

DEPARTMENT OF FISH, WILDLIFE AND PARKS
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ENVIRONMENTAL ASSESSMENT

Project Title CO-07-06 Bundy Access Road Culvert and Gravel Ramp

Division/Bureau Fisheries/Management

Program Fisheries

Description of Project Yellowstone County is proposing to construct a road to cross a backwater channel of the Yellowstone River at T3N, R30E, S20, SW, SE, NE to access a proposed parking area and boat launching site. The crossing would span 77 ft of backwater channel using a 6 ft diameter culvert and pit-run and crushed-gravel fill. It would affect 74 ft of channel bank per side or 148 ft combined. Ramp construction would involve minor sloping the Yellowstone River bank and, perhaps, addition of a topping of crushed gravel. Large cottonwood trees will be avoided. Disturbed areas and exposed slopes will be reseeded with native grasses. Little flow is expected in the channel during construction. This channel receives most of its water from the Yellowstone River backing up during higher flows. A 6 ft culvert will more than accommodate irrigation return flows that enter a short distance upstream.

I. POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Terrestrial & aquatic life and habitats			X			I.1.
2. Water quality, quantity & distribution			X			I.2.
3. Geology & soil quality, stability & moisture				X		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
4. Vegetation cover, quantity & quality			X			I.4.
5. Aesthetics				X		
6. Air quality				X		
7. Unique, endangered, fragile, or limited environmental resources			X			I.7.
8. Demands on environmental resources of land, water, air & energy				X		
9. Historical & archaeological sites					X	I.9.

II. POTENTIAL IMPACTS ON HUMAN ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Social structures & mores				X		
2. Cultural uniqueness & diversity				X		
3. Local & state tax base & tax revenue				X		
4. Agricultural or industrial production				X		
5. Human health				X		
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational and wilderness activities		X				II.7.

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
8. Quantity & distribution of employment				X		
9. Distribution & density of population & housing				X		
10. Demands for government services			X			II.10.
11. Industrial & commercial activity				X		
12. Demands for energy				X		
13. Locally adopted environmental plans & goals				X		
14. Transportation networks & traffic flows				X		

Other groups or agencies contacted or which may have overlapping jurisdiction U.S. Army Corps of Engineers, US Fish and Wildlife Service (USFWS)

Individuals or groups contributing to this EA: Allison Puchniak, FWP Native Species Biologist; Kevin McDonnell, FWP Civil Engineer Specialist; Tom Carroll, BLM Reality Specialist; Lou Hanebury, USFWS Wildlife Biologist

Recommendation concerning preparation of EIS: None required. This EA was prepared in consultation with the USFWS regarding potential impacts to the bald eagle nest site. The BLM has also prepared and circulated a "Draft Environmental Assessment, Finding of No Significant Impact, and Decision Record" for the "Yellowstone County Proposed Bundy Bridge River Access Site Right-of-Way."

The Yellowstone County Commissioners have publicized plans for the Bundy Bridge river access site in the Billings Gazette over the past several years. Comments were heard at the November 4, 2004 Board of County Commissioners meeting, during which the Bundy Bridge project was an item on the published agenda.

Formal public hearings were scheduled during Board of County Commissioner meetings on February 7 and February 17, 2006, at 9:45 a.m. in the Yellowstone County Courthouse, 4th floor. In addition, an evening comment session was held on February 7, 7:00 p.m., in Huntley, Montana. The public hearings were advertised as legally required, and the Bundy Bridge public hearing notice was sent to not only the Billings Gazette, but also to the Laurel Outlook and the Yellowstone County News.

EA prepared by: Jim Darling, FWP Regional Fisheries Manager

Date: June 9, 2006

COMMENTS

I.1. A small amount of terrestrial and aquatic habitat will be temporarily disturbed during construction in the immediate vicinity of the project. The banks will be reseeded and the channel substrate will re-sediment. A whooping crane was recently sighted in the vicinity; it should not be affected. Softshell turtles may nest in the vicinity wherever sand or gravel banks are available.

I.2. Turbidity will increase temporarily during construction in the immediate vicinity of the project.

I.4. Grasses, shrubs, and forbs will be removed from either side of the backwater channel bank within the 74 ft construction zone on each side. Both sides will be reseeded after construction.

I.7. There is an active bald eagle nest within .26 mile of the proposed construction site and two others within 2.5 miles (see attached memo of October 29, 2004 from Allison Puchniak). The proposed project is not within direct line of sight of the eagle's nest because of dense vegetation. Project construction is intended to begin around the first of July and completed before the Lewis and Clark Bicentennial Celebration in late July. Proposed construction could fall, therefore, within the timeframe when nestlings may still occupy a nest. The closest nesting pair has persisted through major bridge construction within 1/3 mile and field cultivation within 650 ft. Construction is expected to be completed within 2-3 weeks, with the majority of time spent on the road crossing approximately 1/3 mile from the nest.

Construction activity prior to August 15 may be allowed with consideration of the specific nesting chronology of the affected nest and through coordination with the U.S. FWS and Montana Fish, Wildlife, and Parks. Yellowstone County will contact Lou Hanebury, U.S. Fish and Wildlife Service, Wildlife Biologist, at 406-247-7367, and Allison Puchniak, Montana Fish, Wildlife, and Parks, Native Species Biologist, at 406-247-2966 to inform them of the actual construction start date. Construction activity will be negotiated based on the nesting chronology of the eagles. The development stage of the fledgling eagles will determine how much construction activity can occur.

These activities are not expected to have an impact on the bald eagle winter communal roost site due to the decreased dispersed recreational activities in the winter. In the future, additional mitigation measures may need to be established, such as a no disturbance zone from humans during the nesting period, if production of young declines.

I.9. There are no known or anticipated historic properties located within the vicinity of the proposed construction, nor are there any known or suspected significant properties in the vicinity that may be subject to ancillary impacts. No impacts are anticipated as a result of this action. The archaeologist will be on site during construction to determine whether artifacts are uncovered during construction.

II.7. Access to the Yellowstone River will improve significantly, which is a benefit both to recreationists and search-and-rescue personnel.

II.10. Development of this access site will require maintenance and patrolling by Fish, Wildlife and Parks and Yellowstone County.

Alternatives

No Action: Recreationists willing to wade the backwater channel would have limited access to this public land. Boat launching would be confined to Voyagers Rest FAS 7 miles upstream and Captain Clark FAS 18 miles downstream.

Preferred Alternative: The site would be accessible to launching and retrieving motorized and non-motorized boats for recreation and search and rescue operations.

**APPENDIX A
PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST**

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

(List any mitigation/stipulations required, or note "None".)

None.

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

YES

NO

___X___

1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?

___X___

2. Does the action result in either a permanent or indefinite physical occupation of private property?

- | | | |
|---------------|---------------|---|
| <u> </u> | <u> X </u> | 3. Does the action deprive the owner of all economically viable uses of the property? |
| <u> </u> | <u> X </u> | 4. Does the action deny a fundamental attribute of ownership? |
| <u> </u> | <u> X </u> | 5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO , skip questions 5a and 5b and continue with question 6.] |
| <u> </u> | <u> </u> | 5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests? |
| <u> </u> | <u> </u> | 5b. Is the government requirement roughly proportional to the impact of the proposed use of the property? |
| <u> </u> | <u> X </u> | 6. Does the action have a severe impact on the value of the property? |
| <u> </u> | <u> X </u> | 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO , do not answer questions 7a-7c.] |
| <u> </u> | <u> </u> | 7a. Is the impact of government action direct, peculiar, and significant? |
| <u> </u> | <u> </u> | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded? |
| <u> </u> | <u> </u> | 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question? |

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.