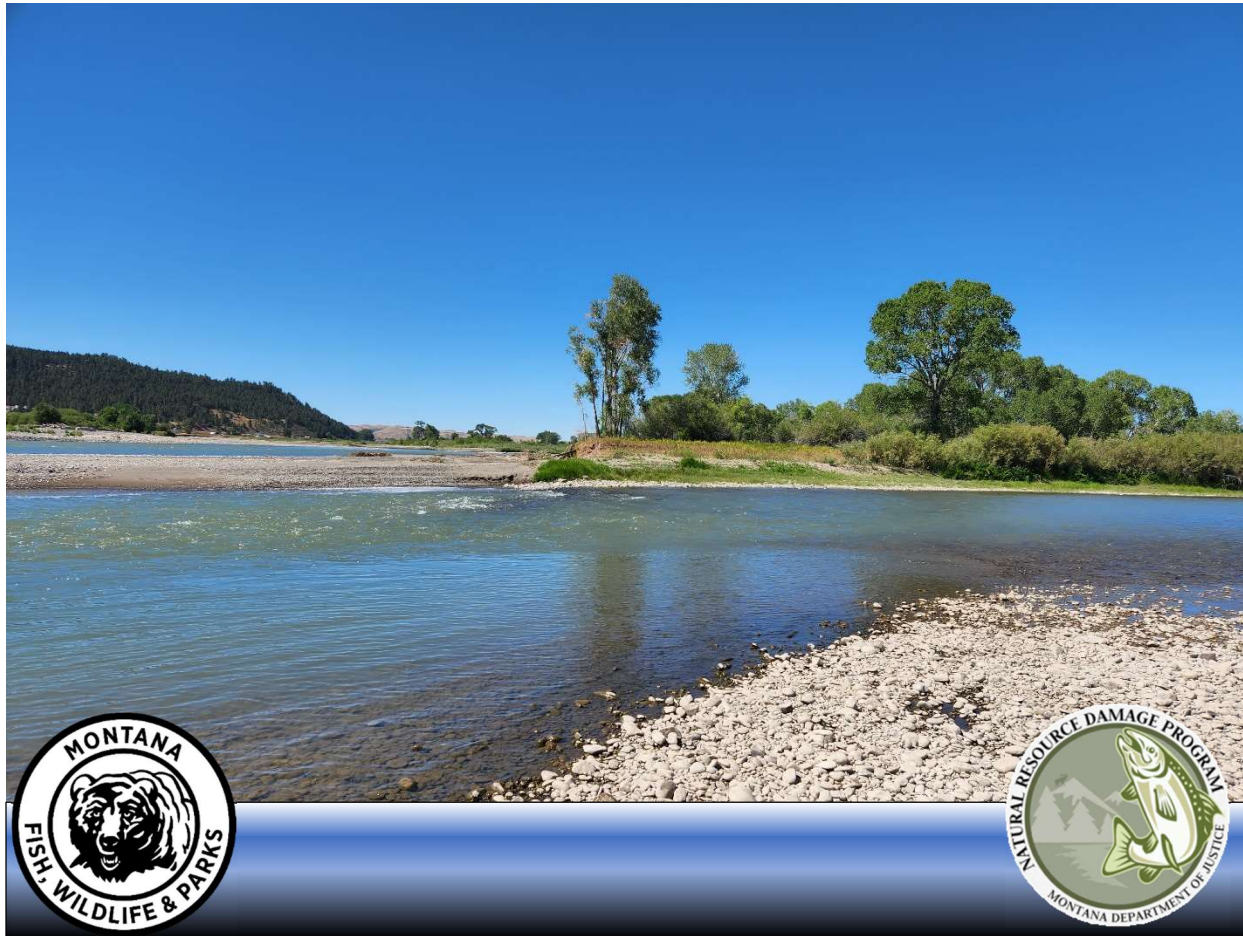


OTTER CREEK ISLANDS ACQUISITION YELLOWSTONE RIVER



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Emailed comments can be sent to fwpreion5pc@mt.gov please use subject: **Otter Creek Islands**
Comment period open September 28, 2022 thru October 28, 2022.

Executive Summary

Montana Fish Wildlife & Parks (FWP) has an opportunity to acquire an island complex in the Yellowstone River upstream of Reed Point, MT. The complex could be acquired with mitigation funds administered by the Montana Natural Resource Damage Program (NRDP) as a result of the Exxon Mobil Pipeline Company July 1, 2011, Yellowstone River Oil Spill. This site is adjacent to Indian Fort Fishing Access Site (FAS), 4 river miles below Bratten FAS site, and 7 river miles above Twin Bridges. The islands are in a high priority reach of the Yellowstone River for additional public access. The NRDP has provisions to allow for natural function of river processes and recruitment of large woody debris--typically cottonwoods--to the river during floods by securing cottonwood riparian areas that are exposed to natural riverine forces. The natural riverine function builds islands and provides habitat for terrestrial and aquatic organisms. The NRDP proposes to fund FWP to purchase the islands from Otter Creek Ranch LLC. FWP would hold title and administer the property on behalf of the State of Montana. The islands would remain as an undeveloped area for wildlife stewardship and provide recreational resources for the public such as angling, hunting, birdwatching, and camping.

The project is part of the implementation of the *Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Assessment for the Exxon Mobil Pipeline Company July 1, 2011, Yellowstone River Oil Spill* (restoration plan) prepared by the U.S. Department of the Interior, through the Bureau of Land Management, U.S. Fish and Wildlife Service, and the State of Montana through the NRDP. The restoration plan identified five categories of injury along the Yellowstone River and identified project types for each injury category to address the injuries, compensate for the service losses due to the oil spill, and meet restoration plan goals. This acquisition addresses the terrestrial/riparian habitat and large woody debris project categories.

Alternatives for this proposal include no action in which FWP doesn't act to acquire the land from Otter Creek Ranch LLC, and the proposed preferred alternative in which FWP accepts title from a sale completed with Otter Creek Ranch LLC and adds the new islands to the Indian Fort Fishing Access Site.

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Purpose and Need

The purpose of this project is to acquire an island complex off the Yellowstone River for human recreational use, habitat for riverine function, fish, and wildlife. The proposed area is a high FWP priority reach for additional Fishing Access Sites. It is within the natural resource's recovery area for the 2011 Exxon Pipeline spill as defined in the NRDP restoration plan. This acquisition addresses the terrestrial/riparian habitat and large woody debris project categories discussed in the NRDP restoration plan. The goal of these types of NRDP projects is to recruit large woody debris to the river and restore natural river function to re-establish large woody debris piles in areas where they were dismantled or disturbed by response actions. This action fulfills program plans for each of the two state agencies, Montana FWP and NRDP.

A. Background and Proposed Actions

Type of Proposed Action

The action for FWP would be to accept title to the lands acquired from Otter Creek Ranch LLC with funds provided by the NRDP. No development of the site would be considered for this proposed water-only access addition to Indian Fort FAS.

Agency Authority for the Proposed Action

- 87-1-209 MCA, FWP authority to acquire land by purchase, lease, agreement, gift or easement.
- 23-1-127 MCA Maintenance at FAS sites
- 12.8.602 ARM specifies development elements considered significant within sites
- 23-1-110 MCA defines public involvement for FAS
- 23-1-126 MCA, Good Neighbor Policy

Project Name

Otter Creek Islands Addition to Indian Fort Fishing Access Site

Project Sponsor

Montana Fish, Wildlife, and Parks
2300 Lake Elmo Drive
Billings, MT 59105

Anticipated Schedule

Table 1. Timeline of proposed actions.

Event	Date
Public Comment Period	September 28 th through October 28 th , 2022
Public Meeting	Not anticipated
Decision Notice (estimated)	November 3 rd , 2022
Project begins	After February 2023 FWP Commission
Project completed	February 28 th , 2023

Location of Project

The project area, known as Otter Creek Islands, currently exists as two parcels on an island in the Yellowstone River about two miles above Reed Point in Sweetgrass County. The two parcels (called Island A and Island B) combined are approximately 107 acres and are presently undeveloped. Island “A,” situated in Section 25, T1S, R17E, P.M.M., located in Sweetgrass County, Montana. Said property contains a total of 51.744 acres, more or less. Island “B,” situated in Sec. 25, T1S, R17E, P.M.M., located in Sweetgrass County, Montana, and situated in Sec. 30, T1S, R18E, P.M.M. Said property contains a total of 56.059 acres, more or less. The islands are owned by Otter Creek Ranch LLC. Figure 1 indicates the location with a reference within the state, Figure 2 provides a reference at a County level, Figure 3 displays the current image of the island complex with the cadastral boundaries generally overlaid.



Figure 1. Map of location statewide reference.

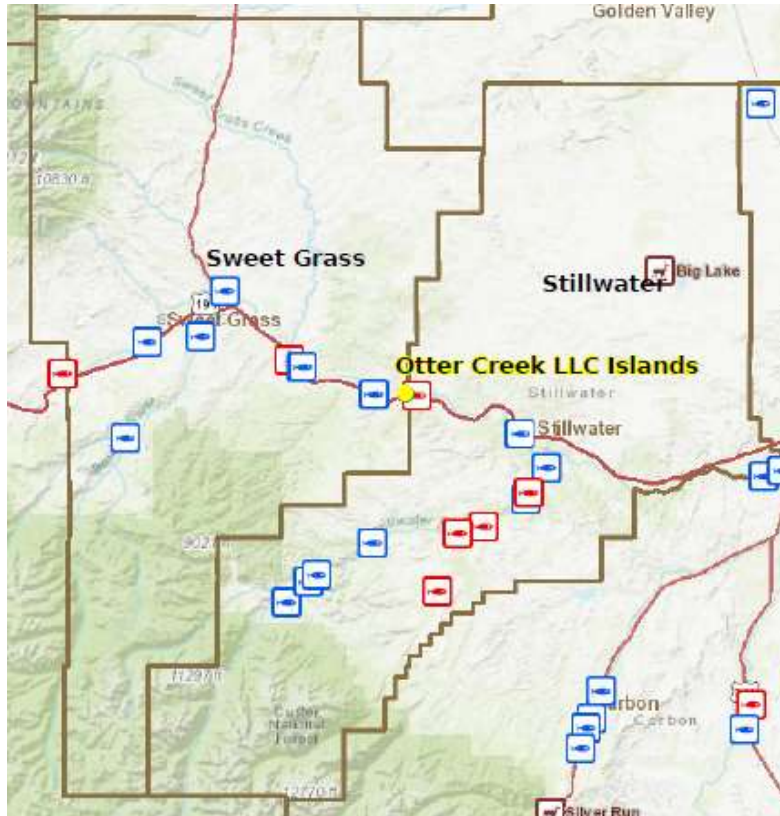


Figure 2. Map of location county reference.

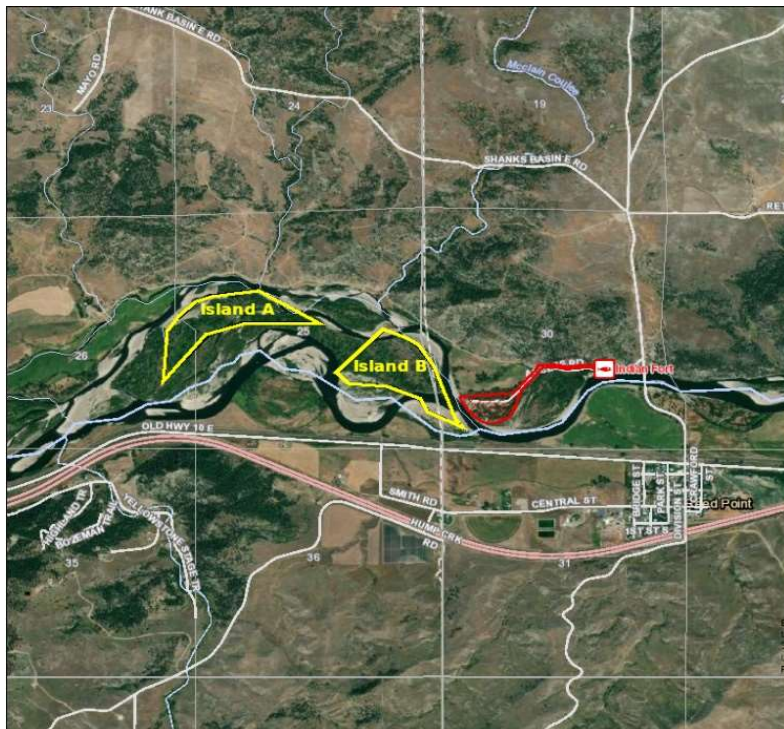


Figure 3. Satellite image of Otter Creek parcels (yellow) with Indian Fort FAS (red) outlined for reference.

Project Size

The area considered for purchase is approximately 107 acres. Island areas outside of the cadastral lines are a mix of private and accreted lands primarily comprised of riparian forest, freshwater emergent wetlands, riparian shrub, and open gravel bars. Accreted lands are increases in land by a river or stream depositing soil. The parcels under consideration and associated accreted lands would be considered part of this potential addition to Indian Fort FAS. A survey would be required to identify property lines with signage indicating the borders to private lands. Table 2 below indicates the approximate acreage for the Fishing Access Site lands based on the 107 acres in the defined parcels. The majority of the islands are in the FEMA 100-year floodplain, Island A and B have approximately 2.4 and 7.6 acres above the 100-year floodplain, respectively (Appendix 1). The areas defined by the USFWS Wetlands Inventory were used to create Table 2 values (Appendix 2).

Table 2. Acres of land affected by the proposed project.

Description	Acres
Developed	0
Open Space	5.0
Riverine	8.5
Riparian Forested	60
Riparian Shrub	10
Riparian Emergent	19
Freshwater Forested Shrub	3
Freshwater Emergent Wetland	1.5
TOTAL	107

Consultation

- Montana Natural Resource Damage Program
- Montana Natural Heritage Species of Concern Reports
- USFWS Service Wetland Mapping
- Montana Department of Natural Resources
- FEMA Flood Plain Mapper
- Montana State Historic and Preservation Office
- Montana Fish, Wildlife & Parks Wildlife Biologist Megan O'Reilly

Permits

No Permits are required for the proposed action.

Budget

The costs to FWP are limited to project planning, due diligence, and public outreach efforts in conjunction with NRDP. NRDP paid for the completed cultural resources and contaminant studies and will pay closing costs and associated fees. NRDP paid for an appraisal and has been

providing staff for project planning. FWP under the preferred proposed alternative would accept NRDP funds to purchase the land from Otter Creek Ranch LLC. The land appraisal resulted in a value of \$140,150 which will be used to complete the transaction if the preferred proposed alternative is accepted after considering public comment and approval from the FWP Commission.

Appraised Value..... \$140,150

Project Brief History

This area was used by Paleo-Indian and native Americans for 8,500 years or more. In the 1700s into the 1800s this area was predominately occupied by Blackfeet and Crow tribes. The earliest documented white explorers to pass through the area was the Corps of Discovery, a.k.a. the Lewis and Clark Expedition. Most of Lewis and Clark’s exploration focused on the Missouri River and its major tributaries. In July of 1806 after crossing back over the Bitterroot Mountains, the Corps of Discovery divided sending Lewis with a party back to the Great Falls of the Missouri and Clark with a party to explore the upper Yellowstone River. Of particular interest to the project area, on July 17, 1806, William Clark noted an “Indian fort” that was constructed on an island in the Yellowstone River. The precise location and function of this structure can only be speculated but some researchers believe that it may have been in the Reed Point area. Clark’s journal entries near and on the 18th of July, while passing through current Sweet Grass and Stillwater counties indicated abundant bison, elk, deer, and grizzly bear and may contain the first written documentation of mountain suckers. The area was explored by traders and trappers for the next several decades. From 1851 to 1882 the area was part of the Crow Tribe Reservation. From 1882 to 1883 the Northern Pacific Railroad was developed across Montana. The railroad parallels the Yellowstone River near this site. The Homestead Act of 1862 set lands aside for settlement. The Newlands Reclamation Act in 1902 combined with railway access spurred settlers to Montana. Some evidence the area had been used for agricultural purposes was found on the parcels with old, downed fencing and a small perimeter snow fence enclosure. No recent evidence of grazing or development was found in the parcels.

B. Alternatives

1. No Action for this site.
2. FWP accepts title

C. Description of Alternatives

1. No Action

Under this alternative FWP would not accept or continue to invest time to acquire the island complex as part of the Indian Fort FAS. NRDP would seek other projects that meet the criteria for riparian lands that could meet the Large Woody Debris Program criteria.

2. FWP Acquisition

Under this alternative, FWP will work with NRDP and Otter Creek Ranch LLC to acquire lands and add on to the already existing Indian Fort FAS, thereby meeting objectives in the NRDP restoration plan and FWP statewide management plan.

D. ENVIRONMENTAL REVIEW

The following tables summarize potential effects to the physical and human environments if the preferred alternative is selected and implemented.

D.1 LAND RESOURCES

Table 3. Physical Environment Land Resources.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Soil instability or changes in geologic substructure?		x				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil which would reduce productivity or fertility?		x				
c. **Destruction, covering or modification of any unique geologic or physical features?		x				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		x				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		x				
f. Other:		x				

D.2 AIR

Table 4. Physical Environment Air.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Emission of air pollutants or deterioration of ambient air quality? (also see 13 (c))		X				
b. Creation of objectionable odors?		X				
c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?		X				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		X				
e. ***For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regs? (Also see 2a)		X				
f. Other:		X				

* Include a narrative explanation under Part III describing the scope and level of impact. If the impact is unknown, explain why the unknown impact has not or cannot be evaluated.

** Include a narrative description addressing the items identified in 12.8.604-1a (ARM)

*** Determine whether the described impact may result and respond on the checklist. Describe any minor or potentially significant impacts.

**** Include a discussion about the issue in the EA narrative and include documentation if it will be useful.

D.3 WATER

Table 5. Physical Environment Water.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. *Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?		x				
b. Changes in drainage patterns or the rate and amount of surface runoff?		x				
c. Alteration of the course or magnitude of floodwater or other flows?		x				
d. Changes in the amount of surface water in any water body or creation of a new water body?		x				
e. Exposure of people or property to water related hazards such as flooding?		x				
f. Changes in the quality of groundwater?		x				
g. Changes in the quantity of groundwater?		x				
h. Increase in risk of contamination of surface or groundwater?		x				
i. Effects on any existing water right or reservation?		x				
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		x				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?		x				
l. ****For P-R/D-J, will the project affect a designated floodplain? (Also see 3c)		x				
m. ***For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a)		x				
n. Other:		x				

D.4 VEGETATION

Table 6. Physical Environment Vegetation.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated*	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?		x				
b. Alteration of a plant community?		x				
c. Adverse effects on any unique, rare, threatened, or endangered species?		x				A
d. Reduction in acreage or productivity of any agricultural land?		x				
e. Establishment or spread of noxious weeds?		x				B
f. ****For P-R/D-J, will the project affect wetlands, or prime and unique farmland?		x				
g. Other:		x				

- A. Although no disturbance of land will be generated through the purchase, dispersed recreational use would likely occur on the island. As such, a review of the Montana Natural Heritage Program Plant Species of Concern database was conducted. There is one species of concern Slim-pod Venus'-looking-glass *Triodanis leptocarpa* documented in this township 1S 17E. Appendix 3.
- B. No disturbance of land would occur with this proposal, beyond posting boundary signs

D.5 FISH/WILDLIFE

Table 7. Physical Resource Fish and Wildlife.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Deterioration of critical fish or wildlife habitat?		x				
b. Changes in the diversity or abundance of game animals or bird species?		x				
c. Changes in the diversity or abundance of nongame species?		x				
d. Introduction of new species into an area?		x				
e. Creation of a barrier to the migration or movement of animals?		x				
f. Adverse effects on any unique, rare, threatened, or endangered species?		x				A
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?		x				
h. ***For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f)		x				
i. ***For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d)		x				
j. Other:		x				

- A. No adverse effects on any rare, threatened or endangered species are likely to occur as part of this proposal. However, a review of animal species of concern using the Montana Natural Heritage database was completed. The following species of concern have been documented in this township. The full report is attached in the appendix.
- a. Mammals: hoary bat, long eared myotis, little brown myotis, grizzly bear.
 - b. Birds: great blue heron, veery, bobolink, pinyon jay, Cassin's finch, Lewis's woodpecker, Clark's nutcracker, sage thrasher, green-tailed towhee, Brewer's sparrow.
 - c. Reptiles: spiny softshell turtle, edge of range on the Yellowstone
 - d. Fish: Yellowstone cutthroat trout
 - e. Insects: Alberta snowfly
 - f. Purchase of this project would not negatively affect these species.

D.6 HUMAN ENVIRONMENT NOISE/ELECTRICAL EFFECTS

Table 8. Human Environment Noise and Electrical Effects.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Increases in existing noise levels?		x				
b. Exposure of people to serve or nuisance noise levels?		x				
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?		x				
d. Interference with radio or television reception and operation?		x				
e. Other:		x				

D.7 LAND USE

Table 9. Human Environment Land Use

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?		x				A
b. Conflicted with a designated natural area or area of unusual scientific or educational importance?		x				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		x				
d. Adverse effects on or relocation of residences?		x				
e. Other:		x				

A. A site visit determined these parcels have not been developed. An old cedar post fence was found with all wires down, a small area was fenced with old lathe fencing to create a small enclosure. The current landowners have not been using the parcels for grazing or production.

D.8 RISK/HEALTH HAZARDS

Table 10. Human Environment Risk and Health Hazards.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?		x				
b. Affect an existing emergency response or emergency evacuation plan or create a need for a new plan?		x				
c. Creation of any human health hazard or potential hazard?		x				
d. ***For P-R/D-J, will any chemical toxicants be used? (Also see 8a)		x				
e. Other:		x				

D.9 COMMUNITY IMPACT

Table 11. Human Environment Community Impact.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?		x				A
b. Alteration of the social structure of a community?		x				
c. Alteration of the level or distribution of employment or community or personal income?		x				B
d. Changes in industrial or commercial activity?		x				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		x				
f. Other:		x				

- A. No effect, most of the area is in a 100-year floodplain. No development of significance would be permitted with or without a change in title.
- B. There would be no negative effect. The additional recreational use may modestly increase the demand for services in surrounding communities including gas, food, shuttle service, and other services associated with floaters and angler needs. The parcels are near Indian Fort FAS and downstream of Bratten FAS.

D.10 PUBLIC SERVICES/TAXES/UTILITIES

Table 12. Human Environment Public Services, Taxes, Utilities.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Will the proposed action have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:		x				A
b. Will the proposed action have an effect upon the local or state tax base and revenues?		x				B
c. Will the proposed action result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		x				C
d. Will the proposed action result in increased use of any energy source?		X				D
e. **Define projected revenue sources			x			E
f. **Define projected maintenance costs.			x			F
g. Other:		x				

- A. No change is anticipated. Boaters, floaters, and anglers already utilize the Yellowstone River in this area. This allows for expanded use of the islands outside of the ordinary high-water mark.
- B. Montana Fish, Wildlife & Parks pays property tax at the same rate as other owners.
- C. No facilities or utilities are part of this project.
- D. No effect.
- E. Funds administered by NRDP Program.
- F. Future costs of maintenance would be limited as this would be a natural setting without vehicular access.

D.11 AESTHETICS/RECREATION

Table 13. Human Environment Aesthetics and Recreation.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		x				
b. Alteration of the aesthetic character of a community or neighborhood?		x				
c. **Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report)			x			A
d. ***For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c)		x				
e. Other:		x				

- A. This will expand available public lands inaccessible by road. This will give the public an opportunity to camp or fish on the Yellowstone River without presence of vehicles aside from boats.

D.12 CULTURAL/HISTORICAL RESOURCES

Table 14. Human Environment Cultural and Historical Resources.

Will the proposed action result in:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. **Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?		x				
b. Physical change that would affect unique cultural values?		x				
c. Effects on existing religious or sacred uses of a site or area?		x				
d. ****For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a)		x				A
e. Other:		x				

- A. State Historical Preservation Office (SHPO) letter to review the project is included in part in Figure 6 also consulted with the following Native American Tribes Tribal Historic and Preservation Offices: Shoshone Bannock, Blackfeet Nation, Crow Tribe, Northern Cheyenne, Shoshone Wind River. The islands show no record of building developments. It is anticipated the parcels will remain undeveloped.

E. SIGNIFICANCE CRITERIA

SUMMARY EVALUATION OF SIGNIFICANCE

Table 15. Summary Evaluation of Significance.

Will the proposed action, considered as a whole:	IMPACT *				Can Impact Be Mitigated *	Comment Index
	Unknown *	None	Minor *	Potentially Significant		
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total.)		x				
b. Involve potential risks or adverse effects which are uncertain but extremely hazardous if they were to occur?		x				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?		x				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		x				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		x				
f. ***For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e)		x				A
g. ****For P-R/D-J, list any federal or state permits required.		X				B

- A. This project isn't expected to generate organized opposition. The land is currently held by Otter Creek LLC.
- B. No permits are required for this action.

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 OR STIPALTIONS REQUIRED, OR NOTE "NONE")

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

YES/NO

Yes	1.	Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
No	2.	Does the action result in either a permanent or indefinite physical occupation of private property?
No	3.	Does the action deprive the owner of all economically viable uses of the property?
No	4.	Does the action deny a fundamental attribute of ownership?
No	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.]
	5a.	Is there a reasonable, specific connection between the government requirement and legitimate state interests?
	5b.	Is the government requirement roughly proportional to the impact of the proposed use of the property?
No	6.	Does the action have a severe impact on the value of the property?
No	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.]
	7a.	Is the impact of government action direct, peculiar, and significant?
	7b.	Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
	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.

No taking or damaging implications exist, willing seller of their property.

F. EVALUATION AND LISTING OF MITIGATION, STIPULATION OR OTHER CONTROL MEASURES ENFORCEABLE BY THE AGENCY OR OTHER GOVERNMENT AGENCY

As part of the NRDP program goals this island portion of Indian Fort FAS would be allowed to degrade and aggrade naturally while allowing for public use.

G. NARRATIVE EVALUATION AND COMMENT

No negative impacts are anticipated as part of this title acquisition project. Net positive effects are anticipated as natural river process would be allowed to act on this island without human intervention. The island would provide protected habitat for plant and animal species associated in this reach of the Yellowstone River.

H. EA CONCLUSION SECTION

1. Based on the significance criteria evaluated in this EA, is an environmental impact statement (EIS) required (YES/NO)?

NO.

2. Describe the level of public involvement for this project if any and, given the complexity and the seriousness of the environmental issues associated with the proposed action, is the level of public involvement appropriate under the circumstances?

The NRDP program completed a programmatic EA which identified acquisition of potentially erodible lands with riparian forests and shrubs to address loss of large woody debris due to the ExxonMobil Pipeline Company July 1, 2011 Oil Spill. The Montana Fish Wildlife & Parks 2019-2027 Statewide Fisheries Management Program and Guide indicates increased use of the lower portions of the Upper Yellowstone area with a need for additional

access and opportunity. This document was publicly reviewed and approved by the FWP Commission.

FWP frequently receives inquiries about access and legal use of islands in the Yellowstone River. This site would provide island access to the public with the ability to picnic, camp, fish, and hunt this island complex. This EA and associated FWP Commission review will provide for additional public involvement.

If substantial comments are received a public meeting may be held.

- Legal notices will be published in the Billings Gazette, Independent Record (Helena), Stillwater County News and Big Timber Pioneer.
 - Public notice will be posted on FWP's website, and the draft EA will be available electronically.
 - Copies of this draft EA may be obtained by mail from FWP, 2300 Lake Elmo Drive, Billings, MT 59105 or by phoning 406-247-2940
3. Duration of the comment period will be 30 days. Comments are due by midnight of October 28th, 2022, the closing day.
 4. Comment period will be from September 28th, 2022 to October 28th, 2022. Written comments can be mailed to:

Sean Flynn
Montana Fish Wildlife & Parks
2300 Lake Elmo Drive
Billings, MT 59105

Emailed comments can be sent to fwpreion5pc@mt.gov please use subject: **Otter Creek Islands**

Phone comments can be directed to

Sean Flynn at [406-431-6112](tel:406-431-6112) or Padraig Cunneen at 406-565-6924.

5. Name, title, address, and phone number of the person(s) responsible for preparing the EA:

Sean Flynn, FWP, Recreation Manager,
2300 Lake Elmo Drive
Billings, MT 59105.
406-431-6112.

Padraig Cunneen, NRDP, Environmental Science Specialist,
P.O. Box 201425
Helena MT 59620.
406-565-6924

Literature Cited and Website Links

MTNHP. 2022. Montana Natural Heritage Program.

<http://mtnhp.org/SpeciesOfConcern/?AorP=a> animal report, and

<http://mtnhp.org/SpeciesOfConcern/?AorP=p> plant report. Using Township 2 Range 18.

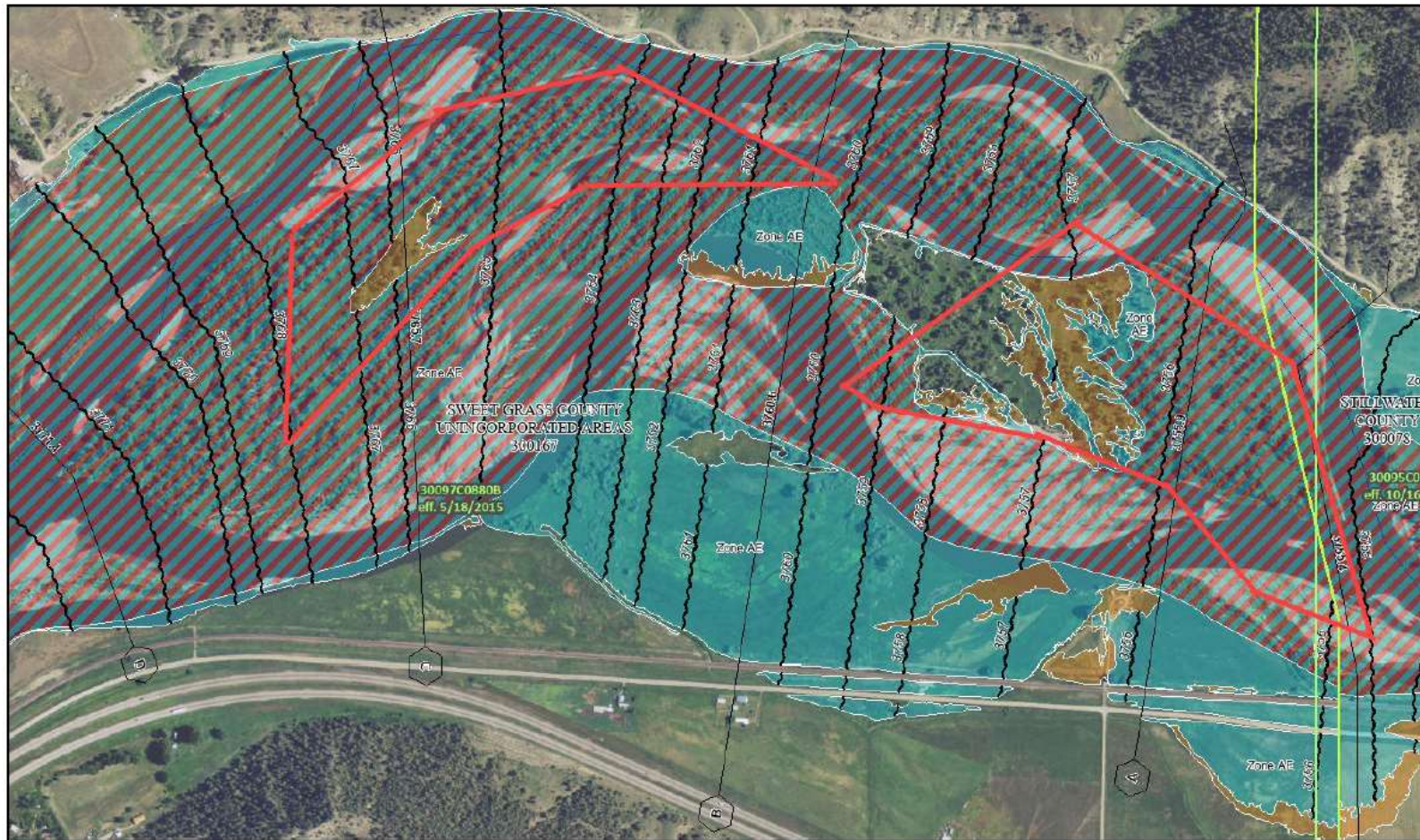
State and Federal Trustees 2017. Final Programmatic Damage Assessment and Restoration Plan And Final Programmatic Environmental Assessment for the ExxonMobil Pipeline Company July 1, 2011 Yellowstone River Oil Spill. DOJ. 2017. [https://media.dojmt.gov/wp-](https://media.dojmt.gov/wp-content/uploads/nrdp-yellowstone-restoration.pdf)

[content/uploads/nrdp-yellowstone-restoration.pdf](https://media.dojmt.gov/wp-content/uploads/nrdp-yellowstone-restoration.pdf)

US Fish and Wildlife Service National Wetlands Inventory. 2022.

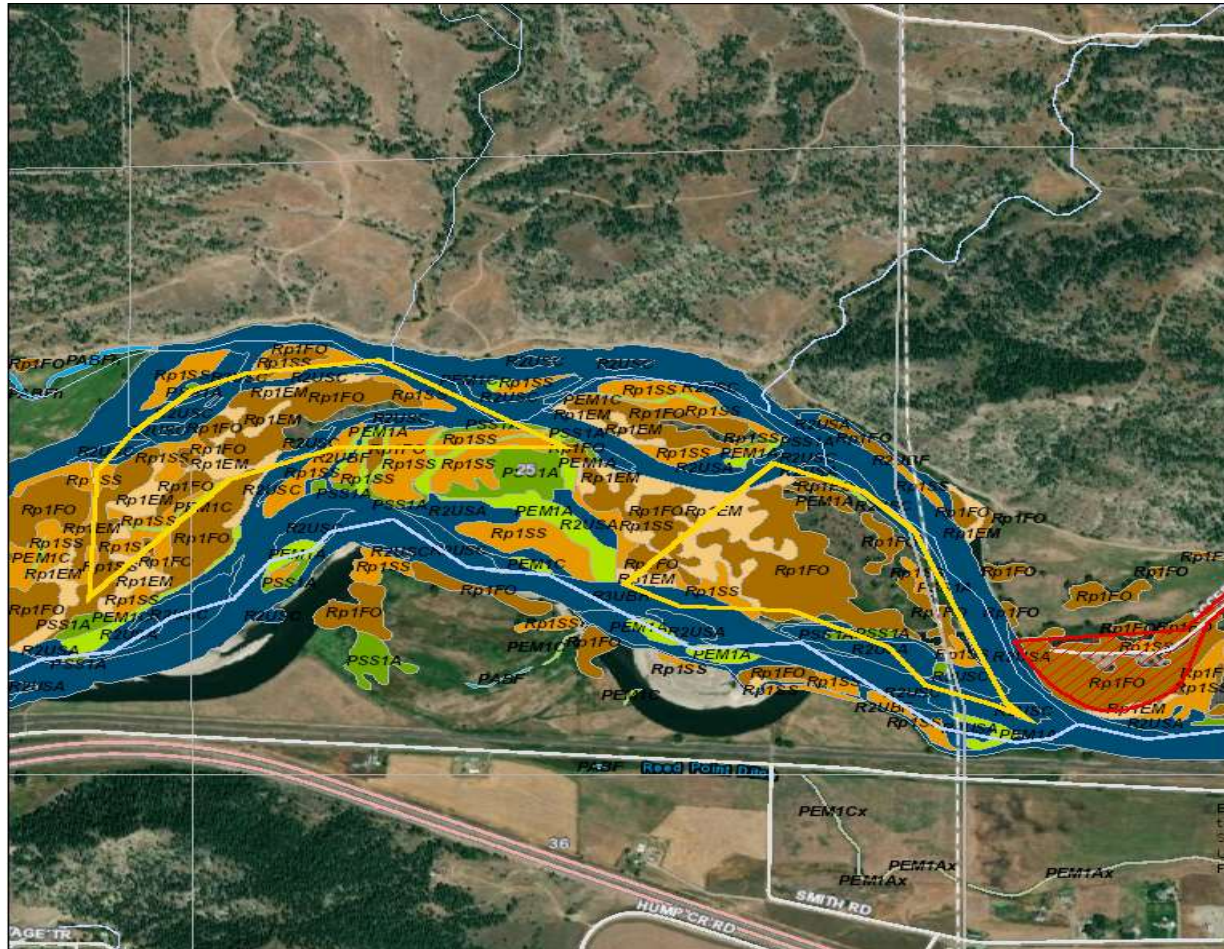
<https://www.fws.gov/wetlands/data/mapper.html>

Appendix 1. Flood Plain Map



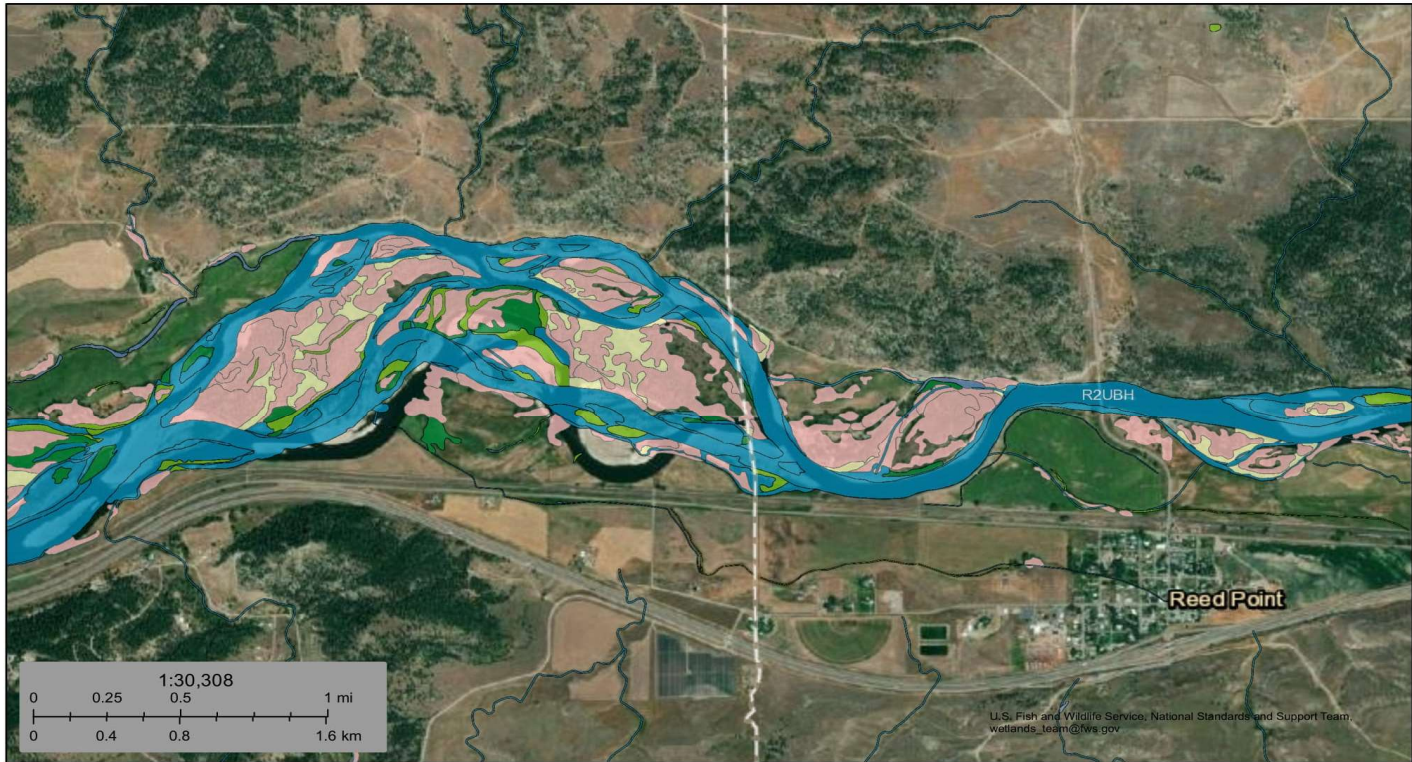
Floodplain Map (Red Outline Approximates Location of Island Properties)

Appendix 2. Wetland Survey Map.





Key-Rp1FO-Riparian Forest, Rp1SS-Riparian Scrub-Shrub, Rp1EM-Riparian Emergent, PSS1A Freshwater Scrub-Shrub Wetland

Figure 4. FWP Map outlining Wetland Areas within the Project.



August 17, 2022

Wetlands

-  Estuarine and Marine Deepwater
-  Estuarine and Marine Wetland

-  Freshwater Emergent Wetland
-  Freshwater Forested/Shrub Wetland
-  Freshwater Pond

-  Lake
-  Other
-  Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

National Wetlands Inventory (NWI)
This page was produced by the NWI mapper

Figure 5. USFWS National Wetlands Survey Map.

Species_Subgroup	Genus Species	Common Name	Family	Global Rank	State Rank	Comment	COUNTY
Flowering Plants	<i>Triodanis leptocarpa</i>	Slim-pod Venus'-looking-glass	Bellflower Family	G5?	S3	<i>Triodanis leptocarpa</i> is common in the southern Great Plains and extends into eastern and central Montana. It occurs in grasslands, grass-dominated rocky slopes, and sagebrush-dominated grasslands. It has been found in grazed and ungrazed lands and appears to tolerate some disturbance. Approximately 14 locations were documented prior to 1958 and occur in central Montana. Approximately 14 locations were documented since 1974 and mostly occur in eastern Montana. Re-visits to known locations and current population data is greatly needed.	Big Horn, Carter, Cascade, Chouteau, Custer, Park, Petroleum, Phillips, Powder River, Rosebud, Stillwater, Sweet Grass, Valley

Table 16. Plant Species of Concern Report for Township

Family	Genus Species	Common Name	Global Rank	State Rank	S_Rank_Reasons	Short_Habitat
Mammals	<i>Cynomys ludovicianus</i>	Black-tailed Prairie Dog	G4	S3	Across much of eastern Montana this species occurs in areas with suitable soil and topography. However sylvatic plague has caused the species to decline and has affected colony size and dynamics. Ongoing threats from disease and persecution due to perceived competition with grazing make long-term status of this species uncertain.	Grasslands
Mammals	<i>Lasiurus cinereus</i>	Hoary Bat	G3G4	S3B		Riparian and forest
Mammals	<i>Myotis evotis</i>	Long-eared Myotis	G5	S3		Forest
Mammals	<i>Myotis lucifugus</i>	Little Brown Myotis	G3G4	S3	Species is common and widespread, but under significant threat of catastrophic declines due to White-Nose Syndrome, a fungal disease responsible for the collapse of populations of this species in the eastern US.	Generalist
Mammals	<i>Ursus arctos</i>	Grizzly Bear	G4	S2S3		Conifer forest
Birds	<i>Ardea herodias</i>	Great Blue Heron	G5	S3	Small breeding population size, evidence of recent declines, and declining regeneration of riparian cottonwood forests due to altered hydrology and grazing.	Riparian forest
Birds	<i>Catharus fuscescens</i>	Veery	G5	S3B		Riparian forest
Birds	<i>Dolichonyx oryzivorus</i>	Bobolink	G5	S3B	Species has undergone recent large population declines in Montana and a patchwork of declines and increases have been documented in surrounding states and provinces.	Moist grasslands
Birds	<i>Gymnorhinus cyanocephalus</i>	Pinyon Jay	G3	S3		Open conifer forest
Birds	<i>Haemorhous cassinii</i>	Cassin's Finch	G5	S3	Data show recent short-term declines in population for this species	Drier conifer forest
Birds	<i>Melanerpes lewis</i>	Lewis's Woodpecker	G4	S2B		Riparian forest
Birds	<i>Nucifraga columbiana</i>	Clark's Nutcracker	G5	S3		Conifer forest
Birds	<i>Oreoscoptes montanus</i>	Sage Thrasher	G4	S3B		Sagebrush

Birds	<i>Pipilo chlorurus</i>	Green-tailed Towhee	G5	S3B	Populations in Montana and across the Northern Rockies have undergone recent declines.	Shrub woodland
Birds	<i>Spizella breweri</i>	Brewer's Sparrow	G5	S3B	Species faces threats from loss of sagebrush habitats it is dependent on as a result of habitat conversion for agriculture and increased frequency of fire as a result of weed encroachment and drought.	Sagebrush
Reptiles	<i>Apalone spinifera</i>	Spiny Softshell	G5	S3		Prairie rivers and larger streams
Fish	<i>Oncorhynchus clarkii bouvieri</i>	Yellowstone Cutthroat Trout	G5T4	S2	The Yellowstone Cutthroat trout is currently ranked ;S2 in Montana because it is at risk because of very limited and/or potentially declining population numbers, range and/or habitat, making it vulnerable to extirpation in the state.	Mountain streams, rivers, lakes
Invertebrates	<i>Isocapnia integra</i>	Alberta Snowfly	G4G5	S2	The Alberta snowfly is currently ranked ;S2t; in Montana because it was thought to be at risk due to very limited and/or potentially declining population numbers, range and/or habitat, making it vulnerable to extirpation in the state. But, recent range extensions due to taxonomic changes may warrant re-evaluating this SOC rank.	Mountain Streams to Rivers

Table 17. Animal Species of Concern Report for Township.

There are no previously recorded cultural resources on the properties. The parcels have never been formally surveyed for cultural resources because they have been privately owned and no federal undertaking has occurred. Historical USGS topographic maps from 1891 to the present show no buildings or other development on the parcels.

The NRDP proposal does not include any specific undertakings on the acquired land. If FWP proposes any development on the land, we will undertake cultural resource inventories commensurate with those actions and consult fully with the SHPO and the THPOs of the Blackfoot Nation, Crow Tribe, Northern Cheyenne Tribe, Shoshone Tribe of the Wind River Reservation, and the Shoshone-Bannock Tribes. As with all FWP's state parks, fishing access sites, and wildlife management areas, if this land is acquired, our mission would continue to encompass preserving and protecting our state's cultural, natural, and recreational heritage, and these lands would fall under the Montana Antiquities Act and related Administrative Rules.

The Concurrence letter will be included in the final EA

Figure 6. Copy of SHPO Letter to be included in Final EA.