1, 2006