

DECISION NOTICE

**Morgan Wild Animal Menagerie Permit
Prepared by Region 3
Montana Fish, Wildlife & Parks
March 9, 2000**

Proposal

Montana Fish, Wildlife & Parks proposes to issue a permit to Nikki Morgan to operate the Morgan Wild Animal Menagerie at her residence of 1515 Royal Road, Gallatin County, Montana.

Montana Environmental Policy Act (MEPA)

MEPA requires FWP to assess the potential consequences of this proposed action for the human and natural environment. The proposal was detailed in an environmental assessment completed by FWP on January 12, 2000. A 15-day comment period ended on January 27, 2000.

Issues Raised in the Environmental Assessment

The environmental assessment considered such areas as public safety, welfare of the animals, possible consequences to the natural environment and effects on the local human community.

General Summary of Public Comment

We received a total of six letters of comment regarding this permit. Five of them were from people residing in the area who were opposed to the issuing of the permit. One was from the Belgrade City Planner, pointing out current and future development plans in the area. A combined total of eight people signed the comment letters.

Specific Summary of Comments

The people writing to protest this project listed numerous objections. Since many of the objections were repeated in more than one letter, we have attempted to combine all of the objections, which were cited in the letters into one list, which we will address.

- 1. Comment:** This is an application for a zoo and menagerie permit, which is defined as a public exhibit of animals. The applicant or future owners may open a larger zoo type business.

Response: This application is for a wild animal menagerie permit. Section 87-4-801 (3) states that these permits do not authorize public exhibition of animals. Additionally, these permits are not transferable. If the applicant leaves, the permit is void.

- 2. Comment:** There were several complaints regarding wolves, lynx, bobcats and foxes already on the property.

Response: The permit being considered here is only for the possession of one bear. The department does not regulate the possession of wolves. The lynx, bobcat, and foxes are held on a previously issued fur farm license, which is not the subject of this permit.

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3. Comment: There was an objection to the concept of keeping wild animals in cages.

Response: The state legislature has authorized zoos and menageries. If a person wishes to establish such a facility, they may do so by complying with applicable regulations. Our regulatory authority is limited to seeing that a facility complies with these regulations. We do not have authority to prohibit the confinement of animals.

4. Comment: The homeowner's association was not consulted during the EA process.

Response: All members of the homeowner's association received hand delivered copies of the draft EA and all members submitted their comments.

5. Comment: The issuing of this permit will set a precedent for the applicant to want more animals or for other people to want to do the same thing.

Response: Anyone who wishes to apply for these permits may do so. Anyone who has a permit may apply to expand it. These requests are all reviewed for compliance with existing statutes and regulations. The fact that someone nearby has such a permit or that the applicant previously acquired a permit for another animal does not influence the decision.

6. Comment: This use of the property violates existing covenants. Additionally, the homeowner's association has filed an amendment to the existing covenants, which bans the possession of carnivores.

Response: It has been determined by Fish, Wildlife & Parks legal staff that the department lacks the jurisdiction to interpret and enforce covenants. The Department is not enlisted with the authority to determine the validity of covenants. Covenants are private contracts between members of a homeowner's association. While members of the association may challenge land use activities as violations of the covenants, outside parties may not. If the association prevails in a civil suit, the possession of the bear could be prohibited, even if the applicant has a state permit.

7. Comment: If the applicant is permitted to have a bear, local property values will go down.

Response: The effect of an activity on local property values is very subjective. While certain large-scale industrial activities may have a demonstrable effect on property values, the presence of a single bear, which is kept out of sight, may or may not have any effect on home sales. There is no way to measure any perceived economic impact from the presence of a single bear.

8. Comment: There are too many homes in this area. The keeping of a bear is a safety concern both to people and to livestock in the event of an escape.

Response: The safety concern was addressed in the draft EA. This is an area of concern we had with this proposal. First, there is concern that the bear might escape from the cage and second, that the bear might prove to be an attractant to neighborhood children.

We, therefore, have added to the permit the additional stipulation that an 8' solid fence be constructed around the cage. Both the bear cage and the surrounding 8' fence will remain locked at all times unless the owner is inside of the enclosure. The fact that the bear is not visible to the public should eliminate the concern of attracting neighborhood children.

It should also be pointed out that this is not a wild bear. It has grown up in captivity. It has been hand fed and handled by people all of its life. It is doubtful that it has acquired hunting instincts, which would make it less of a threat to livestock than a wild bear.

9. Comment: There was concern expressed about noise and smell.

Response: Bears make very little noise. This permit is for one bear. Regulations require that the cage be cleaned at least once a day, and kept free of offensive odor. Keeping a single bear would result in fewer odors than almost any normal livestock operation. Livestock operations are common in this area.

10. Comment: The bear won't be taken care of adequately.

Response: There are numerous regulations regarding the care of animals in a wild animal menagerie. If the care of the animal is not adequate, the permittee may face criminal charges or revocation of the permit.

11. Comment: The presence of the bear will scare away local wildlife.

Response: Bears have been kept at numerous locations in Montana. There is no evidence that local wildlife has fled the surrounding vicinity.

12. Comment: Urine and fecal matter from the bear will contaminate ground water and the Gallatin River.

Response: The amount of waste produced by a single bear will be inconsequential, especially when compared to that produced by surrounding livestock and dogs.

Permit Conditions

The laws and regulations governing wild animal menageries can be found in 87-4-801 through 87-4-808 M.C.A. and 12.6.1301-12.6.1309.

In order to assure the health and well being of the bear the following additional rules shall apply:

- 1.) The applicant shall adhere to the conditions of A.R.M. 12.6.1302 – 12.6.1304 (to include any future amendments or additions) regarding the caging and care of the bear.
- 2.) The applicant shall not have more than one bear.
- 3.) A den box shall be provided.
- 4.) The cage shall be at least 14'x14'x6' in size.

As there are nearby neighbors, children and dogs in the area, the following rules shall apply in the interest of public safety.

- 5.) The cage shall be made of chainlink or heavier material. It shall be supported by steel pipe attached securely to or imbedded in a concrete floor.
- 6.) The door shall have sturdy latches at each of the free-swinging corners and be secured with a padlock. The padlock shall remain locked at all times when the bear is unattended.

- 7.) There is concern that the visible presence of the bear may entice children or dogs onto the property when the applicant is not home. In order to alleviate this concern, the following rule shall apply: A vertical, opaque fence shall surround the cage at least eight foot in height, made of wood or a similar material. The fence shall have a door or gate made of a similar material, which shall be padlocked at all times when the bear is unattended. If the applicant situates the cage near her house or other structure so as to block the view to one side of the cage, the wall on that side may be made of see-through mesh wire subject to approval. The fence shall be erected a minimum of three feet from the cage in all directions.

The following additional rules shall apply.

- 8.) No commercial or public viewing of the bear is permitted.
- 9.) The bear is to remain in its cage at all times. If the applicant would like to submit to the department a plan for an enclosed exercise area, it will be considered.
- 10.) At no time will the bear be removed from the property except for required veterinary care.
- 11.) Any escape or act of aggression on the part of the bear shall be reported to the department immediately.

Decision

It is my judgement that the proposed provisions for having and caring for the bear and for protecting the public are proper and adequate and will be in accordance with laws, rules and standards established by the Department.

Based on the findings of the Environmental Assessment and the addition of several conditions to alleviate other possible concerns, it is my decision to issue the permit for a Wild Animal Menagerie.

I find there to be no significant impacts associated with this action and conclude that an Environmental Impact Statement is not needed. The completed EA is the appropriate level of analysis.



Patrick J. Flowers
Regional Supervisor