

CARPENTER ELK RANCH
ALTERNATIVE LIVESTOCK FACILITY
DECISION DOCUMENT

October 5, 2000

Alternative Livestock Application and MEPA Review.

Montana Fish, Wildlife and Parks (FWP) received an application for an alternative livestock license from Kenny Carpenter on May 5, 2000 to construct a 100-acre alternative livestock facility in Lake County, Montana. The application was accepted by FWP as complete on June 8, 2000. The proposed Carpenter Elk Ranch alternative livestock facility would be located approximately 5 miles northwest of Dayton and 1 mile west of Proctor, Montana near the west side of Flathead Lake.

Purposes of the facility would be for breeding stock, meat and antler production, trophy sales, and other activities such as photography. The proposal does not include fee shooting of alternative livestock at the facility. The total alternative livestock operation would consist of up to 50 elk on 100 acres. The applicant would live adjacent to the facility year-round.

FWP and the Montana Department of Livestock (DoL) prepared a Draft Environmental Assessment (EA) pursuant to the Montana Environmental Policy Act (MEPA) and Alternative Livestock statutes/rules. This document was distributed for public review and comment on August 31, 2000, with comments accepted through September 21, 2000.

FWP received nine public comment submittals (written and verbal) during the comment period. Issues raised include: risk of disease (Chronic Wasting Disease – CWD); changes in land use; soil erosion and riparian damage; ethics and hunting traditions; enforcement of alternative livestock regulations; and the expense of agency monitoring. These comments were collected and sorted by Maxim Technologies, Inc., of Helena, MT, with responses to specific issues prepared by Maxim, FWP, and DoL. A summary of the specific issues raised and resulting responses are included in the Final EA.

Upon completion of the EA, it was determined that a full Environmental Impact Statement (EIS) would not be required. No significant impacts from the Proposed Action were identified that could not be mitigated. A copy of the Final EA is attached.

Proposed Decision:

Based upon our 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. The issuance of this license is contingent upon approval of all fence construction, and DoL approval of quarantine and handling facilities or plans. The Licensee will have 3 years from the date of this approval to complete all fence construction as submitted in his application. Changes from the application must be approved by FWP prior to implementation of modifications.

The Licensee must be in compliance with all Alternative Livestock statutes, rules and regulations of FWP and DoL. 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 alternative livestock facilities, there is a concern of disease transmission to wild populations and also genetic 'pollution' should wild and captive animals interbreed. Wild animals, such as native elk, black bears, mountain lions, and coyotes, can be attracted to elk facilities due to the availability of food and potential breeding opportunities. Responsible management and adherence to FWP and DoL regulations will reduce the risk of contact between wild game and captive elk to an acceptable level. The EA recommends additional mitigation measures, which should assist in that effort.

The proposed facility will exclude wildlife from using approximately 100 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 nonsignificant 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 increase the risk of ingress and egress associated with most alternative livestock facilities. FWP requires the immediate notification of the ingress or egress of any wild or captive ungulate 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 an alternative livestock facility with up to 50 elk. 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 Stipulation:

The following requirement is imposed by FWP for the alternative livestock facility and is designed to ensure that the fenced enclosure is maintained in a game-proof condition and that the risk of contact between wild and domestic game is reduced:

1. Licensee should inspect the perimeter fence on a regular basis (e.g., weekly) and immediately after or during events that have a greater probability of damaging the fence (e.g., wind storms and significant precipitation events) to ensure fence integrity with respect to congregating native elk in the vicinity, surface water runoff, burrowing animals, predators, and other game animals. Fence inspection should follow a written fence monitoring plan that is submitted to and reviewed by FWP prior to issuance of the license. The fence monitoring plan should include contingency actions that address evacuations due to natural disasters, and movement of elk to avoid congregations of wild ungulates along the fenceline. If major repairs are required of the perimeter fence due to falling tree(s) or heavy runoff, no alternative livestock should be placed back into the affected pasture(s) until the fence is inspected for game-proof condition by an FWP representative. Additional remedial actions may be required by FWP if ingress or egress occurs at the facility.

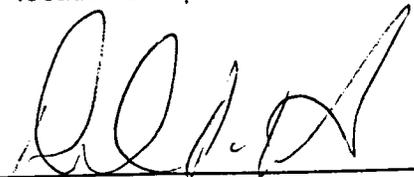
This requirement is imposed to mitigate a potential risk to fence integrity and the resulting potential for ingress/egress of alternative livestock and wildlife. Without this requirement, risks to wildlife from contact with alternative livestock would have the potential to be significant, due to the site being located in an area currently being used by native elk. Regular fence monitoring and a written fence monitoring plan is required so that FWP has a level of confidence that fence integrity problems can be detected promptly before egress problems occur.

Recommended Mitigation Measures:

The following list of recommended mitigation measures will be incorporated into the license requirements. They address minor impacts identified in the Carpenter Elk Ranch alternative livestock EA; for a complete list of all mitigation measures, see the Draft and Final EAs:

- Maintain a reasonable stocking rate in the proposed facility to mitigate potential impacts from erosion and fecal matter.
- Maintain a reasonable stocking rate on wet areas within the elk ranch enclosures to minimize changes in soil structure and potential increases in runoff and erosion to Dayton and Proctor Creeks from disturbed ground. A "reasonable stocking rate" in this case would include rotational grazing strategies that limit periods of time that elk would be using any one pasture in order to reduce potential for devegetation and erosion.
- Create interior pastures such that rotational grazing strategies can be implemented to reduce adverse impacts to vegetation. In particular, allow only seasonal use of saturated soil in wetland areas.

- Clean debris promptly that may collect at the fenced stream crossings to reduce the potential for flooding and fence damage.
- Provide certified weed-free supplemental feed and minerals to the alternative livestock on a seasonal basis to reduce excessive grazing on preferred pasture plants.
- Monitor the ranch site for invasion of noxious weeds, and treat affected areas in a timely manner. Should noxious weeds continue to be detected, a weed control program should be implemented, if not already in place, to control the weeds.
- Employ Best Management Practices to reduce odor problems if they occur by (1) quickly incorporating accumulated waste into soil by plowing or disking as appropriate, (2) spreading waste during cool weather or in morning hours, and (3) properly disposing of animal carcasses according to county solid waste regulations. Carcasses and fecal matter should not be disposed of in, or adjacent to, water bodies, roads, or ditches.
- Control surface water discharges from the proposed site, if they occur, by employing Best Management Practices where runoff might enter Dayton and Proctor Creeks. The BMPs may include earthen berms, vegetation (willow plantings), buffer zones, straw bale dikes, or silt fences during portions of the year. The booklet "Common Sense and Water Quality, a Handbook for Livestock Producers" (Montana Department of Health and Environmental Sciences, 1994) is recommended for further mitigation measures.
- Stop work in the area of any observed archaeological artifacts. Report discovery of historical objects to the Montana Historical Society, Historic Preservation Office, (406) 444-7715. If work stoppage in the area containing observed artifacts is not possible, record the location and position of each object, take pictures, and preserve the artifact(s).


 Daniel P. Vincent
 Regional Supervisor

10/3/00
 Date

 Kenny Carpenter
 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.

Mail to: Nancy Ivy, MFWP Region One, 490 North Meridian Rd., Kalispell, MT 59901

FINAL ENVIRONMENTAL ASSESSMENT CARPENTER ELK RANCH ALTERNATIVE LIVESTOCK OPERATION

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 alternative livestock industry 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 negotiated rules and standards therein, 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, 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 alternative livestock statute, Montana Code Annotated (MCA) Title 87, Chapter 4, Part 4.

Mitigation measures may be considered in FWP's analysis as a means to reduce impact(s) of an alternative livestock operation 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 Carpenter Elk Ranch alternative livestock operation, which identified no significant impacts from the Proposed Action that could not be mitigated. The Draft EA was released for public review and comment August 31, 2000. Public comments were accepted through September 21, 2000.

The Draft EA, as modified herein, and this Final EA are hereby approved as the Final EA. This Final EA for the proposed Carpenter Elk Ranch alternative livestock operation contains summaries of the Proposed Action, affected environment, and potential consequences of the Proposed Action, all of which are described in additional detail in the Draft EA, which is adopted in this Final EA. This document also describes mitigation measures, includes a summary of substantive public comments and agency responses to those comments, and provides the conclusion of the EA. The preferred alternative is the Proposed Action with one required stipulation and several recommended mitigation measures.

PROPOSED ACTION

FWP received an initial application dated May 5, 2000 from Kenny Carpenter to build an alternative livestock facility in Lake County, Montana. FWP received the application on May 10, 2000, and accepted the application as complete in a letter to Mr. Carpenter dated June 8, 2000. The proposed alternative livestock facility is located approximately 5 miles northwest of Dayton and 1 mile west of Proctor, Montana. The property is located on Dayton Creek, about 5 miles upstream of the creek's confluence with Flathead Lake. The applicant lives on the proposed alternative livestock site.

The proposed alternative livestock facility consists of 100 acres of irrigated pasture located in the SW¼ of Section 29, Township 25 North (T25N), Range 21 West (R21W). The applicant proposes that up to 50 elk be allowed on the 100-acre area on a year-round basis, including bulls, cows, and calves. Construction of the facility is expected to be completed by the end of 2000.

Purposes of the proposed alternative livestock facility include: breeding stock, meat and antler production, trophy sales, and other activities such as photography. The applicant has indicated, however, that shooting of alternative livestock by the public would not be allowed at the site. Alternative livestock to occupy the facility would be procured from licensed facilities within Montana; however, none have been identified at this time. Wild animals (big game and predators) would be removed from the enclosure by the applicant prior to licensing by FWP.

Fence construction would be completed in accordance with requirements of FWP under ARM 12.6.1531. Fencing would consist of 8-foot high, high-tensile, Tightlock steel wire fencing on steel posts, with higher fencing on steep slopes. The fence bottoms would be installed to provide not more than 3 inches of ground clearance. Two exterior gates would be constructed for the proposed site. A handling and quarantine facility would be constructed located in the southeast portion of the enclosure.

ALTERNATIVES

One alternative (No Action Alternative) is evaluated in this EA. Under the No Action Alternative, FWP would not issue a license for construction of the 100-acre alternative livestock operation as proposed. Therefore, no alternative livestock would be placed in the proposed enclosure. Implementation of the No Action Alternative would not preclude other activities allowed under local, state, and federal laws to take place at the proposed alternative livestock site.

AFFECTED ENVIRONMENT

The proposed Carpenter Elk Ranch alternative livestock facility is located on leased land about 5 miles northwest of Dayton, Montana. The proposed facility is situated on approximately 100 acres of irrigated pastureland in the floodplain associated with Dayton Creek. The property lies in a north-south trending drainage on the eastern side of Dayton Creek. Slopes are flat to moderate throughout the proposed enclosure area. The majority of the site is in the moderate slope class (less than 20 percent).

This area was historically used for forage production and livestock grazing. Soils have developed on glacial alluvium and have medium to coarse textured surface layers. Soil units are mantled and are highly productive if soil surface layers are not displaced or removed. Wetter, silty soil, such as that found in the northwestern portion of the site, generally has low strength and compacts easily.

The proposed alternative livestock facility is located in the Dayton Creek watershed approximately midway (i.e., 2 to 3 miles) between Lake Mary Ronan and Flathead Lake. Average annual precipitation at Polson and Kalispell is about 15.3 inches. The proposed enclosure area straddles a low divide between Dayton Creek near the east side and Proctor Creek, 700 feet of which flows through the northeast corner of the site. These drainages extend southeast to Flathead Lake. The head of Proctor Creek is located about ½-mile north of the proposed enclosure and is fed by a spring. Overland flow occurs across portions of the site during periods of snowmelt and heavy precipitation events.

The primary aquifer in the project area is bedrock of Precambrian-age Belt Series Formation. Surficial glacial deposits, however, contain small quantities of shallow groundwater. Water for the proposed alternative livestock would be obtained from a well at the site. A listing of groundwater rights within 1 mile of the proposed enclosure shows less than 10 wells, most of which are completed to depths greater than 200 feet. Direction of groundwater flow in the vicinity of the proposed alternative livestock facility is

southeasterly toward Dayton Creek and Flathead Lake. Depth to groundwater in bedrock is generally greater than 100 feet, with limited quantities of shallow water in unconsolidated alluvial and glacial sediments. During the spring runoff period, sediment in low-lying areas adjacent to the creek can become saturated to the surface, and surface water can leave the enclosure area.

Dayton Creek has been identified by the Confederated Salish and Kootenai Tribes (CSKT) and FWP for restoration work due to its importance as an historic cutthroat trout spawning and rearing stream. Riparian inventories conducted in 1997 by the Montana Riparian Association in Dayton Creek indicate that the hydrology, soil, and vegetation ratings for the stream were respectively nonfunctional, functional, and intermediate.

Most of the proposed enclosure area has moderately rolling (10 to 20 percent) topography and contains irrigated pasture, primarily grass species such as Kentucky bluegrass, orchardgrass, smooth brome, and timothy. Some scattered shrub communities (e.g., snowberry) and cottonwood trees also occur within the enclosure area. The property has historically been used to pasture livestock and grow hay.

Annual forage production for the proposed facility is estimated at 2,000 to 3,000 pounds per acre; therefore, total forage produced on the proposed 100-acre enclosure would be between 200,000 and 300,000 pounds (100 to 150 tons) on an annual basis. No federally listed threatened or endangered plant species were observed within the proposed enclosure. The proposed site contains areas of scattered spotted knapweed.

The proposed site and surrounding land is used by white-tailed deer, elk, moose, and mule deer during all or parts of the year. Winter range for white-tailed deer has been delineated adjacent and to the south and east of the property. Elk also use the area during winter and spring seasons, and known elk and mule deer winter range is located within one mile of the property to the north, west, and south. Moose likely are transient in the area during part of the year. Other wildlife species known or expected to use the area, at least on a transient basis, include black bear, mountain lion, coyote, and fox. Gray wolves, bald eagles, and lynx are federally listed as threatened or endangered and may also be transient through the general area.

Most land immediately surrounding the proposed alternative livestock facility is private agricultural land that is grazed by domestic livestock. Land in the general area has historically been used by local farmers and ranchers, though recent ingress of residents on smaller subdivided parcels has also occurred on private land to the north, west, and south of the site. The two nearest permanent residences are located approximately ¼-mile west of the site. The small town of Dayton and Highway 93 are located approximately 3 miles southeast of the site, and the Flathead Indian Reservation is located 1 mile to the south.

Domestic livestock are currently pastured in the project area. There are resident populations of elk and deer in the vicinity of the proposed enclosure. These domestic and wild animals located outside of the proposed enclosure potentially could be subject to disease transmission from alternative livestock. In order for disease transmission to occur, the organism causing the disease needs to be present. Any alternative livestock introduced to this facility would be tested for brucellosis and tuberculosis and would be in compliance with Montana Department of Livestock (DoL) regulations (monitoring for chronic wasting disease, etc.) prior to movement to the facility.

CONSEQUENCES OF THE PROPOSED ACTION

Only primary resources with the potential to be adversely impacted by the Proposed Action are summarized in this section. A more detailed review of environmental consequences is contained in *Part II* of the Draft EA.

Impacts to Land, Water, and Vegetation Resources

Approval of the alternative livestock application would have minor impacts to land, soil, and vegetation resources. Increased runoff and soil erosion could occur in some areas of the proposed enclosure if pasture use is such that vegetative cover is diminished. The proposal to pasture up to 50 alternative livestock on the 100-acre site would locally reduce vegetative cover to a minor degree. Areas of the enclosure that would be most susceptible to erosion problems are on the wet areas and along the creek banks. The extent to which erosion would occur is dependent primarily on animal density, season, and duration of use. Impacts would increase if more than 50 animals are placed in the enclosure. Surface water would leave the enclosure area during rain and snowmelt periods and could impact Proctor and Dayton Creeks. Sediment, alternative livestock fecal matter, and nutrient-enriched water may have a minor effect on the quality of water in the vicinity of the alternative livestock site (dependent upon animal density and waste management practices), primarily during periods of snowmelt and major precipitation events. The fence would cross Proctor Creek at two locations and would require approval by FWP as game-proof at these sites.

The occupancy period for alternative livestock would be on a year-long basis. It is estimated that the proposed site could supply all the domestic elk forage needs when fully stocked with 50 animals. The maximum stocking rate of approximately 0.5 animal per acre is considered moderate under existing vegetative conditions. Assuming irrigation would occur on most of the site, vegetation likely would be maintained in relatively good condition, both in terms of plant species composition and productivity. Supplemental feed would be used to sustain the animals during the nongrowing season. There are no plans to physically alter the native plant communities on the proposed facility (i.e., crop or hay cultivation). Threatened or endangered plant species were not observed in this area.

Spread of noxious weeds is possible at this site and, under an intensive grazing regime with no weed management, would be expected to invade and subsequently increase in abundance. Weeds would spread quickly to disturbed areas around any site that animals are fed or handled. Weed seeds could also be imported into the area with animal feed. The applicant would develop and implement a weed control program on the ranch, including vegetative seeding of exposed areas. If BMPs are properly implemented and a reasonable stocking rate is maintained as proposed by the applicant, impacts to vegetation would be minor.

Impacts to Wildlife Resources

The exclusion of wild game from 100 acres would displace a few resident deer, elk, and moose from moderate to good quality habitat in the drainage. Game moving through the area would be forced to travel a minimal distance to get to the same point(s) along the travel routes. Mountain lions, bears, and wolves could pass through this area and may be attracted to the alternative livestock.

The proposed enclosure fence crosses moderate (10 to 20 percent) slopes. The potential for impacts to area wildlife due to ingress/egress risk would be mitigated through strict adherence to fence construction, maintenance, and monitoring procedures.

A concern regards the escape of captive elk and the potential for interbreeding of wild elk with domestic elk whose genetic make-up has been altered through several generations of selective breeding or through interbreeding with domestic red-deer. Although red-deer are now prohibited species in Montana, historically some alternative livestock operators did bring red-deer or red-deer hybrids into their facilities. The concern regarding red-deer hybrids is partially mitigated through current regulations. Although the impact of genetic pollution on wild elk herds is unknown, the effect is undesirable in terms of maintaining the genetic integrity of existing populations.

Impacts to Land Use, Recreation, and Community

The proposed facility would be compatible with existing agricultural land uses. No significant conflicts should result between operation of the alternative livestock facility and the agricultural or residential areas, including the small town of Dayton located approximately 3 miles to the southeast. Additional homes could be constructed in the vicinity of the facility on private land. Potential effects of the alternative livestock facility on adjacent property values is difficult to evaluate because some nearby property owners may like the idea of the alternative livestock operation, whereas others might find it undesirable.

Some local residents may feel the alternative livestock operation would decrease their quality of life. Neighbors harboring negative feelings about the operation would perceive a loss in their sense of social well-being. However, some neighbors and local residents may like the idea of an alternative livestock facility and enjoy viewing the elk. These people may feel the facility would add to their quality of life.

Risk/Health Hazards

There is potential for transmission of water-borne disease pathogens, if present, to be transported into and out of the ranch, primarily via Proctor and Dayton Creeks. This is expected to be a minor risk because of current animal disease testing requirements. The route of chronic wasting disease (CWD) transmission at this time is unknown; therefore, the potential for transmission by soil, water, or other media cannot be determined, nor impacts disclosed.

The risk of disease (e.g., brucellosis and tuberculosis) being passed from alternative livestock to wildlife and domestic livestock would be minimal if fence integrity is maintained and the stipulation and recommended mitigation measures described in this EA are followed. Potential for disease transmission from alternative livestock is also mitigated through DoL disease testing requirements. Each facility is required to have access to an isolation pen (quarantine facility) on the property or an approved quarantine plan to isolate any animals that are imported or become ill.

There is a minor risk of infection to hunters who field dress deer or elk infected with tuberculosis or brucellosis. Routine brucellosis and tuberculosis testing requirements for alternative livestock offer a measure of surveillance that minimizes that risk. Another potential, minor risk to human health would be the attraction of predators to the proposed enclosure and the proximity of residences to the site. Therefore, increased encounters between predators (e.g., mountain lions and bears) and humans could occur as a result of the alternative livestock enclosure.

Cumulative Effects

The Proposed Action would add to impacts associated with existing agricultural practices and residential development in the area, and which would result in potential impacts that are individually minor, but not cumulatively significant.

REQUIRED STIPULATION

The following requirement is imposed by FWP for the alternative livestock facility and is designed to ensure that the fenced enclosure is maintained in a game-proof condition and that the risk of contact between wild and domestic game is reduced:

1. Licensee should inspect the perimeter fence on a regular basis (e.g., weekly) and immediately after or during events that have a greater probability of damaging the fence (e.g., wind storms and significant precipitation events) to ensure fence integrity with respect to congregating native elk in the vicinity, surface water runoff, burrowing animals, predators, and other game animals. Fence

inspection should follow a written fence-monitoring plan that is submitted to and reviewed by FWP prior to issuance of the license. The fence-monitoring plan should include contingency actions that address evacuations due to natural disasters, and movement of elk to avoid congregations of wild ungulates along the fenceline. If major repairs are required of the perimeter fence due to falling tree(s) or heavy runoff, no alternative livestock should be placed back into the affected pasture(s) until the fence is inspected for game-proof condition by an FWP representative. Additional remedial actions may be required by FWP if ingress or egress occurs at the facility.

This requirement is imposed to mitigate a potential risk to fence integrity and the resulting potential for ingress/egress of alternative livestock and wildlife. Without this requirement, risks to wildlife from contact with alternative livestock would have the potential to be significant, due to the site being located in an area currently being used by native elk. Regular fence monitoring and a written fence monitoring plan is required so that FWP has a level of confidence that fence integrity problems can be detected promptly before egress problems occur.

RECOMMENDED MITIGATION MEASURES

The following recommended mitigation measures address minor impacts identified in this EA for the proposed construction of the Carpenter Elk Ranch alternative livestock facility for resources that have the potential to be affected by the Proposed Action:

- Maintain a reasonable stocking rate within the enclosure to minimize potential for erosion and mitigate potential impacts from runoff and fecal matter. Potential water quality impacts also could be minimized by disposing of dead animals and excess fecal material at a site that is isolated from surface water and groundwater (disposal must meet county regulations for solid waste if applicable). On-site disposal of dead alternative livestock would be regulated by DoL under ARM 32.4.1002.
- For any areas that may have erosion and sedimentation problems, utilize best management practices (BMPs) where surface water could enter Proctor and Dayton Creeks. The BMPs may include riparian fencing, earth berms, straw bale dikes, vegetative buffer zones, and/or silt fences to be used on a seasonal basis.
- Clean debris promptly that may collect at the fenced stream crossings to reduce the potential for flooding and fence damage.
- Monitor the alternative livestock site for invasion of noxious weeds and treat affected areas in a timely manner. Should noxious weeds continue to be detected, a weed control program should be implemented, if not already in place, to control the weeds.
- Provide certified weed-free supplemental feed and minerals to the alternative livestock on a seasonal basis to reduce excessive grazing on preferred pasture plants.
- Create/utilize interior pastures such that rotational grazing strategies can be implemented to reduce adverse impacts to vegetation, minimize changes in soil structure, and potential increases in runoff and erosion to surface water drainages from disturbed ground. In particular, allow only seasonal use of saturated soil in wetland areas.
- Store feed away from exterior fences or enclose in bear-resistant containers or buildings. Feed alternative livestock at interior portions of the enclosure and not along the perimeter fence.
- Minimize risk of disease epidemic or heavy parasite infections among alternative livestock by maintaining a reasonable stocking rate in relation to the enclosure size, periodic removal of manure from concentration areas, and development of a disease immunization and parasite treatment

protocol as applicable to alternative livestock.

- If archeological artifacts are observed during construction of the enclosure fence or from other activities, work should stop in the area and the discovery reported to the Montana Historical Society in Helena. If work stoppage in the area containing observed artifacts is not possible, record the location and position of each object, take photographs, and preserve the artifact(s).

SUMMARY OF PUBLIC COMMENTS AND FWP RESPONSES

Public comments for the Carpenter Elk Ranch alternative livestock operation Draft EA were accepted from August 31, 2000, until 5 p.m., September 21, 2000. FWP received nine public and agency comment submittals (written and verbal) during the comment period. Substantive issues and questions raised during the comment period are summarized below, along with FWP and DoL 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.

Category 1 – Disease and Risk

Issue 1: Concern over the threat of diseases in alternative livestock (e.g., chronic wasting disease - CWD). We do not know enough about this disease and how it is spread. We also do not know how long an animal may have the disease before it appears or if the disease will be in the animals that Mr. Carpenter would be buying.

Response 1: Comment noted. Potential for impacts due to disease transmission are described on pages 9 and 32-34 of the Draft EA and page 5 of this Final EA. The potential for disease transmission is addressed by DoL's disease testing and surveillance requirements, by maintaining the integrity of the facility's exterior fencing, and by implementing mitigation measures in the EA. Both FWP and DoL are concerned about the possible spread of disease among animals and will require additional monitoring if there is reason to suspect its presence. Currently, CWD has not been detected on alternative livestock facilities in the state of Montana other than on the Kesler facility, where all animals were killed and tested. FWP and DoL periodically inspect alternative livestock operations to ensure continued compliance with the license and regulations. It is true that the transmission mechanism of CWD is unknown. Disease testing and surveillance requirements by DoL minimize the potential for disease at an alternative livestock site (see ARM 32.4.1301-1320 for surveillance requirements and importation restrictions on alternative livestock with respect to CWD). The same potential for transmission of disease exists from wildlife and domestic livestock to alternative livestock.

Category 2 – Land Use

Issue 2: Because the alternative livestock facility is on leased land, there is a possibility of the landowner not renewing the lease. There would be the problem of the elk being abandoned and left for FWP to dispose of.

Response 2: Review and licensing of this alternative livestock facility assumes the applicant will have control of the property. Any change in the land status of the facility will require license modification and additional MEPA review. Disposition of alternative livestock in a licensed facility to be closed would be subject to requirements of FWP and DoL.

Category 3 – Ethical Traditions

Issue 3: Not ethical to fence in elk that are wild animals – it is not in tradition with Montana's wildlife heritage.

Response 3: Comment noted. The alternative livestock are considered "domestic" and not "wild".

Category 4 – Impacts/Analysis

Issue 4: Concern over erosion and riparian damage to Dayton and Proctor creeks and the impacts downstream to cutthroat trout spawning areas.

Response 4: As discussed on pages 4 and 17 of the Draft EA, soil in riparian areas is susceptible to compaction, which can cause an increase in runoff and erosion if vegetative cover is significantly reduced or eliminated. It is not expected that impacts to downstream cutthroat spawning areas would occur, given the other agricultural land use occurring in the watershed. The recommended mitigation measures and requirements section found on page 6 of this Final EA and page 10 of the Draft EA include measures that should reduce or eliminate potential impacts relating to soil and ground disturbance. These include: supplemental feeding, rotational grazing, and seasonal use of wetland areas.

Category 5 – MEPA Process

Issue 5: Concern that the Carpenter application came in after the deadline.

Response 5: The law (SB 0007) setting a moratorium on new alternative livestock facilities was signed on May 11, 2000. In the law there is specific language (Savings Clause) that exempts facilities that were in the process of being analyzed or had submitted applications for licensure prior to that date. The Carpenter Elk Ranch facility license was applied for prior to that date, and therefore, by law, FWP must process the application and proceed with this analysis and potential licensing.

Category 6 – Mitigation/Monitoring

Issue 6: Objects to use of sportsmen's dollars to correct and monitor problems in and around the facility, such as down fences, gates left unlocked and animals escaping, and FWP staff locating escaped animals.

Response 6: Comment noted. The licensee would be responsible for correcting any problems identified for the alternative livestock facility. The state legislature approves the budget for FWP's administration and monitoring of alternative livestock operations. A Programmatic EIS is being prepared for the alternative livestock program that may also address this issue.

Issue 7: Concern over inability to enforce laws, rules, and regulations regarding alternative livestock industry.

Response 7: Statutes and regulations are in place and being implemented statewide with respect to monitoring of alternative livestock facilities and activities. Monitoring occurs in a variety of ways, including: annual inspections by FWP and DoL personnel, and submission of required reports and forms (death, sale, removal of animals, etc.). Additional monitoring or inspections by other state agencies may occur as needed or requested by individuals, agencies,

or the applicant to assess compliance with requirements (e.g., surface water quality).

Issue 8: Concern over ingress/egress problems due to the possibility of large snow falls in the area.

Response 8: New fencing requirements formulated under the Negotiated Rulemaking Process for alternative livestock facilities, which went into effect in January 1999, are intended to decrease probability of ingress/egress at alternative livestock facilities. In addition, recommended fence monitoring will serve to minimize the referenced risks.

CONCLUSION OF THE EA

The Draft EA, as modified herein, and this Final EA are approved as the Final EA for the Carpenter Elk Ranch alternative livestock operation. The preferred alternative is the Proposed Action, modified with the requirements listed in this Final EA. Based on this review, it is determined that the Proposed Action 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

Montana alternative livestock statutes (87-4-476, MCA) require that licenses may be denied or issued with stipulations to prevent unacceptable threat of escape of alternative livestock, and to prevent a significant threat to the safety of the general public and surrounding landowners by the shooting of alternative livestock animals. 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 for the preferred alternative and has found that the preferred alternative does not have taking or damaging implications and that further analysis of impacts to private property is not required.

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