



Decision Notice for the Draft Environmental Assessment: Property Addition to Paul's Memorial Fishing Access Site

February 13, 2023

PROPOSAL

Type of Proposed State Action

Montana Fish, Wildlife & Parks, (FWP) is proposing to accept a donation of four acres of property bordering the existing 10-acre Paul's Memorial Fishing Access Site (FAS) on Lake Five near West Glacier.

Narrative Summary of the Proposed Action

Paul's Memorial FAS currently includes 150ft of shoreline and the proposed donation would add approximately four acres and an additional 250ft of shoreline to accommodate shore-based recreation and reduce crowding, safety hazards, and conflicts at the existing boat ramp and dock. FWP's ownership would be subject to a life estate held by one of the donor's family members. Thus, FWP would not possess the property until the death of that family member. FWP is not proposing any development or improvements on the property and any future improvements would be subject to a separate Environmental Assessment.

ALTERNATIVES

Alternative 1: No Action

In addition to the proposed Project, and as required by MEPA, FWP analyzed the "no-action" alternative for this EA. Under the "no-action" alternative, FWP would not accept the donation of four acres to be added to Paul's Memorial FAS on Lake Five. FWP assumes that crowding, safety hazards, and conflict between users at the boat ramp would persist.

Alternative 2: Proposed Action:

FWP would accept the donation of approximately four acres to be added to Paul's Memorial FAS through a life estate. The property would be incorporated into the existing FAS upon termination of the life estate. No development of the property is proposed.

PUBLIC REVIEW PROCESS

FWP released a draft environmental assessment (EA) for a 30-day public comment period from December 15, 2022, through January 15, 2023. The EA could be viewed on the FWP website at <https://fwp.mt.gov/public-notices> or by contacting the Region 1 office at (406) 752-5501. Comments could be submitted to FWP via mail or email. Legal notices for the availability of the draft EA were published in the Daily Interlake and Helena Independent Record and email notifications were sent to FWP's Region 1 interested persons list.

PUBLIC COMMENTS

FWP received 50 e-mails on the proposed project. 19 people expressed general support for the Proposed Action, and the remainder expressed opposition or concern over specific elements of the proposed action. FWP staff reviewed those e-mails to identify specific comments. A comment was defined as a specific issue or impact. In many cases, multiple people listed the same or similar comments; these comments were summarized, categorized, listed once, and one response is provided. The following is a synopsis of public input received during the comment period and FWP's response to those comments.

Comments Concerning Overcrowding and Safety

Comment: Lake Five is too small to accommodate any increased use. The Lake is already overcrowded and unsafe. There are numerous larger lakes nearby including Hungry Horse Reservoir and Flathead Lake that can easily accommodate more use.

Response: FWP is not proposing to add any additional parking or expand boating facilities at the site to accommodate more boating use. The proposal is intended to better accommodate existing use and alleviate safety concerns and user conflicts. Due to the existing site shape and configuration of Paul's Memorial FAS, non-boaters are recreating within the developed boat launch area, creating user conflict, and boating hazards. This proposal would reduce that likelihood by providing dedicated space for non-boater recreation.

Some commentors expressed concerns about overcrowding on Lake Five as a result of the proposed action. FWP believes this proposal would have minimal impact on perceived crowding and would improve safety at the boat ramp. The addition of 250 feet of shoreline would bring the total shoreline of Paul's Memorial FAS to 400 feet, or approximately 2% of the lake's shoreline. Current boating regulations, including a prohibition on personal watercraft (jet skis) and a requirement for boats towing water skiers, tubers, etc., to travel in a counterclockwise direction, are intended to mitigate boat safety concerns. A separate petition from landowners on Lake Five for additional boating regulations is being considered by the FWP Commission independently from this proposal.

Comment: The Lake Five Resort offers a large, safe beach that can easily accommodate swimmers, and picnickers making this proposal unnecessary. FWP does not need to compete with this business.

Response: The Lake Five Resort is privately owned, and access is not guaranteed. A change in ownership or management could result in a loss of public access in the future. FWP does not offer any value-added services at Paul's Memorial FAS and is not in competition with private interests on Lake Five.

Comment: Parking is currently a problem, and this proposal will make it worse. When the parking lot at the site is full, people park on the access road and on Belton Stage Rd causing congestion.

Response: FWP is not proposing to add additional parking at the site. The proposal is intended to better accommodate existing use and alleviate safety concerns by providing a place for non-boaters to recreate. FWP staff has not observed major issues of parking on the access road to the FAS. FWP staff will continue to monitor and address parking issues within the FAS as they occur. FWP staff have observed vehicles parked along Belton Stage Rd beyond the FAS access road. Staff has not observed that this has resulted in a high level of walk-in traffic to the FAS. The distance from Belton Stage Rd to Lake Five is approximately 1200ft which appears to be a disincentive to walking in. U.S. Forest Service lands border Belton Stage Rd opposite the FAS and staff have observed dispersed recreation and camping on those Forest Service lands that appears to be associated with vehicles parked along Belton Stage Rd.

Comment: FWP should not consider expanding the site because FWP can't currently enforce regulations at the site and lacks the ability to enforce the regulations if the site were expanded. The FWP on-site host lacks authority and is not present on-site much of the time. This unfairly passes the burden onto the Sheriff's department and local taxpayers.

Response: FWP Game Wardens will continue to patrol the site and address violations. Non-enforcement FWP staff play an important role in proactively preventing rule violations by providing visitor information and communicating important information to wardens. A site host is stationed at the site during the peak visitation season to assist users and inform them of site regulations. FWP does not anticipate that the addition of 4 acres to the FAS will alter the demand on law enforcement services. The majority of calls and complaints received by the site manager are regarding crowding and conflict at the boat ramp. FWP anticipates that the proposed action would reduce conflict at the boat ramp, likely reducing demand on law enforcement.

Comment: Paul's Memorial FAS was intended for fishing boats as the title Fishing Access Site implies and not for recreational boaters, swimmers, and picnickers. FWP should not expand the site to accommodate non-angling uses.

Response: Montana's Fishing Access Sites provide access to quality waters for diverse users. A 2018 survey found that approximately 40% of FAS users state-wide primarily use fishing access sites for fishing and the remaining 60% of users primarily engage in non-angling activities such as

recreational boating, floating, swimming, picnicking and dog walking. The proposed land acquisition is intended to reduce congestion and conflict between boaters and non-boaters at the boat ramp.

Comment: The "Purpose and Need" for this project stated in the Draft EA is misleading. The addition of public property will increase the use of the boat dock by non-boating users, not decrease it as the EA states. The conclusions lack data and facts to support them and it is up to FWP to prove its conclusions.

Response: FWP staff disagree that providing additional public property will lead to an increase of non-boating use of the boat dock and ramp. FWP makes a reasonable assumption informed by experience that tells us providing a safe and legal space for non-boating users will reduce crowding and safety issues at the boat ramp and dock.

Comments Concerning Impacts to Landowners

Comment: Landowners and residents on Lake Five should have the right to control the nature of their community. A resort development was recently denied and FWP should not be able to expand public access.

Response: Pursuant to Article IX, Section 3 of the Montana Constitution, all surface waters within the boundaries of the state are the property of the state for the use of its people. A majority of the property surrounding Lake Five is privately-owned with no public access. The addition of 250 feet of shoreline would bring the total shoreline of Paul's Memorial FAS to 400 feet, or approximately 2% of the lake's shoreline.

Landowners, residents, and all members of the public have the right to participate and provide comment on this proposal in accordance with the Montana Environmental Policy Act (MEPA). FWP will comply with all applicable local planning and zoning regulations.

Comment: Neighbors to the FAS and landowners on the lake will be exposed to more obnoxious and lewd behavior, drinking, partying, and excessive noise.

Response: FWP will continue to enforce all applicable rules and regulations to minimize disturbance to neighbors and landowners. The FAS has a host on site during the peak visitation season; is closed at night; and fires, fireworks, and shooting are prohibited. This proposal is designed to improve safety and reduce conflict between users at the boat ramp by providing dedicated space for non-boaters away from the boat ramp.

Comment: The expansion of Paul's Memorial FAS will lead to an increase in trespassing on neighboring private property. FWP will have to build a fence and sign a liability waiver that indemnifies the landowners if someone was to get injured while on their property.

Response: The proposal is intended to reduce conflicts and safety concerns at the boat launch and is not expected to result in an increase in trespass. By providing a safe and legal area for non-boating recreation FWP intends to reduce trespassing on adjoining properties. FWP will work with neighboring property owners to address trespass issues if they occur. MCA 70-16-302 restricts liability of landowners for persons who use their property for recreational purposes with or without permission.

Comment: The public access has ruined the character of Lake Five. Prior to the opening of Paul's Memorial FAS, the lake was quiet and peaceful. Expanding the FAS will continue to degrade the quality of life for residents and landowners.

Response: Pursuant to Article IX, Section 3 of the Montana Constitution, all surface waters within the boundaries of the state are the property of the state for the use of its people. FWP expects the proposed project will improve conditions at Paul's Memorial FAS and Lake Five by providing space for the non-boating public to recreate.

Comment: Property values for neighbors and landowners on the Lake will be negatively affected by the expansion of the FAS.

Response: The effect of the proposed property addition to the FAS on property values is unknown. Numerous social and economic factors affect property values, and many buyers consider proximity to parks and open space to be an asset.

Comments Concerning Impacts to Natural Resources

Comment: Increased boating access will degrade water quality on Lake Five.

Response: This proposal does not expand boating facilities or parking capacity at the site and FWP does not expect water quality to be affected.

Comments: Aquatic Invasive Species (AIS) will be more likely to spread to other water bodies including those in Glacier National Park.

Response: This proposal does not expand boating facilities or parking capacity at the site and the threat of AIS spreading will remain unchanged. FWP operates a robust AIS prevention and monitoring program. Additionally, Glacier National Park requires all boats to be inspected prior to launching inside the park.

Comment: Loons will be negatively impacted by increased public use.

Response: In 2022, loons nested on Lake Five for the first time since at least 2002. Unfortunately, the nest failed due to spring rains and associated natural flooding. Loons are sensitive to human activity including motorized and non-motorized boating. The project

does not propose to increase motorized boating opportunity. The loon nest is on the opposite side of Lake Five from the proposed project and FWP does not expect nonboating use at the project site to impact the nesting site.

This proposal does not provide additional parking or expanded boating facilities and recreational boating originates from public and private properties on Lake Five. Loon activity, including nesting, is monitored by Forest Service Loon Rangers. All nests and associated buffers will be clearly marked with floating buoys to help mitigate any potential disturbance from boat activity. Educational signage is posted at the boat ramp and Loon Rangers provide periodic on-site education to visitors.

Comment: Garbage left behind will be an issue, post "leave no trace" signage AND enforce a minimum \$200.00 fine for littering. Consider providing concrete picnic tables and having the camp host maintain garbage cans at the pit toilet to help deter littering. No shooting and no camping signage must be posted at the Forest Service trail access on Belton Stage across from Paul's Memorial to provide access and safety for recreators drawn to the area because of the public access to Lake Five.

Response: On-site hosts and FWP staff remove litter from the site on a routine basis and on-site signage address littering. Picnic tables are not part of this proposal. FWP has no authority to post or enforce shooting restrictions on adjacent US Forest Service lands.

Comments Concerning Process and Public Participation

Comment: The original purchase of land by FWP to create Paul's Memorial FAS was contested by landowners and ultimately settled in District Court. FWP was required to pay attorney fees which were paid by Montana taxpayers. FWP violated its own rules and regulations in the process of acquiring the property for the FAS. FWP will repeat its errors if it accepts the donation of property.

Response: FWP has and will follow all established laws and policies pertaining to the acceptance of this donation as an addition to Paul's Memorial FAS.

Comment: FWP's "Summary of Potential Impact of the Proposed Project on the Physical Environment and Human Population" is misleading and lacks data for validation. FWP lacks data to support the conclusions presented in the Checklist including analysis of the duration and severity impacts. All determinations can be refuted with data and facts. You cannot proceed with the acceptance of this property until all your analysis is completed and presented to the public for review.

Response: FWP has indicated in the Summary of Potential Impacts of the Proposed Project on the Physical Environment and Human Population section of the Modified Final EA that many of the impacts are expected to be negligible or minor, but not significant or greater than those already created by existing recreational use levels. These conclusions are based on reasonable assumptions and experiences that providing additional open space while not expanding boating

facilities or parking will have minimal impacts on the physical and human environment some of which are positive impacts. Approximately 98% of Lake Five shoreline would remain privately owned and many factors may contribute to increased recreational use of Lake Five.

Comment: Your evaluation of this project is incomplete since you have not considered alternate actions.

Response: As required by the Montana Environmental Policy Act, the environmental assessment includes Alternative 1- No Action and Alternative 2- Proposed Action. Under Alternative 1- No Action, the environmental assessment states “The “no-action” alternative forms the baseline from which the potential impacts of the proposed Project can be measured. Under the no-action alternative FWP would not accept donation of four acres adjacent to Paul’s Memorial FAS and it is unknown what would happen to the property. It’s expected the property would likely remain in private ownership. Conditions at Paul’s Memorial FAS would remain unchanged and congestion and user conflicts at the boat ramp would persist.”

Comment: Government agencies have a habit of proposing projects during times of the year when the least number of property owners can participate in the public process. Although FWP’s rules and regulations don’t require you to include input from all landowners on Lake Five, this supports the general public’s distrust of FWP. Common sense tells the general public that FWP is more interested in a land grab than service to the general public.

Response: These processes are frequently conducted outside of the peak summer visitation periods due to staffing availability and seasonal workloads. FWP mailed individual notices to adjacent property owners and posted notice on the FWP website and on social media. Additionally, FWP press releases have resulted in broad coverage of the proposal in multiple media outlets.

Comment: It is suspicious that the same family that is offering this proposed land donation is also petitioning the FWP Commission for increased boating restrictions on Lake Five.

Response: The proposals were made by different people. The petition to change boating regulations on Lake Five is a separate process from the consideration of accepting this donation.

Comments Pertaining to Beneficial Impacts

Comment: I support the donation of 4 acres of property bordering the existing 10-acre Paul’s Memorial FAS. This addition can only help the existing conditions at that FAS. As a landowner that borders an existing FAS, I can say I have no problem with the FWP as neighbors, and the public has always respected our property boundaries.

Response: FWP concurs, and this is consistent with the purpose and need for the proposed action.

Comment: The proposal will reduce crowding at the boat ramp and conflict between boaters and non-boaters by providing non-boaters a place to recreate.

Response: FWP concurs, and this is consistent with the purpose and need for the proposed action.

Comment: Waterfront property is in high demand and an opportunity like this will not come again.

Response: Thank you for your comment.

Comment: The addition of four more acres to the existing FAS to provide opens space for recreators will hopefully alleviate concerns of neighboring landowners.

Response: FWP concurs, and this is consistent with the purpose and need for the proposed action.

Comment: The lake is a true gem in the Flathead Valley and more shoreline would mean more families getting to use the lake.

Response: The proposed action is intended to improve safety for all users of the FAS.

Comment: This is a generous offer by the landowner. Please express our gratitude.

Response: FWP concurs.

Comment: With 8 billion people sharing planet Earth, all recreation sites will only be increasingly crowded in the future. We need to dramatically increase access for all outdoor recreation.

Response: Thank you for your comment.

Comment: With Glacier National Park limiting access through ticked entry, it is good to expand access opportunities outside the park.

Response: Thank you for your comment.

Comments Outside the Scope of this Proposal

Comment: FWP should implement a ban on wake surf boats and other boating restrictions to improve safety, reduce impacts to wildlife and reduce lakeshore erosion.

Response: This proposal does not address boating regulations. Boating regulations are achieved through a separate petition process and a petition for Lake Five has been brought forth to the FWP Commission by a group of landowners.

DECISION AND RECOMMENDATION

Based upon the Modified Final Environmental Assessment and the applicable laws, regulations, and policies, I have determined that the proposed action will not have significant negative effects on the human and physical environments associated with this project and some of the impacts identified are beneficial. Therefore, I conclude that the EA is the appropriate level of analysis, and the preparation of an Environmental Impact Statement is unnecessary.

Based on the analysis in the Modified Final Environmental Analysis FWP has selected the "Proposed Action" (Alternative 2). FWP will recommend to the Fish and Wildlife Commission that it accept the donation of approximately four acres adjacent to Paul's Memorial FAS to be added to the existing FAS as identified in the Modified Final Environmental Analysis.

Lee Anderson

Lee Anderson
Region 1 Supervisor
Montana Fish, Wildlife & Parks

Date 2/13/2023