DECISION NOTICE:
POKER JOE FISHING ACCESS SITE
DEVELOPMENT AND
MANAGEMENT PROJECT

Montana Fish, Wildlife and Parks
3201 Spurgin Road
Missoula, MT 59804
(406) 542-5500

DESCRIPTION OF PROPOSED PROJECT

The heavy summertime use of the site has created some problems for FWP and neighboring property owners, especially traffic and parking on Simpson Lane. The only road access to Poker Joe is via Simpson Lane. Simpson Lane runs south from Luby Lane for approximately one quarter mile then takes a left turn and runs east, terminating at Poker Joe. There is a one-lane bridge on Simpson Lane approximately 250 yards before the road ends at Poker Joe.

Neighbors in the subdivision have complained that visitors to the FAS often drive too fast, blare their music, block driveways and gates when parking, trespass, litter, and behave very discourteously when asked to slow down, move their cars, etc. In November of 2006, a group of neighbors with property at the end of the road became so unhappy with the situation that they erected a rope barrier across the one-lane bridge on Simpson Lane and posted signs which stated that public access was prohibited over the last 250 yards of Simpson Lane. This effectively blocked public road access to Poker Joe.

Within days of the barrier being erected, FWP began receiving irate phone calls from the public, mostly from sportsmen like waterfowl hunters and anglers, complaining that access to their favorite site was blocked. Upon communicating with the neighbors and their attorney, FWP was informed that these homeowners were taking the position that public access ends at the bridge and the roadway beyond the bridge is in essence a private drive shared by several residents, including FWP. In their opinion, employees of FWP were authorized to use the "driveway", but the public at large was not.

FWP responded in February of 2007 by filing a lawsuit against the homeowners who were responsible for blocking access to Poker Joe, alleging that it held a prescriptive or implied easement for access to Poker Joe that included public use.

While confident in its position, FWP was cognizant of and sympathetic to the real problems occurring at Poker Joe, which affected adjacent homeowners. After several months of communication and negotiation, FWP and the affected neighbors entered into a settlement agreement, which required several things of both parties.

First, the homeowners were required not to obstruct, gate, fence, or otherwise impede the public's right to access Poker Joe. Second, the homeowners would grant a perpetual road easement for use by FWP and the public across their premises. The easement would include the right to maintain and repair the road, and the right to manage public use of the road as may be necessary to prevent resource damage and provide for public safety.

In return, FWP agreed to take measures to control traffic and parking on Simpson Lane and to increase patrols of Poker Joe for unlawful and inappropriate behavior. In addition, FWP has

agreed to construct a parking area on its property so visitors will no longer park in the cul-de-sac at the end of Simpson Lane. Some of these measures have already been implemented. For example, six temporary speed bumps have been installed on Simpson Lane, and numerous signs have been erected which post a lowered speed limit and prohibit parking in front of private drives. Some measures, such as dust abatement and road maintenance, are ongoing. Other measures such as the parking area and fence work have not been initiated yet. Under the settlement agreement, FWP must construct a parking area by July 31, 2008, at which time the Department will also repair or replace its fences and mark the boundary of the cul-de-sac with large rocks or other appropriate material.

In order to comply with the settlement agreement, FWP has initiated the process of constructing a parking area in Poker Joe, of which the EA was a part. Following public notice and comment, the parking area would be constructed in the spring of 2008. It is the hope of all parties that the proposed development will reduce visitor/homeowner conflict at Poker Joe while still providing public access and resource protection.

Alternative A: No Action

Alternative B: Parking Area with Short Entrance Road

Alternative C: Parking Area with Longer Entrance Road

PUBLIC PROCESS AND COMMENT

The EA was sent out and the public comment period began February 8, 2008, and ran through March 11, 2008. Legal notices were published in the Missoulian, Ravalli Republic and the Helena Independent Record along with one statewide press release. There were 21 full copies, 32 electronic versions, and 35 post cards about the EA sent to interested parties consisting of neighbors, friends, conservation groups, Montana state legislators, county & state departments or agencies. The Poker Joe FAS Development and Management EA was posted on the FWP web site February 8, 2008. The EA is still available for review at http://fwp.mt.gov/publicnotices/archive.aspx.

Seven comments were received from the public.

- Three of those comments supported Alternative B.
- One comment supported Alternative A.
- One comment feels too much time and money is being spent on this particular situation.
- Another comment feels FWP should re-evaluate the need for an FAS at this location.
- The last comment was concerned about various items such as: any culvert used to build a road into the site will be "popped out" from high spring flows; 12 parking spaces allow too many visitors; impacts to game and non-game animal species would be more than the EA indicated; some plant and animal species observed in the area were not mentioned in the EA; herbicides shouldn't be used on the site; concern for an old fire ring; and feels a vault latrine would be inappropriate in this location.

FWP response to these comments.

- FWP feels Alternative B is the best because it has less of an impact to the site as compared to Alternative A and it still provides the same number of parking spaces. Because Alternative B needs only one culvert and puts the parking area closer to the

end of the road, it will be easier for law enforcement to monitor & observe people's behavior.

- FWP heard from many people last year saying that Poker Joe was an important FAS site, therefore, FWP feels this site and location is the right place to keep the FAS. The settlement agreement with the neighbors is based on FWP developing a parking area into the property.
- FWP engineers are following Montana building standards and techniques in developing their specifications. They will research the different hydraulic structures available for providing safe vehicle crossings. They will also apply for all required permits needed to do such a project.
- The 12 parking spaces were agreed to when FWP and the neighbors discussed and signed the settlement agreement.
- FWP biologists reviewed the information researched & available including the Montana Natural Heritage Database regarding game and non-game species and continue to feel that this project may have only a minor impact to those species. This also included some communications with the Professor of Mammology, U of M, Division of Biological Sciences.
- Even though specific plant & animal species are not mentioned in the EA doesn't mean they weren't considered. When doing EA's, a lot of the focus is on the species that are considered threatened or endangered. Again, FWP biologists reviewed available information & data on those species and feel this project may only have a minor impact to those species.
- FWP does have an integrated weed management plan that includes mechanical, biological and chemical methods for all department properties. Licensed maintenance personnel or contractors handle weed management activities for FWP.
- The State Historic Preservation Office was contacted regarding this project. They reviewed their records regarding cultural resources and found that there had been a previously conducted cultural resource inventory done in the area. They feel there is a low likelihood of cultural properties being impacted. They did recommend that if cultural materials were inadvertently discovered during this project that we contact their office and have the site investigated.
- FWP must acquire a county sanitation permit and a flood plain permit in order to install a permanent latrine. If FWP were unsuccessful in acquiring these permits, then FWP would utilize a porta-pottie to handle the need for sanitation facilities.

DECISION

Based on the analysis in the Environmental Assessment (EA) and the applicable laws, regulations and policies, I have determined that this action will not have a significant effect on the natural or human environment. Therefore, an Environmental Impact Statement will not be prepared.

It is my decision to implement Alternative B and proceed with the improvements of this site. By notification of this Decision Notice, the draft EA is hereby made the final EA with the FWP responses in this Decision Notice. The final EA with Decision Notice may be viewed at or obtained from Montana Fish, Wildlife & Parks at the above address. Please direct any further requests or questions to Mack Long, Region Two Supervisor.

In accordance with FWP policy, an appeal may be made by any person who has either commented in writing to the department on the proposed project, or who has registered or commented orally at a public meeting held by the department on the proposed project, or who can provide new evidence

that would otherwise change the proposed plan. An appeal must be submitted to the Director of FWP in writing and must be postmarked or received within 30 days of this decision notice. The appeal must describe the basis for the appeal, how the appellant has previously commented to the department or participated in the decision-making process, and how the department can provide relief. The appeal should be mailed to: Director, Fish, Wildlife & Parks, 1420 East 6th Avenue, Helena, MT 59620.

3/24/08

Mack Long **Date**