

# **ENVIRONMENTAL ASSESSMENT**

**FOR THE**

## **NORTH SUNDAY CREEK CONSERVATION EASEMENT**



**AUGUST 2018**



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## **Chapter 1.0: Purpose of and Need for Action**

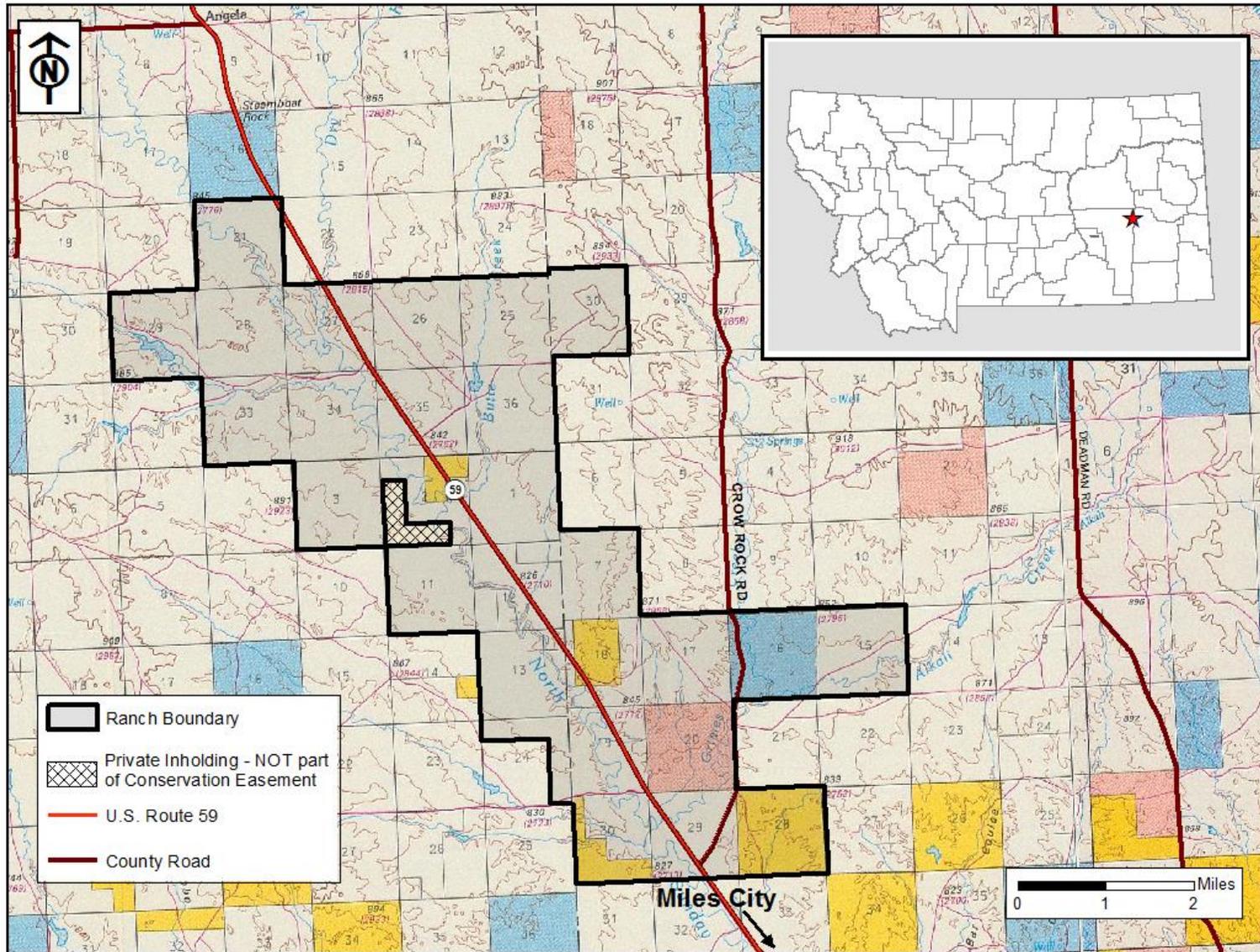
### **1.1 Proposed Action**

The Montana Department of Fish, Wildlife and Parks (hereafter, “FWP” or “the Department”) proposes to purchase two separate and distinct but overlapping conservation easements totaling 14,300.75 acres in Custer and Rosebud Counties, Montana. The reason for two separate conservation easements, rather than one single conservation easement, is to take advantage of available funding sources, which come with different requirements. The first conservation easement, the North Sunday Creek 1 (ALE) Deed of Conservation Easement (“ALE CE”), will utilize primarily Natural Resources Conservation Service (NRCS) Agricultural Lands Easements (ALE) funding for 11,371.34 acres. The ALE program does not fit well for areas that are actively farmed. Therefore, the ALE CE does not include cultivated land. The second conservation easement, The North Sunday Creek 2 (FWP) Deed of Conservation Easement (“FWP CE”), would utilize Habitat Montana dollars to fund the remaining acres, but would encumber the entire property to ensure that the Land remains in a single unit in the future. Both conservation easements would be administered by FWP. See Chapter 2, section 2.1 below for further details on anticipated funding sources. The easements can be viewed in their entirety, including maps and legal descriptions of easement land, in Attachment A. The two proposed easements will collectively be referred to as the “North Sunday Creek Conservation Easement”, “Easement”. The property on which the Easement is granted is referred to as the “Land”, or “Ranch”.

Conservation easements are voluntary binding agreements, between a landowner, and in this case, FWP. Through the conservation easement, FWP pays that landowner and, in exchange, the landowner agrees to limit certain uses of the property in order to protect high-priority wildlife habitat and conservation values. The conservation easement deeds are recorded and run with the land in perpetuity. Developing and implementing conservation easements requires an ongoing partnership between FWP and willing private landowners with the primary intent of conserving native wildlife habitats and providing public access, while keeping the land in private ownership. Land conversion has occurred in this general area, this Easement would assure the natural resources on this property are available to livestock and wildlife in perpetuity.

The proposed Easement is in FWP Administrative Region 7, Deer/Elk Hunting District 701 and is located 2 miles southeast of Angela, MT, 17 miles northwest of Miles City, MT in Custer and Rosebud Counties (Figure 1).

Figure 1. The boundary of the North Sunday Creek Conservation Easement and associated public land leases (black outline). While the Easement would only be placed on deeded land (white), DNRC land (blue) and BLM land (gold and pink) leased by the Landowner are shown to demonstrate the conservation footprint of the project.



## **1.2 Need for the Action**

The proposed Easement is comprised of over 90% native prairie grassland. It is widely known that the greatest risk to native prairie grassland systems is conversion to cropland and the Land remains at risk as grassland conversion has occurred in this general area. The Land provides year-round habitat for sagebrush-associated species such as sage-grouse, antelope, mule deer, sharptailed grouse, Sprague's pipit and burrowing owls. The proposed Easement would protect the Land from conversion in perpetuity.

In addition, native grassland can be at risk of degradation through improper grazing or vegetation treatments that directly impact shrubs, riparian zones and hardwood draws. The Easement requires the implementation of a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (see Attachment A, Draft Deeds of Conservation Easement, Exhibit C in each). By following the prescribed grazing management plan (see Attachment B, Management Plan, Chapter 3), the long-term viability of native plant communities within this ecological system is expected to be maintained or improved.

Landownership in eastern Montana is comprised of more than 75% private land and public recreational access in the part of the state continues to be increasingly difficult. A conservation easement on this property would secure and enhance public recreational access in perpetuity. The proposed easement represents an opportunity to provide a minimum 400 hunter days annually for mule deer, upland game birds, antelope and occasionally white-tailed deer. The Land lends itself well to wildlife watching and is easily accessed by county road and state highway (Figure 1).

The Easement covers a single parcel of land of sufficient size to provide conservation benefits for a variety wildlife species. The public access provided by this Easement would benefit sportsmen and wildlife watchers for generations to come. Collectively, the terrestrial, wetland, and aquatic habitats, recreational opportunities, and agricultural sustainability are referred to as the Land's "Conservation Values."

## **1.3 Objectives of the Action**

The objectives of the proposed North Sunday Creek Conservation Easement are to concurrently:

1. Protect Conservation Values of the Land including open space, rangeland health, habitat quality, and value for wildlife in perpetuity
2. Preserving the agricultural character of the Land in a manner that facilitates a sustainable ranching operation.
3. Provide managed public access to the Land for hunting, trapping and wildlife viewing in perpetuity.

## **1.4 Relevant Authorities**

In 1987, the Montana Legislature passed HB526 which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee-title acquisition (§ 87-1-241 and 242, MCA). Subsequently, the Habitat Montana Program developed because of this legislation. The Habitat Montana Program provides direction for all FWP's wildlife habitat acquisition programs including the proposed Easement .

Montana Fish, Wildlife and Parks has the authority under state law (§ 87-1-201, Montana Code Annotated (MCA)) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. Section 76-6-103 MCA authorizes the acquisition of conservation easements to protect “significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.” Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance with local growth policies. The proposed Easement would be submitted to Custer and Rosebud Counties for their review in accordance with this requirement.

## **1.5 Relevant Plans**

### 2015 State Wildlife Action Plan (SWAP)

<http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>

The proposed Easement is comprised almost entirely of SWAP Tier I (83%) and Tier II (7%) community types and is within the range of SWAP Species of Greatest Conservation Need (SGCN), including: 3 of 6 of amphibians SGCN, 23 of 63 of birds SGCN, 8 of 23 of mammals SGCN and 5 of 8 of reptile SGCN. Reference Appendix A for complete listing of wildlife species documented in similar habitats near the proposed North Sunday Creek Conservation Easement.

## **1.6 Decision to be Made**

The decision to be made is whether FWP should move forward with the proposed purchase of the Easement. Following completion of the draft Environmental Assessment (EA) and public comment period, the FWP Region 7 supervisor will issue a decision notice that makes a recommendation to the Fish and Wildlife Commission on a course of action. This course of action could be either of the Proposed Action or the No Action alternatives, or an action that is within the scope of the analyzed alternatives. As with other FWP conservation easement projects, the Fish and Wildlife Commission would make the final decision. This draft EA and the comments FWP receives are part of the decision-making process.

## **Chapter 2.0: Alternatives Including the Proposed Action**

### **2.1 Alternative A: Proposed Action: Purchase the proposed North Sunday Creek Conservation Easement.**

The Department would purchase two, partially-overlapping conservation easements totaling 14,301-acres using Habitat Montana funding and funds from an NRCS ALE grant for the protection of wildlife habitat. Pending review and approval of the appraisal by FWP and NRCS, the combined value of both conservation easements determined by an independent appraisal is approximately \$3,432,000.00. The total cost of the Easement will not exceed the combined appraised easement value. ALE funding would cover approximately 44% of the total cost and Habitat Montana funds would cover the remainder. Habitat Montana funds are earmarked state funds derived from the sale of Montana hunting licenses. No State of Montana tax dollars would be used to fund this Easement. The payment under this proposal would be the combined value of both conservation easements (based on two separate appraisals). Although the two conservation easements overlap, the values assigned to each are not additive (i.e., each unique conservation term is only valued once between the two easements). As earlier described, the purpose of two easements would be to take full advantage of the ALE funding source, while also using Habitat Montana funds to expand the Easement area to encompass the entire property. In addition to the cost of the Easement, FWP and the Landowner would share the costs (50/50) of grazing infrastructure improvements needed to establish a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (Exhibit C within each easement document in Attachment A), involving a total estimated cost of \$104,310 (for more detail see Chapter 3.6 in Attachment B). Anticipated monitoring costs of the Easement by FWP staff is estimated to be between \$1,000-2,000 annually.

Under the terms of the Easement, each party would retain or receive certain rights. Below is a summary of the terms of the Easement that would impact agricultural and Conservation Values:

#### **SUMMARY OF EASEMENT TERMS**

(See Attachment A for Draft Deeds of Conservation Easement in their entirety)

To protect agricultural values, the landowner would retain the right to:

- Graze livestock, provided that such grazing adheres to a grazing system that meets or exceeds the FWP “Standards for Grazing Livestock”. The grazing system is described in the Management Plan (Attachment B)
- Lease the Land for agricultural purposes.
- Install and maintain infrastructure on the Land such as water resources, sheds, roads, fences, and utilities. New or renovated fences that would significantly impact wildlife movement through the Land must be wildlife friendly, as described in the Management Plan.
- Build residences and outbuildings within identified Residential/Agricultural Building Areas.

- Sell the Land, but subdivision is prohibited.
- Allow noncommercial recreational use by friends and family on the Ranch.

To protect Conservation Values, the Easement would:

- Prohibit the destruction, of native vegetation, sagebrush, trees, wetland, and riparian areas.
- Surface alteration would be prohibited, except in croplands and for other limited, small-scale purposes specifically allowed by the easement (e.g., extraction of materials like sand and gravel for use on the Land, a single landfill for disposal of household trash).
- Allow habitat restoration and enhancement projects.
- Limit the storage of waste and use of hazardous materials on the Land.
- Require prior approval for pesticide use outside of Cultivated, Seeded Residential/Agricultural Building Development Areas, except for weed management and pesticides applied directly to livestock.
- Limit commercial use of the Land to agricultural production, temporary or seasonal outdoor events, and small businesses that do not harm Conservation Values.
- Prohibit the use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo, menagerie, or related activities.
- Prohibit the establishment of a commercial feedlot.
- Prohibit separating water rights from the Land.

Public access for hunting, trapping, and wildlife viewing is guaranteed by the easement, but is subject to limitations specified by the easement and the Management Plan (Attachments A and B). The Landowner will provide 400 hunter-days annually if demand exists, but the Landowner has the right to regulate public use. Members of the public may be required to obtain permission prior to accessing the Land, and the Landowner may manage the distribution and numbers of the public that are allowed to access the Land at any given time. The Landowner is prohibited from selling, leasing, or charging trespass fees to access or cross the Land for hunting, fishing, or wildlife viewing purposes.

## **2.2 Alternative B: No Action. The Department would not purchase the North Sunday Creek Conservation Easement**

For the No Action Alternative, FWP would not purchase the Easement. The Landowner would not be required to protect the Conservation Values of the Land in perpetuity. In the future, the Land could be threatened with conversion to tillage agriculture or other risks to the Conservation Values such as improper grazing management, subdivision, or rangeland treatments intending to enhance forage production while reducing or eliminating native shrubs and forbs. And public access to the Land would not be guaranteed in perpetuity.

## Chapter 3.0: Affected Environment & Predicted Environmental Consequences

### 3.1 Land Use

Under the Easement the Landowner would have the right to keep the Land a working cattle ranch. The Land is comprised of 12,868 acres (90 %) native rangeland with 1,216 acres (8%) of cultivated cropland and 223 acres (2%) of prior-converted croplands that are currently used for grazing. There is an occupied home sites and an abandoned homesite, along with various infrastructure developments including outbuildings, shops, and corrals. A more detailed analysis of land cover can be found in the Management Plan, Attachment B, Chapter 2: Grasslands Component Description.

#### Proposed Action:

The proposed Easement would concurrently protect and conserve wildlife habitat, while supporting a traditional ranching operation. The Land would available to the public for hunting, trapping, and wildlife viewing in perpetuity. The proposed Easement would ensure that habitat and ranching resources are maintained. The Easement would prohibit destruction of native habitats or other activities that would negatively impact the Conservation Values of the Land but would allow cropping and/or seeding of prior-converted areas mentioned above. The Proposed Action Alternative ensures that the primary use of the Land in the future would be livestock grazing. The terms of the Easement do require modifications of current land management practices, including the implementation of a grazing system that adheres to “FWP Minimum Standards for Grazing Livestock” (See Attachment A, Conservation Easements, Exhibit C in each easement) as well as provisions for allowing public access. To implement and accommodate the grazing plan, the landowner and FWP would cost-share on new fence construction and other improvements necessary to implement the grazing system.

Where the Landowner owns the minerals, the Easement would prohibit mining. The Easement could not prevent mineral owners other than the Landowner from developing minerals on the Land. The potential for coal, oil and gas development on the Land is low. There are no coal deposits of economic value (NRCS 2017). There are numerous dry oil and gas wells near the proposed Easement (NRCS 2017). As with most of eastern Montana, the potential for wind energy development in the area exists. Wind power estimates rate the Land to be mostly fair with some good wind power potential. The Easement would preclude commercial wind energy development. However, the Easement does allow for renewable energy development for use on the Land, including wind energy. The Easement does allow for existing cropped and seeded areas to be maintained, and for a single landfill to dispose of household waste and other debris generated on the Land. Other minimal soil-disturbing activities would occur under normal ranching operations and maintenance to existing ranch facilities.

### No Action:

If the proposed Easement were not approved, the primary land use on the Land would likely still be cattle ranching. However, the Land would be at risk of conversion to cropland (destruction of native vegetation), subdivision, and degradation of habitat due to improper grazing, wind energy development and other threats to the Conservation Values of the Land. Public access to the Land may be limited or precluded.

## **3.2 Habitat and Vegetation**

The Land provides habitat and vegetation to support full suite of wildlife species associated with the great plains of eastern Montana. More specifically the Land provides year-round habitat for mule deer, antelope, sharp-tailed grouse and sage-grouse. The Land provides crucial winter range for antelope that often migrate to the sagebrush bottoms that prevalent on the ranch. It is not uncommon for several hundred antelope to winter on this property. The Land is directly adjacent to core sage-grouse habitat and is in historic sage-grouse range. There are over 4,000 acres of Wyoming Big sagebrush dominated grassland that provide nesting and winter food sources for sage grouse and other sagebrush associated species. Given the known leks in the area and considering sage grouse nesting and brood rearing habits, all of the Land would be considered habitat important to the long-term viability of sage-grouse in the area.

A detailed summary of land cover, plant communities, soils, and ecological sites that occur on the Land can be found in Attachment B, Chapter 2: Grasslands Component Description. The 2015 FWP Comprehensive Fish and Wildlife Management Strategy (see Chapter 1.5 above) delineates four “Tier I” community types of greatest conservation need (CTGCN) that occur on the proposed Easement: grassland complexes, sagebrush flats, mixed shrub/grass associations, and riparian & wetland on the Land. These Tier I Community Types have a low or declining status and conservation actions are recommended for these community types statewide. Further, the proposed Easement is comprised almost entirely of Tier I and Tier II community types described in the 2015 State Wildlife Action Plan (see Chapter 1.5 above).

### Proposed Action:

The proposed Easement would conserve and enhance vegetation and wildlife habitat on the Land. The terms of the Easement protect the quantity, quality, and character of the native vegetative communities found on the proposed Easement. Many shrub species are important to wildlife for cover and forage values. The terms of the Easement would prevent the removal, control, or manipulation of sagebrush and other woody species, except in very limited and necessary circumstances. The grazing system, as described in Chapter 3 of the Management Plan (Attachment B), would maintain and enhance the vigor and productivity of vegetation through time through scheduled rest and deferred grazing practices. Riparian areas and woody draws are expected to be maintained or improved as the rest treatments in the grazing system allow shrubs and trees to rebound and reestablish. Maintaining productive vegetation will benefit both wildlife and the ranching operation. The Department has completed a Baseline Inventory Report that documents the existing condition of the Land at the time the Easement is acquired. The report documents wildlife habitat, plant communities, roads, fences, water

developments, and other features. Additional vegetation photo points and other monitoring plots would be established and maintained by FWP in appropriate areas to examine habitat trends and conditions. Both long-term and short-term changes will be evaluated to assess management effectiveness. The proposed action would have a positive impact on habitat and vegetation.

No Action:

Without protections offered by the terms of the proposed Easement, the quantity, quality, and character of the native plant communities found on the Land could decline. The Land would be vulnerable to sodbusting or other development or disturbance. Future impacts to native vegetation and overall productivity of the Land could be considerable and reduced habitat quality would have detrimental impacts to wildlife.

### **3.3 Terrestrial Species**

The proposed Easement supports the following game species: mule deer, white-tailed deer, pronghorn, sharp-tailed grouse, and Hungarian partridge. As previously noted, the Land is in historic sage-grouse range and sage-grouse have been observed on the Land during breeding, nesting, brood-rearing and winter periods. The proposed Easement also supports a variety of raptors and songbirds, reptiles and amphibians, small mammals, bats, and common species including bobcat, coyote, red fox, badger, racoon, and skunks. The Land is within the range of many of SWAP Species of Greatest Conservation Need, listed in section 1.5.

Proposed Action:

The proposed Easement would benefit a variety of wildlife. The terms of the Easement would serve to protect the Land as agricultural and open space and to provide year-round and seasonal habitat for many of Montana's native wildlife species. Conserving native plant communities is important for most of Montana's indigenous wildlife species. Protection from subdivision, wind energy development and conversion to tillage agriculture, and implementation of the grazing system would ensure adequate quantity and quality of forage and cover for a variety of wildlife species. No adverse effects are expected on the diversity or abundance of game species, non-game species or unique, rare, threatened, or endangered species.

Wild game populations fluctuate over time and may periodically exceed FWP management objectives, thus contributing to above-average wildlife use of the Land, resulting in game damage problems. Such circumstances on the Land would be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts would be provided on an "as needed" basis to the Landowner, upon agreement of both the Landowner and FWP.

The proposed action would ensure public hunting access to the Easement Land in perpetuity. Hunting and wildlife watching on the proposed Easement would not negatively impact the overall distribution and population of game species in the area. The seasonal harvest of game species is evaluated on an annual basis by FWP. Hunting seasons and quota recommendations

are submitted to the Fish and Wildlife Commission during the annual hunting season setting process.

Any new or renovated fencing would follow the guidelines for wildlife friendly fences described in Chapter 6 of the Management Plan (Attachment B) to ensure the fences do not impede wildlife movements (particularly pronghorn and sage-grouse) within and through the designated pastures.

No Action:

Without terms to conserve the Land for agriculture and open space to provide year-round habitat for many of Montana's native wildlife species, there would be no provisions preventing changes in land use that could be detrimental to wildlife such a subdivision or sodbusting. The selection of the No Action Alternative would allow the landowner to close the ranch to public hunting, which would result in a lack of public access and would reduce the FWP's ability to manage big game numbers.

### **3.4 Fisheries Species and Water Resources**

The proposed Easement includes a portion of North Sunday, Hay, Dry House, Butte and Grimes Creek, along with a number of unnamed minor tributaries. It is expected that currently none of the creeks on the Land support sport fish. Species that may occur in these creeks include: Black Bullhead, Fathead Minnow, Flathead Chub, Green Sunfish, Plains Minnow, and Sand Shiner. One species commonly pursued by anglers, Channel Catfish, have been found in the North Sunday Creek drainage, but not as far upstream as the Land. If they were to use that portion of the creek, it would likely be during periods of high flow during the spring.

Open water on the Land is primarily represented by stock dams, most notably a 20-acre stock dam on Hay Creek and another 5-acre stock dam on Butte Creek. These area reservoirs are currently too shallow to support a sustainable fishery. Therefore, it is expected that under current conditions none of the reservoirs on the Land support sport fish. Emergent marshes are associated with North Sunday, Hay Creek Dry House, Butte and Grimes Creek, and their tributaries creating small sites throughout the land where seeps, springs, or water-holding depressions occur in association with riparian areas.

Proposed Action:

Current agricultural uses on the Ranch have proven to be compatible with maintenance of water quality. However, if the proposed Easement is implemented, positive impacts should be realized in surface and ground water as a result of improvements in soil condition by implementing the grazing system. The grazing system will result in more residual vegetation, which will reduce runoff and soil erosion. Additional water improvements could be developed in order to improve livestock distribution, range conditions, and riparian vigor as long as the conservation values are not negatively impacted.

No Action:

Without terms to conserve the North Sunday Creek, there would be no provisions to protect fish species and water resources. If the Land were developed, plowed or sold without protections provided by the Easement, there would be no assurances that riparian areas, fish species, and water resources would be conserved.

### **3.5 Aesthetics and Recreation**

The proposed Easement has the potential to provide high-quality hunting, trapping, and wildlife viewing recreational opportunities for the public. The vast tracts of open space, native prairie grassland, badlands, and riparian areas contribute to the aesthetic value of the landscape.

#### Proposed Action:

Implementing the proposed Easement would ensure that managed public hunting, trapping, and wildlife viewing opportunities are allowed on the Land in perpetuity. Prior to seeking an Easement, the Landowner leased out the hunting rights. Therefore, the proposed Easement would increase the level of public recreation on the Land, as the Landowner would be required to provide a minimum 400 hunter days annually if demand exists. The proposed Easement is located within FWP Region 7, Deer/Elk/Antelope Hunting District 701. Hunting would be allowed on the Land in accordance with all Fish and Wildlife Commission established regulations and seasons. The Landowner would retain the ability to manage the distribution and numbers of the hunters on the proposed Easement. The public may be required to sign in or otherwise obtain permission before entering the Land. Public access would be walk-in only and via public roads or designated parking areas. The terms of the Easement would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, or wildlife viewing on the Land. See the Draft Deeds of Conservation Easement (Attachment A) and Chapter 8 of the Management Plan (Attachment B) for additional details on how public access would be managed.

The terms of the Easement would protect the aesthetic values of the Land and guarantee public recreation in perpetuity by retaining current land use and prohibiting developments that would impact such values.

#### No Action:

Historically, hunting has been leased out for restrictive use providing minimal to no public recreational opportunities. In the absence of the Easement, hunting and public access on the Land would likely continue to be minimal to nonexistent. There would be no guarantee of public access to or across the Land.

The aesthetic values could change under the No Action Alternative. If rural subdivision, expanded tillage, wind turbines, or other changes in land use or developments were to occur, the aesthetic value of the area would be diminished. While the Land currently provides open-space aesthetics, without public access the ability of the public to enjoy this aesthetic value has been limited and could continue to be limited.

### **3.6 Public Services, Taxes, and Community**

#### Proposed Action:

Under the Proposed Action Alternative, the ranching operation would continue similar to the past. Neighboring landowners may observe more recreational activities by the public on the Ranch. To minimize issues of trespass onto neighboring properties, boundary signs would be posted along the exterior of the Land and particularly at any problem areas identified by neighboring landowners. Hunters and wildlife watchers would be provided with maps of the Land. It is the responsibility of the users to know where they are at and avoid trespassing. Those guilty of trespassing could be prosecuted. No other impacts to neighboring landowners are expected.

There would be no impact on local or state tax bases or revenues, no alterations of existing utility systems, nor increased use of energy sources. 76-6-208 states that, “Any land subject to such easement may not be classified into a class affording a lesser assessed calculation solely by reason of the creation of the easement.” Therefore, as an agricultural property, the Ranch would continue to be taxed as it has before. There are expected to be no unfavorable changes in taxable valuation or tax revenue to local county governments. This is because agricultural land in Montana is taxed on a production basis. Unless the state legislature changes the tax law for agricultural land to a market value basis, a decline in market value due to a conservation easement will not be reflected in assessed valuation.

In accordance with MCA 87-1-24e, the Easement is not expected to have significant impacts on tax revenue, employment opportunities, services required by local governments or local schools. The addition of public access to the Land could result in increased demand for goods and services from businesses that support the area, which could result in a modest increase in revenues for these businesses. Infrastructure improvements needed for establishing a grazing system may also result in minor temporary need for goods and services. However, the terms of the Easement would restrict future residential and commercial developments on the Land.

#### No Action:

The No Action Alternative would not impact local taxes and public services if the Land continued to be maintained as a working ranch. However, changes in land use classifications (e.g., agricultural to recreational) could increase local property taxes for the county if such changes involved housing or other taxable developments. Such developments may also require higher demand for utilities, improved or expanded roads, and other services that would likely be partially or wholly provided by state and local governments and service utilities.

### **3.7 Cumulative Effects**

Proceeding with the proposed action would conserve and enhance the Conservation Values of the Land by preserving important grassland habitat for the benefit of numerous wildlife species. The implementation of the proposed grazing system would benefit native vegetation, maintain or enhance rangeland health, and contribute to clean water, clean air, and functioning ecosystem services, thus contributing to healthy wildlife populations in perpetuity. The no action alternative entails a possibility of habitat degradation: tillage agriculture, sagebrush eradication and overgrazing. The likelihood and extent of this degradation is difficult to quantify.

Research has identified that lack of hunting access is a barrier to recruitment and retention of hunters. The proposed Easement would provide guaranteed public access in landscape comprised of approximately 75% private lands. Public access associated with the Easement could have a positive impact on local businesses, by bringing hunters and their dollars into the local economy.

The Easement would help support a traditional ranching operation with the associated economic and community values. Other than impacts listed in this Environmental Assessment, no additive or interacting ties to other circumstances or events in the local area are known at this time. Based on the similar, existing FWP conservation easements, some of which have been in place since the mid 1980's, the anticipated cumulative effects of the proposed Easement are largely positive in nature and small in magnitude.

## **Chapter 4.0: Resources Considered but Eliminated from Detailed Analysis**

The Montana Environmental Policy Act, MCA § 75-1-101 *et seq.* (MEPA), provides for the identification and elimination from detailed study of issues which are not significant or which have been covered by a prior environmental review, narrowing the discussion of these issues to a brief presentation of why they would not have a significant effect on the physical or human environment or providing a reference to their coverage elsewhere (ARM 12.2.434(d)). While these resources are important, they were either unaffected or mildly affected by the Proposed Action and the effects could be adequately mitigated.

### **4.1 Air Quality**

The Department anticipates there would be no changes to the ambient air quality for either the Proposed Action or No Action Alternatives.

### **4.2 Noise and Utilities**

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed Easement, the Landowner would retain the right to maintain, repair, or replace utilities existing

on the Land. Additionally, the proposed Easement would allow for new utilities and right of ways if they are consistent with the terms of the Easement.

### **4.3 Risk and Health Hazards**

The Department anticipates there would be no changes to risks and health hazards for either the Proposed Action or No Action Alternatives.

### **4.4 Cultural and Historic Resources**

The Proposed Action and No Action Alternatives would not cause a change in land use, so FWP anticipates there would be no impacts to cultural sites or historic resources

## **Chapter 5.0: Need for an Environmental Impact Statement**

Based on the significance criteria evaluated in this EA, is an Environmental Impact Statement (EIS) required?

No. The proposed Easement would affect 14,300 acres in that it would conserve important wildlife habitat and provide public access in perpetuity with minimal effects (positive or negative) to the current land uses (agricultural—livestock operations) and to the existing natural resources of the Land.

This EA revealed no significant (negative or positive) impacts from the Proposed Action. The significance criteria described in ARM 12.2.431 were used in this determination. Based upon the above assessment, an EIS is not required and an EA is the appropriate level of review.

Some limited, minor impacts from the Proposed Action were identified in this EA, such as anticipated positive changes to vegetation and habitat from the proposed grazing system, and an increase in the number of people using the Land for hunting, trapping, and wildlife viewing activities.

## **Chapter 6.0: Public Participation and Collaborators**

### **6.1 Public Involvement**

Prior to the preparation of this draft EA, formal public participation specific to the proposed purchase of this Easement began with a public scoping process. This scoping process represented the first step in the environmental review process, wherein FWP invited the public to identify any issues and concerns related to this Easement proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, the Custer and Rosebud County Commissioners, and DNRC and BLM staff. Notice of the public scoping period was placed in three newspapers (the Miles City Star, Billings Gazette, and the Helena Independent Record), and on the FWP website.

Montana Fish, Wildlife, and Parks received 2 comments during the scoping process, these comments and FWP responses are listed below. Pursuant to this, FWP will continue the environmental review process to purchase the Easement.

**Comment #1:**

City: Helena, MT

Thank you for allowing public comment on the North Sunday Creek Conservation Easement. The Montana Wildlife Federation (MWF) is the oldest wildlife conservation organization in Montana. Since 1936, MWF has been at the table to protect Montana's fish and wildlife, lands and waters, and outdoor recreation heritage. Healthy habitat on both public and private lands is crucial if we are to continue to enjoy Montana's long hunting seasons, diversity of big game, upland birds and waterfowl, and superb fisheries. With that in mind, the Montana Wildlife Federation strongly supports the North Sunday Creek Conservation Easement.

The North Sunday Creek Conservation Easement is on approximately 14,783 deeded acres in Custer and Rosebud Counties, Montana. The easement is approximately 90% undisturbed native grasslands and sagebrush grasslands. The ranch provides year-round habitat for traditional grassland species such as antelope, mule deer, sage-grouse and sharp-tailed grouse. The ranch also supports a diversity of nongame, sagebrush obligate species. A conservation easement would conserve and enhance this important block of sagebrush grassland habitat from conversion to other cover types, benefitting wildlife and agriculture, while also providing for managed public hunting and recreational opportunities.

Access opportunities in Eastern Montana is extremely limited both from commercial interests on private land or private landowners unwilling to let the general public on. The proposed easement represents an opportunity to conserve a large area of high-quality, diverse habitat and provide public access in a landscape dominated by private land. Access to private land for hunting is a privilege, not a right. Montana's hunters understand that. We also understand that landowners and hunters need each other for sound wildlife management. Montana's hunters have shown that we're willing to step up to help our friends in the agriculture community. Habitat Montana is one of the best tools we have to do that. It is one of our greatest conservation success stories

The proposed North Sunday Creek Conservation Easement is an opportunity to benefit wildlife, keep a traditional ranch in operation and provide more hunting opportunities for Montanans. The Montana Wildlife Federation supports this easement and thanks the state, the landowner, and the hunter who have worked on conserving this landscape.

**Comment #2:**

City: Emigrant, MT

Dear Fish Wildlife & Parks Commission,

From what I see in the Public Scoping Notice, this looks like a worth wild undertaking.

Thank you

Public notification of the EA release and opportunities to comment will be by:

- Two public notices in each of the following papers: *Miles City Star*, *Billings Gazette* and *Helena Independent Record*;
- Direct mailing or email to adjacent landowners, interested parties, Custer and Rosebud County Commissioners, DNRC staff, and BLM staff;
- Public notice on the FWP website (<http://fwp.mt.gov/news/publicNotices/>).
- A public meeting will be held to explain the proposal, answer questions and take public comment will be held at the at FWP Region 7 Headquarters, 352 I-94 Business Loop, Miles City 59301 on **August 29, 2018 from 6:30-8:30 pm.**

Copies of this EA will be available for public review at FWP Region 7 headquarters in Miles City and on the FWP website (<http://fwp.mt.gov/news/publicNotices/>).

## **6.2 Comment Period**

The public comment period will extend for thirty-one days beginning August 10, 2018. Written comments will be accepted until September 9, 2018 and can be mailed or emailed to the addresses below:

North Sunday Creek Conservation Easement Environmental Assessment  
c/o Steve Atwood  
Montana Fish, Wildlife and Parks  
352 I-94 Business Loop  
Miles City, MT 59301

or  
email comments to: [satwood@mt.gov](mailto:satwood@mt.gov)

## **6.3 Approximate Timeline of Events**

(Contingent on Decision Notice and subsequent approvals)

Public Comment Period: August 10, 2018 to September 9, 2018

Public Meeting: August 29, 2018

Decision Notice Published: September 21, 2018

Project Submitted to Fish & Wildlife Commission: October 2018

## **Chapter 7.0: EA Preparation**

Steve Atwood, FWP Wildlife Biologist, Miles City, MT  
Caleb Bollman, FWP Fisheries Biologist, Miles City, MT  
John Ensign, FWP Wildlife Program Manager, Miles City, MT.  
Rick Northrup, FWP Habitat Bureau Chief, Helena, MT  
Candace Durran, FWP Land Agent, Helena, MT

## Appendix:

### A. Wildlife species documented in similar habitats near the proposed North Sunday Creek Conservation Easement

Species Group	Common Name	Scientific Name	SOC*	SWAP**
Amphibians	Boreal Chorus Frog	<i>Pseudacris maculata</i>		
Amphibians	Great Plains Toad	<i>Anaxyrus cognatus</i>	SOC	SGCN2
Amphibians	Northern Leopard Frog	<i>Lithobates pipiens</i>	SOC	SGCN1
Amphibians	Plains Spadefoot	<i>Spea bombifrons</i>	SOC	SGCN3
Amphibians	Western Tiger Salamander	<i>Ambystoma mavortium</i>		
Amphibians	Woodhouse's Toad	<i>Anaxyrus woodhousii</i>		
Birds	American Avovet	<i>Recurvirostra Americana</i>		
Birds	American Coot	<i>Fulica americana</i>		
Birds	American Crow	<i>Corvus brachyrhynchos</i>		
Birds	American Goldfinch	<i>Spinus tristis</i>		
Birds	American Kestrel	<i>Falco sparverius</i>		
Birds	American Robin	<i>Turdus migratorius</i>		
Birds	Baird's Sparrow	<i>Ammodramus bairdii</i>	SOC	SGCN3
Birds	Bald Eagle	<i>Haliaeetus leucocephalus</i>	SSS	
Birds	Bank Swallow	<i>Riparia riparia</i>		
Birds	Barn Swallow	<i>Hirundo rustica</i>		
Birds	Black-billed Magpie	<i>Pica hudsonia</i>		
Birds	Black-capped Chickadee	<i>Poecile atricapillus</i>		
Birds	Blue-winged Teal	<i>Anas discors</i>		
Birds	Bobolink	<i>Dolichonyx oryzivorus</i>	SOC	SGCN3
Birds	Brewer's Blackbird	<i>Euphagus cyanocephalus</i>		
Birds	Brewer's Sparrow	<i>Spizella breweri</i>	SOC	SGCN3
Birds	Brown-headed Cowbird	<i>Molothrus ater</i>		
Birds	Burrowing Owl	<i>Athene cunicularia</i>	SOC	SGCN3
Birds	Canada Goose	<i>Branta canadensis</i>		
Birds	Chestnut-collared Longspur	<i>Calcarius ornatus</i>	SOC	SGCN2
Birds	Chipping Sparrow	<i>Spizella passerina</i>		
Birds	Clay-colored Sparrow	<i>Spizella pallida</i>		
Birds	Common Grackle	<i>Quiscalus quiscula</i>		
Birds	Common Nighthawk	<i>Chordeiles minor</i>		

<b>Species Group</b>	<b>Common Name</b>	<b>Scientific Name</b>	<b>SOC*</b>	<b>SWAP**</b>
Birds	Common Poorwill	<i>Phalaenoptilus nuttallii</i>	PSOC	SGIN
Birds	Common Raven	<i>Corvus corax</i>		
Birds	Cooper's Hawk	<i>Accipiter cooperii</i>		
Birds	Eastern Kingbird	<i>Tyrannus tyrannus</i>		
Birds	European Starling	<i>Sturnus vulgaris</i>		
Birds	Ferruginous Hawk	<i>Buteo regalis</i>	SOC	SGCN3
Birds	Field Sparrow	<i>Spizella pusilla</i>		
Birds	Gadwall	<i>Anas strepera</i>		
Birds	Golden Eagle	<i>Aquila chrysaetos</i>	SOC	SGCN3
Birds	Grasshopper Sparrow	<i>Ammodramus savannarum</i>		
Birds	Great Horned Owl	<i>Bubo virginianus</i>		
Birds	Greater Sage-Grouse	<i>Centrocercus urophasianus</i>	SOC	SGCN2
Birds	Horned Lark	<i>Eremophila alpestris</i>		
Birds	House Sparrow	<i>Passer domesticus</i>		
Birds	Killdeer	<i>Charadrius vociferus</i>		
Birds	Lark Bunting	<i>Calamospiza melanocorys</i>		
Birds	Lark Sparrow	<i>Chondestes grammacus</i>		
Birds	Loggerhead Shrike	<i>Lanius ludovicianus</i>	SOC	SGCN3
Birds	Long-billed Curlew	<i>Numenius americanus</i>	SOC	SGCN3
Birds	Mallard	<i>Anas platyrhynchos</i>		
Birds	McCown's Longspur	<i>Rynchophanes mccownii</i>	SOC	SGCN3
Birds	Merlin	<i>Falco columbarius</i>		
Birds	Mourning Dove	<i>Zenaida macroura</i>		
Birds	Mountain Plover	<i>Charadrius montanus</i>	SOC	SGCN2
Birds	Northern Flicker	<i>Colaptes auratus</i>		
Birds	Northern Harrier	<i>Circus cyaneus</i>		
Birds	Northern Pintail	<i>Anas acuta</i>		
Birds	N. Rough-winged Swallow	<i>Stelgidopteryx serripennis</i>		
Birds	Northern Shoveler	<i>Anas clypeata</i>		
Birds	Red-tailed Hawk	<i>Buteo jamaicensis</i>		
Birds	Red-winged Blackbird	<i>Agelaius phoeniceus</i>		
Birds	Rock Pigeon	<i>Columba livia</i>		
Birds	Rock Wren	<i>Salpinctes obsoletus</i>		
Birds	Sage Thrasher	<i>Oreoscoptes montanus</i>	SOC	SGCN3

<b>Species Group</b>	<b>Common Name</b>	<b>Scientific Name</b>	<b>SOC*</b>	<b>SWAP**</b>
Birds	Say's Phoebe	<i>Sayornis saya</i>		
Birds	Sharp-tailed Grouse	<i>Tympanuchus phasianellus</i>	SOC	SGCN1
Birds	Song Sparrow	<i>Melospiza melodia</i>		
Birds	Spotted Sandpiper	<i>Actitis macularius</i>		
Birds	Sprague's Pipit	<i>Anthus spragueii</i>	SOC	SGCN3
Birds	Swainson's Hawk	<i>Buteo swainsoni</i>		
Birds	Upland Sandpiper	<i>Bartramia longicauda</i>		
Birds	Vesper Sparrow	<i>Pooecetes gramineus</i>		
Birds	Western Kingbird	<i>Tyrannus verticalis</i>		
Birds	Western Meadowlark	<i>Sturnella neglecta</i>		
Birds	Western Wood-Pewee	<i>Contopus sordidulus</i>		
Birds	Yellow Warbler	<i>Setophaga petechia</i>		
Birds	Yellow-headed Blackbird	<i>Xanthocephalus xanthocephalus</i>		
Mammals	Badger	<i>Taxidea taxus</i>		
Mammals	Beaver	<i>Castor canadensis</i>		
Mammals	Big Brown Bat	<i>Eptesicus fuscus</i>		
Mammals	Black-tailed Prairie Dog	<i>Cynomys ludovicianus</i>	SOC	
Mammals	Bobcat	<i>Lynx rufus</i>		
Mammals	Bushy-tailed Woodrat	<i>Neotoma cinera</i>		
Mammals	Coyote	<i>Canis latrans</i>		
Mammals	Deer Mouse	<i>Peromyscus maniculatus</i>		
Mammals	Desert Cottontail	<i>Sylvilagus audubonii</i>		
Mammals	Dwarf Shrew	<i>Sorex nanus</i>	SOC	
Mammals	Eastern Fox Squirrel	<i>Sciurus niger</i>		
Mammals	Eastern Red Bat	<i>Lasiurus borealis</i>		
Mammals	Fringed Myotis	<i>Myotis thysanodid</i>	SOC	
Mammals	Hayden's Shrew	<i>Sorex haydeni</i>	POC	
Mammals	Hoary Bat	<i>Lasiurus cinereus</i>		
Mammals	Least Weasel	<i>Mustela nivalis</i>		
Mammals	Little Brown Myotis	<i>Myotis lucifugus</i>	SOC	SGCN3
Mammals	Long-tailed Vole	<i>Microtus pennsylvanicus</i>		
Mammals	Long-tailed Weasel	<i>Mustela frenata</i>		
Mammals	Pallid Bat	<i>Antrozous pallidus</i>	SOC	

Species Group	Common Name	Scientific Name	SOC*	SWAP**
Mammals	Masked Shrew	<i>Sorex cinereusi</i>		
Mammals	Meadow Jumping Mouse	<i>Zapus hudsonius</i>	PSOC	
Mammals	Meadow Vole	<i>Microtus montanus</i>		
Mammals	Merriam's Shrew	<i>Sorex merriami</i>	SOC	
Mammals	Mule Deer	<i>Odocoileus hemionus</i>		
Mammals	Mountain Cottontail	<i>Sylvilagus floridanus</i>		
Mammals	Mountain Lion	<i>Puma concolor</i>		
Mammals	Muskrat	<i>Ondatra zibehicus</i>		
Mammals	Northern Grasshopper Mouse	<i>Onychomys leucogaster</i>		
Mammals	Northern Pocket Gopher	<i>Thomomys talpoides</i>		
Mammals	Northern River Otter	<i>Lontra canadensis</i>		
Mammals	Olive-backed Pocket Mouse	<i>Perognathus fasciatus</i>		
Mammals	Ord's Kangaroo Rat	<i>Dipodomys ordii</i>		
Mammals	Porcupine	<i>Erethizon dorsatum</i>	PSOC	
Mammals	Preble's Shrew	<i>Sorex preblei</i>	SOC	
Mammals	Pronghorn	<i>Antilocapra americana</i>		
Mammals	Raccoon	<i>Procyon lotor</i>		
Mammals	Sagebrush Vole	<i>Lemmiscus curtatus</i>		
Mammals	Spotted Bat	<i>Euderma maculatum</i>	SOC	
Mammals	Striped Skunk	<i>Mephitis mephitis</i>		
Mammals	Swift Fox	<i>Vulpes velox</i>	SOC	
Mammals	Townsend's Big-eared Bat	<i>Corynorhinus townsendii</i>	SOC	
Mammals	Western Harvest Mouse	<i>Reithrodontomys megalotis</i>		
Mammals	Western Small-footed Myotis	<i>Myotis ciliolabrum</i>		
Mammals	White-footed Mouse	<i>Peromyscus leucopus</i>	PSOC	
Mammals	White-tailed Deer	<i>Odocoileus virginianus</i>		
Mammals	White-tailed Jack Rabbit	<i>Lepus townsendii</i>		
Reptiles	Common Sagebrush Lizard	<i>Sceloporus graciosus</i>		
Reptiles	Common Gartersnake	<i>Thamnophis sitalis</i>		
Reptiles	Greater Short-horned Lizard	<i>Phrynosoma hernandesi</i>	SOC	SGCN3, SGIN
Reptiles	Gopher Snake	<i>Pituophis catenife</i>		
Reptiles	North American Racer	<i>Coluber constrictor</i>		

<b>Species Group</b>	<b>Common Name</b>	<b>Scientific Name</b>	<b>SOC*</b>	<b>SWAP**</b>
Reptiles	Painted Turtle	<i>Chrysemys picta</i>		
Reptiles	Plains Gartersnake	<i>Thamnophis radix</i>		
Reptiles	Prairie Rattlesnake	<i>Crotalus viridis</i>		
Reptiles	Prairie Hog-nosed Snake	<i>Heterodon nasicus</i>	SOC	SGCN2, SGIN
Reptiles	Snapping Turtle	<i>Chelydra serpentina</i>	SOC	SGCN3, SGIN
Reptiles	Spiny Softshell	<i>Apolane spinefera</i>	SOC	SGCN3
Reptiles	Western Milksnake	<i>Lampropeltis gentillis</i>	SOC	SGCN2

**Attachments:**

**A. Draft North Sunday Creek 1 (ALE) Deed of Conservation Easement and North Sunday Creek 2 (FWP) Deed of Conservation Easement.**

**North Fork Sunday Creek 1 (ALE)**

**DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Royce Ponessa, P.O. Box 171, Angela, MT 59312 (“Landowner”) to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”) and with a right of enforcement to the United States of America (the “United States”), acting by and through the United States Department of Agriculture (“USDA”) Natural Resources Conservation Service (“NRCS”).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

- Exhibit A** - Legal Description of the North Sunday Creek 1(ALE) Conservation Easement
- Exhibit B** - Map of the Land
- Exhibit C** - FWP Minimum Standards for Grazing Livestock and ALE Grasslands Component Plan
- Exhibit D** - Map of the Existing Residential/Agricultural Building Area
- Exhibit E** - NRCS Agricultural Land Easement “Minimum Terms for Agricultural Land Easements”
- Exhibit F** - Water Rights Existing at the Time of Execution of This Easement

**I. RECITALS**

- A.** The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from willing Landowner by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource of value.
- B.** The Landowner are the owners of certain real property in Rosebud County and Custer County, Montana (the “Land” or “Protected Property”), comprised of approximately 11,371.34 acres legally described in Exhibit A and depicted in Exhibit B, both of which are attached hereto and incorporated herein by this reference.

- C. The Land possesses significant agricultural values and communities of native plants, fish and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.
- D. The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- E. Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- F. The Land provides important opportunities for public recreational hunting, trapping, and wildlife viewing, and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and wildlife management purposes.
- G. This Deed of Conservation Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (“ACEP”) 16 U.S.C. § 3865, *et seq.* and 7 CFR Part 1468 for the purposes of protecting grazing uses and related Conservation Values by restoring and conserving the Land.
- H. The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

## **II. AGREEMENT**

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department’s wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

### **A. PURPOSES**

1. The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of fish and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the Conservation Values and the purposes of the Easement.
2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

## **B. RIGHTS CONVEYED TO THE DEPARTMENT**

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon **Prior Notice** to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly convey to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access

granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.

3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land and across the Land to adjacent publicly accessible land in accordance with the following terms and conditions:
  - a. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including livestock.
  - b. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
  - c. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 400 hunters on the Land per year ("hunter days") on a first-come, first-served basis.
    1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from midnight to midnight.
    2. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days." The term "immediate family" is defined to include spouses, children, in-laws, and parents.
    3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
  - d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.

e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby this grant creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access over and across the Designated Routes and shall park in those designated areas referred to as Parking Areas as described in the Management Plan. The public may not drive off these roads, routes, and trails for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public may travel on foot from the designated roads, parking areas, routes, and trails, or from other publicly accessible areas to hunt, trap, and/or view wildlife throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the parking areas to access the adjacent publicly accessible land that allows public recreational use. Upon agreement with the Landowner, the Department may open additional designated roads and parking areas, as allowed for in the Management Plan.

g. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

i. Public access for trapping and wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter days outlined in Paragraph II B.5. above.

j. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

k. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance

that the Landowner will be offered the opportunity for or be accepted into any such program.

## C. LANDOWNER'S RIGHTS

The Landowner reserves to themselves, and to their heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval** or **Prior Notice** as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserve the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a rest-rotation grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "FWP Minimum Standards for Grazing Livestock and ALE Grasslands Component Plan" more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to the "FWP Minimum Standards for Grazing Livestock and ALE Grasslands Component Plan" as described in Exhibit C. For the purposes of this Easement, "Livestock" is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with **Prior Approval**.
2. **Leasing the Land.** With **Prior Notice**, the Land may be leased to another agricultural operator for agricultural purposes, provided that:
  - a. A written lease must be entered into by the Landowner and the lessee(s);
  - b. The lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and,
  - c. A copy of the executed lease must be provided to the Department.
  - d. Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s).

3. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.
  
4. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, riparian vegetation, or wildlife habitat, wildlife movement, or migration on or through the Land is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations.
  
5. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4.):
  - a. **Residential/Agricultural Building Areas.** The purpose of the Residential/Agricultural Building Areas is to allow Landowner flexibility in the use of the residences and outbuildings and to cluster residential uses and other agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Residential/Agricultural Building Areas.
    - i. There is presently one existing Residential/Agricultural Building Area of approximately 10 acres on the Land as shown on Exhibit D.
  
    - ii. With **Prior Approval**, the Landowner may delineate two additional Residential/Agricultural Building Areas, each no more than 15 acres in size. Landowner must submit the proposed location and dimensions of said new Residential/Agricultural Building Areas to the Department. The location of a new Residential/Agricultural Building Areas requires the approval of the NRCS State Conservationist prior to construction.
  
    - iii. If a new Residential/Agricultural Building Area is approved pursuant to this Paragraph II.C.5, the Department may file in the public records of the affected county a “Notice of Exercise of Reserved Development Right” that documents the location of the

approved new Residential/Agricultural Building Area for the information and benefit of Landowner, Department, and their respective successors and assigns, and the public.

iv. No more than three Residential/Agricultural Building Areas are permitted on the Land.

b. Residences. The right to place or construct, alter, improve, remove, replace, and maintain four single-family residences, and associated non-residential improvements to be located within the three Residential/Agricultural Building Areas. Landowner may relocate or replace any of the four single-family residences and associated non-residential improvements to any one or more of the three allowed Residential/Agricultural Building Areas.

i. Construction on the Land. All new residential structures and related improvements must be located within the Residential/Agricultural Building Areas. The existing Residential/Agricultural Building Area is shown on EXHIBIT D, which is appended to and made a part of the Easement.

The boundaries and location of the Residential/Agricultural Building Areas (existing and yet-to-be-located) may be adjusted with **Prior Approval** of Department and the Chief of NRCS. The Residential/Agricultural Building Areas may not increase in size and the adjusted Residential/Agricultural Building Areas must provide equal or greater protection of the grassland, grazing uses, and related conservation values of the Land.

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Exhibit E Minimum Deed Terms (Section I, Paragraph (4)(C)) that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related conservation values of the Land, may be built outside of the Residential/Agricultural Building Areas with **Prior Approval** of the Grantee provided that the utilities or agricultural structures are consistent with the Minimum Deed Terms described in Exhibit E.

c. Agricultural/Commercial Structures. The right to construct, remove, maintain, renovate, repair or replace agricultural and commercial structures, including, but not limited to corrals, loafing sheds, machine sheds, and barns as long as these structures are located within the Residential/Agricultural Building Areas. The right to place agricultural/commercial structures outside of the Residential/Agricultural Building Areas with **Prior Approval**.

d. Fences. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “wildlife friendly” as described in the Management Plan. This does not apply to corrals, fences, windbreaks and other structures necessary to contain livestock, or protect silage storage, haystacks, or gardens.

6. **Roads.** To maintain existing roads and bridges or waterway crossings as herein permitted.
  
7. **Noncommercial Recreational Use.** Landowner reserves to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.
  
8. **Utilities.**
  - a. Existing Utilities. Landowner may maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines (“Utilities”).
  
  - b. New Utilities on the Land. Subject to **Prior Approval**, Landowner may install and construct new Utilities upon, over, or beneath the Land to existing or subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. Prior to construction of new Utilities, the Landowner shall submit to the Department a Utility Plan as provided in Paragraph II.C.8.d. (“Utility Plan”) below.
  
  - c. New Utilities Serving Adjacent Properties. Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.8.d. below.
  
  - d. Utility Plan. Prior to preparation of the Utility Plan, the Landowner shall contact the Department to obtain the required information for inclusion in the Utility Plan. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department’s approval of the Utility Plan. Any new and expanded Utilities and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of affected counties, signed by the Landowner, the Department, and the utility service provider prior to construction.
  
9. **Renewable Energy Generation for Use On the Land.** With **Prior Approval**, Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities solely for use on the Land, except that any incidental surplus energy may be sold commercially for use off of the Land or credited to Landowners’ utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to the provisions of Paragraph II.C.8.
  
10. **Pesticide Application and Weed Management.**
  - a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) in Man-Made Structures as described in Paragraph II.C.5. Except as provided in Paragraph II.C.10.b. below, **Prior Approval** is required to use pesticides on the Land in other than Residential/Agricultural Building Areas. Any pesticide use should be only in the amount

and frequency constituting the minimum necessary based on pesticide label use instructions and all applicable state and federal regulations concerning use to accomplish reasonable control of the targeted pest species.

b. **Weed Management.** The right to use herbicides for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**.

c. **Prior Approval** is required for aerial application of any pesticide or biological control agent on the Land.

d. Prairie dog colonies currently occupy approximately 150 acres on the Land. With **Prior Approval**, the Landowner may use pesticides as described in Paragraph II.C.10.a. to control prairie dogs when the minimum of 150 acres of active prairie dog colonies is exceeded. Landowners shall not be held responsible if the acreage is reduced below the 150 acre minimum due to natural causes of mortality such as plague, predation or other environmental factors.

**11. Regulation of Public Use.** The right to regulate public use of the Land at all times; subject, however, to the right of public hunting, and wildlife viewing access granted to the Department in Paragraph II.B.5.

**12. Oil, Gas, or Mineral Exploration and Extraction.** Subject to, and without limiting any obligations of Landowner under, Montana Code Annotated § 82-11-202, Landowner shall not mine or extract soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method; provided however, with **Prior Approval**, Landowner may conduct limited mining activity for materials (e.g., sand, gravel, rock) used for agricultural operations on the Land where the extraction of materials used for such agricultural operations is limited, localized, and does not harm the Conservation Values or the agricultural uses of the Land.

a. The existing extraction sites will be identified in the Baseline Report.

b. Landowner shall use or develop no more than two areas of no more than two acres each at any time. Extraction locations constructed by Landowner, or existing extraction locations must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.

c. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Conservation Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.

This Conservation Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

**13. Subdivision and Conveyance of Land Ownership.**

a. For the purposes of this Easement, the Land shall be considered to comprise one unit, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.

b. Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.

c. Landowner shall provide **Prior Notice** to the Department of any proposed real property transfer, and such transfer must be effected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Department may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

**14. Industrial or Commercial Uses.** The right to:

a. Conduct agricultural production and related activities as provide for in this Easement and the Management Plan.

b. With **Prior Approval**, conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.

c. With **Prior Approval**, and provided it does not significantly increase vehicular traffic to or through the Land, operate home-based businesses, small-scale manufacturing of products and distribution of those products, small-scale commercial enterprises related to agriculture or forestry including but not limited to agri-tourism, processing, packaging, and marketing of farm or forest products, farm and machinery repair, and small-scale commercial enterprises compatible with agriculture or forestry.

## **D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES**

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. **Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, with **Prior Approval** Landowner may harvest or contract the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II.D.2.
2. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, the Landowner does not require **Prior Approval** to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.
3. **Wetland and Riparian Areas.**
  - a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table. Active river channels or eroded river banks devoid of effective wildlife cover are not considered riparian areas.
    - b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.
  - c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.

4. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

The Land may not be used as open or natural space or parkland for any subdivision or development purposes or requirements on land not covered by this Easement, nor may the Landowner transfer any development or subdivision rights separate from the Land.

5. **Water Rights.** Landowner may not transfer, encumber, sell, lease, abandon, or otherwise separate water rights from the Land, including any water rights existing at the time of execution of this Easement as shown in Exhibit F, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by the Landowner after execution of this Easement. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.10 is prohibited.
7. **Roads.** The construction of new roads. is prohibited.
8. **Surface Alteration.** The cultivation or farming of any portion of the Land is prohibited, except as allowed for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting fishing, or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting, fishing, or wildlife viewing operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, or wildlife viewing on the Land or for access across the Land to reach public land or other private land, is prohibited.

10. **Mineral Exploration and Extraction.** Landowner may not engage in, authorize, or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.12. Any other mineral exploration, development, or extraction is prohibited.
11. **Man-Made Structures.** The construction of any Man-Made Structures on the Land or any portion thereof is prohibited, other than as provided for in II.C.
12. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
13. **Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner has the right to have ranch dogs and household pets on the Land. This prohibition does not apply to common domestic livestock, or to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land. Domestic livestock is allowed per II.C.1.
14. **Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, outfitting, restaurant, campground, trailer park, motel, commercial swimming pool, gas station, retail outlet, or facility for the large-scale manufacture of any products other than products grown or produced on the Land in connection with agricultural purposes expressly permitted under Paragraph II.C. of this Easement is prohibited.
15. **Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited, except within a single landfill for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. Abandoned homesteads and preexisting dump sites described in the Baseline Report are exempt from this provision, and with **Prior Notice** may be buried on-site or otherwise disposed of. No new material may be added to these preexisting sites. The deposit of natural organic material derived from livestock and crop production

on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.4., are not considered waste disposal.

**16. Hazardous Materials.** Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes. The installation of underground storage tanks is prohibited.

#### **E. MANAGEMENT PLAN**

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the Landowners and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Management Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner (“Successor in Interest”), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge, and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

#### **F. EASEMENT BASELINE REPORT**

The parties agree that a Conservation Easement Baseline Report (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and acknowledged by them in writing to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner’s compliance with the terms and

conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the improved conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

#### **G. PRIOR NOTICE AND PRIOR APPROVAL**

Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Department as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department may provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

If the Department fails to respond to Landowner's notice of **Prior Approval** within 60 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.

The Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the

Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email, addressed as follows:

To Landowner:

Royce Ponessa  
P.O. Box 171,  
Angela, MT 59312

To Department:

Department of Fish, Wildlife & Parks  
Attention: Administrator, Wildlife Division  
1420 E. Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620-0701

With a copy to:

Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
352 I-94 Business Loop  
Miles City, MT 59301

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

## **H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES**

If the Department determines that the Landowners have violated the terms of this Easement, or if the Landowners undertake any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowners of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowners:

1. fail to cure the violation within 30 days after receipt of notice from the Department, or

2. under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing the violation within the 30 day period (or, within 30 days of Landowners' receipt of notice from the Department, if Landowners fail to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. fail to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowners or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowners agree that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowners' liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowners for any injury to or change in the Land resulting from causes beyond the Landowners' control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowners may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowners may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner's violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In the event of such litigation to enforce the terms of this Conservation Easement, each side shall bear its own costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

#### **I. HOLD HARMLESS AND INDEMNITY**

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

#### **J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT**

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is \_\_\_ percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party \_\_\_ percent of the unencumbered value of the real property and the Department shall be entitled to receive \_\_\_ percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

#### **K. SUBORDINATION**

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of \_\_\_\_\_[Bank], [address] (“Lienholder”). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, under Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana (the “Mortgage”), the Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

## **L. ASSIGNMENT**

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the conservation purposes of this Easement are to be carried out in perpetuity.

## **M. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of the affected counties.

## **N. RECORDING**

The Department shall record this instrument in a timely fashion in the official records of the affected counties and may re-record it at any time as may be required to preserve its rights in this Easement.

## **O. REPRESENTATIONS AND WARRANTIES**

Landowner represents and warrants that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.

3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

**P. GENERAL PROVISIONS**

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Landowner shall be joint and several.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowner and the Department have set their hands on the day and year first above written.

This is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT E is attached hereto and incorporated herein by reference and will run with the land in perpetuity. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future uses of the Protected Property identified in EXHIBIT A is and will remain subject to the terms and conditions described forthwith in this Addendum entitled Minimum Deed Terms For The Protection Of Agricultural Use in EXHIBIT E that is appended to and made a part of this easement deed.

**GRANTED BY: LANDOWNER**

\_\_\_\_\_

STATE OF MONTANA                    )  
  : ss.  
COUNTY OF \_\_\_\_\_)

This instrument was signed before me on \_\_\_\_\_, 201\_\_,

by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)



**EXHIBIT A**  
**Legal Description of the North Sunday Creek 1 (ALE) Conservation Easement**

<b>Rosebud County. MT</b>
<b>T11N, R44E MPM Rosebud County</b>
Section 25: All Section 26: All Section 36: E1/2, E2NW4, SW1/4
<b>T10N, R44E MPM Rosebud County</b>
Section 1: Lot 1, SE ¼ NE ¼, E ½ SE ¼  Section 2: Lots 3, 4, E ½ SE ¼, NW ¼ SE ¼, SE ¼ NE ¼, NE ¼ SW ¼, SE ¼ NW ¼ Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 021, under Document # 0099289, records of Rosebud County, MT.  Section 11: All  Section 12: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 021, under Document # 0099289, records of Rosebud County, MT.  Section 13: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 021, under Document # 0099289, records of Rosebud County, MT.  Section 24: E ½ E ½ , NW ¼ NE ¼, N ½ NW ¼
<b>T11N, R44E MPM Rosebud County</b>
Section 21: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 037, under Document # 0099289, records of Rosebud County, MT.  Section 27: NW ¼ Less portion deeded for highway by 32 of Deeds, Page 578 Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 037, under Document # 0099289, records of Rosebud County, MT.  Section 28: N ½ NE ¼, NE ¼ NW ¼ Section 29: W ½ NW ¼, SW ¼  Section 33: N ½

Section 35: N ½, SE ¼, N ½ SW ¼, SE ¼ SW ¼ Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 029, under Document # 0099289, records of Rosebud County, MT.

**T10N, R44E MPM Rosebud County**

Section 3: Lots 1, 2, 3 and 4, S ½ N ½, S ½

**Custer County, MT**

**T10N, R45E MPM Custer County**

Section 7: Lots 1, 2, 3, 4, E ½ W ½, E ½

Section 15: All

Section 17: All

Section 18: Lots 1, 2, 3, 4, SE ¼ SW ¼, SW ¼ SE ¼, E ½ E ½, Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134407, real estate records of Custer County, Montana.

Section 19: Lots 1, 2, 3, 4, E ½ W ½, E ½, Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

Section 29: All, Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

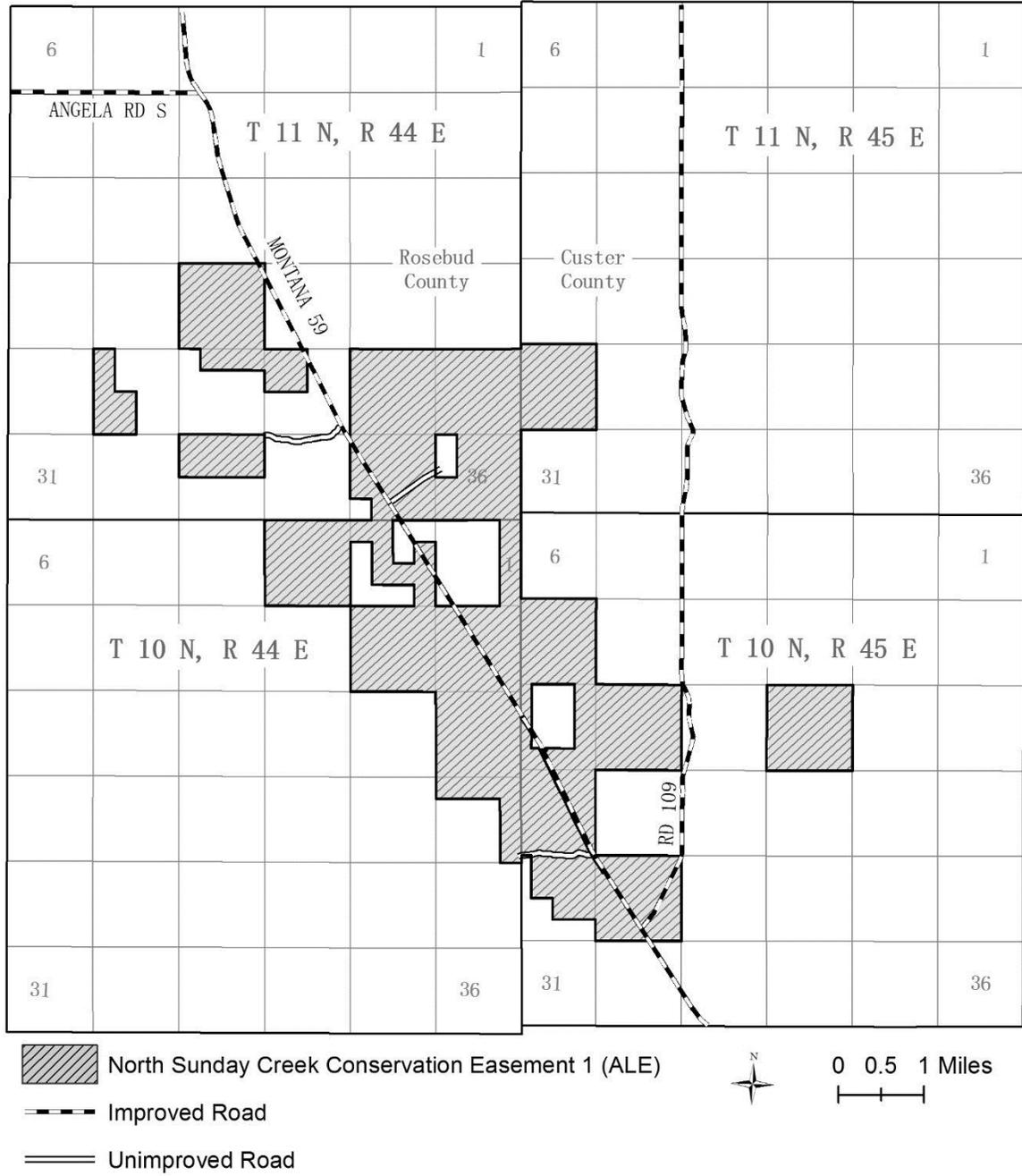
Section 30: NE ¼, E ½ NW ¼, N ½ SE ¼, Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

**T11N, R45E MPM Custer County**

Section 30: Lots 1, 2, 3, 4, E ½ W ½, E ½

**END OF EXHIBIT A**

## EXHIBIT B MAP OF THE LAND



**END OF EXHIBIT B**

**EXHIBIT C**  
**FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK**  
**AND**  
**ALE GRASSLANDS COMPONENT PLAN**

**Introduction**

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP-managed Wildlife Management Areas (WMAs), wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also on WMAs, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

**Why a minimum standard?**

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems.

Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches and to provide flexibility to conserve and protect habitat needs on WMAs where wildlife habitat is the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

### **Grazing Plan**

Prior to grazing livestock, the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the Management Plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects, the management plan will be included as an attachment to the grazing lease or contract. On conservation easements, the grazing plan will be enforceable only on lands covered by the easement.

### **Upland Minimum Grazing Standard for Summer/Fall Systems**

This standard applies to upland pastures in native plant communities (i.e. generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing to allow native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e. grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1.

Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to

allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show how the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

**Table 1. Livestock Grazing Formula using a three pasture approach as an example.**

<b>Grazing Seasons</b>	<b>Pasture 1</b>	<b>Pasture 2</b>	<b>Pasture 3</b>
<b>Year One</b>	A	B	C
<b>Year Two</b>	B	C	A
<b>Year Three</b>	C	A	B
When all treatments have been applied to all pastures, the grazing rotation begins again at year one.			
A = livestock grazing allowed during the growing season; B = livestock grazing begins after seed-ripe time; C = rest from livestock grazing yearlong.			

### **Winter and/or Early Spring Grazing**

In some situations, an early grazing treatment (prior to mid- May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two (2) years. Hay, grain, salt, protein or other supplements will not be placed in riparian areas during winter or any other season.

Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in the table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designated for winter grazing is divided into two pastures and

each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree- dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e. a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

### **Scope**

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

### **Non-native Pasture**

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture, a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in year one then deferred from grazing until near seed-ripe in year 2 (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations, it may be necessary to apply the guideline *Series entitled: The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances, it might be necessary to fence out riparian from the hayfield to protect it from grazing.

### **Stocking Rate**

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words, the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

### **Mineral and Other Supplements**

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

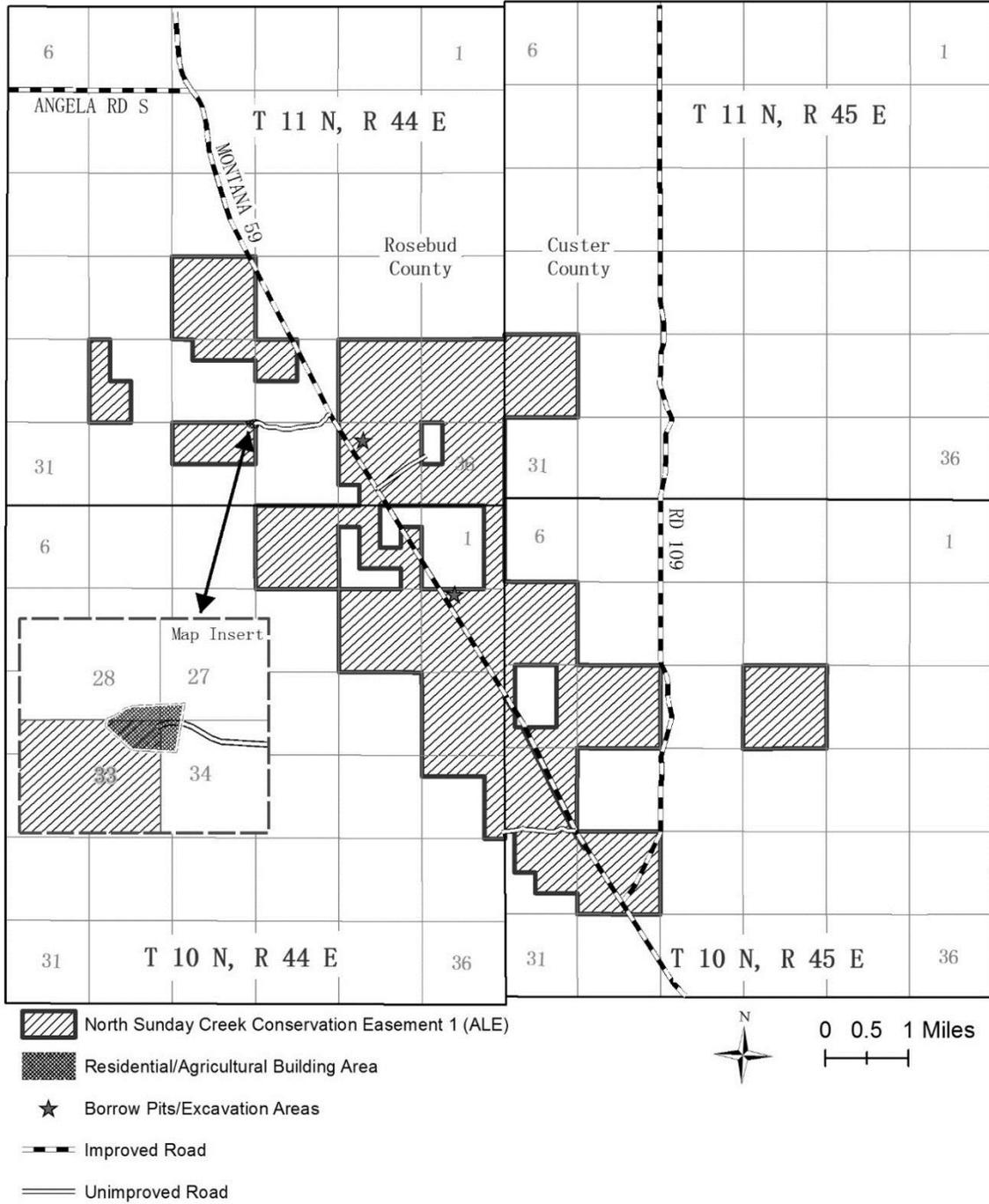
On FWP lands livestock within pasture grazing systems are not to be fed hay.

### **Flexibility**

Rarely, a severe environmental influence (i.e. fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

## **EXHIBIT D**

**Map of Existing Residential/Agricultural Building Area and Existing Borrow/Excavation Areas.**



**END OF EXHIBIT D**

U.S. Department of Agriculture

## **EXHIBIT E**

### **MINIMUM TERMS FOR AGRICULTURAL LAND EASEMENTS**

The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement (ALE) on real property described in Exhibit A, hereafter referred to as “the Protected Property” for the purpose of protecting grazing uses and related conservation values by restoring and conserving the Protected Property.

Royce Ponessa (Landowner), the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana (Department), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (jointly referred to as the “Parties”) acknowledges that the ALE is acquired by the Department to protect grazing uses and related conservation values by restoring and conserving the Protected Property. Baseline conditions of the Protected Property are set forth in a Baseline Documentation Report, a copy of which is maintained in the files of the Department.

In order to ensure compliance with the Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq. and 7 CFR Part 1468, the following rule of interpretation will govern any and all inconsistencies between the ALE and this Exhibit. Notwithstanding any other provision of the ALE, the Parties agree that all present and future use of the Protected Property is and will remain subject to all of the following terms and conditions identified in Section I and II. If the terms and conditions in Section I and II are inconsistent with terms and conditions in other sections of the ALE, Section I and II will control; provided however, if other sections of the ALE have terms and conditions that are consistent with, but more restrictive to the rights of the Landowner than the terms and conditions in Section I, Paragraphs 1, 2, and 3, those more restrictive terms and conditions will control. If other sections of the ALE are more restrictive to the rights of the Landowner than Section I Paragraph 4 and 5 and Section II then Section I Paragraph 4 and 5 and Section II will control.

#### **SECTION I - MINIMUM CONSERVATION DEED RESTRICTIONS**

Even if the Protected Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Protected Property as a whole.

The terms and conditions of the ALE run with the land and are binding upon the Landowner, the Department and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this easement, including the following:

- 1. Agricultural Land Easement Plan.** As required by 16 U.S.C. Section 3865a, agricultural

production and related uses of the Protected Property are subject to an ALE Plan, as approved by NRCS, to promote the long-term viability of the land to meet the ALE purposes. The ALE Plan must also be approved by the Landowner and Department. Landowner agrees the use of the property will be subject to the ALE Plan on the Protected Property.

The ALE Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this ALE. The Department and Landowner agree to update the ALE Plan in the event the agricultural uses of the Protected Property change. A copy of the current ALE Plan is kept on file with the Department.

The Department must take all reasonable steps to secure compliance with the ALE Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify the Department. NRCS will give the Department and Landowner a reasonable amount of time, not to exceed 180 days, to take corrective action. If Department fails to enforce the terms of the ALE, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

**2. Limitation on Impervious Surfaces.** Impervious surfaces will not exceed **2%**, of the Protected Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Protected Property, including, but not limited to, buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Department by this ALE.

**3. Limitations on Nonagricultural Uses.** Any activities inconsistent with the purposes of the ALE are prohibited. The provisions of this ALE limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values. The following activities are inconsistent with the purposes of ALE and are specifically prohibited, subject to the qualifications stated below:

(A) *Subdivision* – Separate conveyance of a portion of the Protected Property or division or subdivision of the Protected Property is prohibited.

(B) *Industrial or Commercial Uses* – Industrial or commercial activities on the Protected Property are prohibited except for the following:

(i) agricultural production and related uses conducted as described in the ALE Plan;

(ii) the sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Department approves in writing as being consistent with the conservation purposes of this Easement;

(iii) temporary or seasonal outdoor activities or events that do not harm the agricultural use, future viability, and related conservation values of the Protected Property herein protected;

(iv) commercial enterprises related to agriculture or forestry including but not limited to *agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and farm wineries.*

(v) small-scale commercial enterprises compatible with agriculture or forestry.

(C) *Construction on the Protected Property* – All new structures and improvements must be located within the Residential/Agricultural Building Areas, containing approximately 15 acres, and the existing 10 acre Residential/Agricultural Building Area is shown in Exhibit D, which is appended to and made a part of the ALE.

The boundaries and location of the Residential/Agricultural Building Areas may be adjusted with **Prior Approval** of Department and the Chief of NRCS of the adjusted boundaries and location. The Residential/Agricultural Building Areas may not increase in size and the adjusted Residential/Agricultural Building Areas must provide equal or greater protection of the grassland, grazing uses, and related conservation values of the Protected Property.

Agricultural structures and utilities to serve approved buildings or structures, including on-farm energy structures allowed under Exhibit E Minimum Deed Terms (Section I, Paragraph (4)(C)) that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related conservation values of the Land, may be built outside of the Residential/Agricultural Building Areas with **Prior Approval** of the Grantee provided that the utilities or agricultural structures are consistent with the Minimum Deed Terms described in Exhibit E.

Maintenance of existing roads documented on the Baseline Documentation Report is allowed; however, existing roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by the Department, and necessary to carry out the agricultural operations or other allowed uses on the Protected Property.

Fences may be maintained and replaced and new fences installed only in accordance with the ALE Plan and consistent with grassland species management requirements.

(D) *Granting of easements for utilities and roads* – The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact *the protection of the grazing uses, grassland conservation value,* and related conservation values of the Protected Property as determined by the Department in consultation with the Chief of NRCS.

(E) *Surface Alteration* – Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Protected Property is prohibited, except as follows:

(i) dam construction in accordance with an ALE plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement

through wetland restoration, enhancement or creation;

(ii) erosion and sediment control pursuant to a plan approved by the Department or;

(iii) soil disturbance activities required in the construction of approved agricultural structures, roads and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement; or

(iv) Grazing uses or grassland restoration and conservation activities conducted in accordance with the ALE Plan.

(F) *Oil, Gas, or Mineral Exploration and Extraction* – Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by the Landowner as of the date of this ALE or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method, from the Protected Property is prohibited. Provided however, limited mining activities for materials (e.g., sand, gravel, or rock) used for agricultural operations on the Land is allowed where the extraction of materials used for such agricultural operations is limited, localized, and small with a defined area and identified in Exhibit D, and does not harm the conservation values or the agricultural uses of the Protected Property.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this ALE is executed, and their interests have not been subordinated to this ALE, the Landowner must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with this paragraph (F).

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this ALE Deed are subordinate to the terms of this Deed and will incorporate by reference this Deed.

(G) *Crop Cultivation* - Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial non-grassland agricultural product is prohibited.

**4. Preserving Agricultural Uses:** No uses will be allowed that decrease the ALE's protection for the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values of the Protected Property. Allowed uses of the Protected Property include, the specific uses allowed in Section I, Paragraph (3)(B) (i)-(iii) and the following activities, subject to the qualifications stated below:

(A) *Agricultural Production* – The production, processing, and marketing of livestock and agricultural products compatible with restoration and conservation of grassland, grazing uses, and related conservation values is allowed provided it is conducted in a manner

consistent with the terms of the ALE Plan described in Section I, Paragraph 1.

(B) *Forest Management and Timber Harvest* – Forest management and timber harvesting is allowed, provided it is carried out to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. In addition, if the Protected Property contains 40 contiguous acres of forest or 20 percent of the Protected Property is forestland then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Grantee. A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities and structures on the Protected Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

(C) *On-Farm Energy Production* – Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential needs of the Protected Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the conservation values of the Protected Property and consistent with the purposes of the ALE.

(D) *Grassland Uses of the Protected Property* – Landowner is allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this ALE. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property. Landowner must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified in the ALE Plan. Determinations of nesting seasons for birds whose populations are in significant decline and the areas of the property affected by this restriction will be set forth within the ALE Plan for the Protected Property that has been approved by Landowner, Department, and NRCS.

## **SECTION II - PROTECTION OF THE UNITED STATES' INTERESTS**

**1. United States Right of Enforcement.** Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE are not enforced by the holder of the ALE. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Department, or its successors or assigns, fails to enforce any of the terms of this ALE, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and

all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Landowner, including, but not limited to, attorney's fees and expenses related to Landowner's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Department, including, but not limited to, attorney's fees and expenses related to Department's violations or failure to enforce the easement against the Landowner up to the amount of the United States contribution to the purchase of the ALE.

The Department will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Department and Landowner are in compliance with the ALE and ALE Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE, the ALE Plan, and the United States Cooperative Agreement with the Department, the United States will have reasonable access to the Protected Property with advance notice to Department and Landowner or Landowner's representative.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to Department and Landowner or Landowner's representative at the earliest practicable time.

**2. General Disclaimer and Landowner's Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Department's or Landowner's negligent acts or omissions or Department's or Landowner's breach of any representation, warranty, covenant, or agreements contained in this ALE Deed, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Protected Property.

Landowner must indemnify and hold harmless United States, their employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Landowner negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

**3. Environmental Warranty.** Landowner warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws. Landowner warrants that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Protected Property. Landowner further warrants that

it has no actual knowledge of an undisclosed release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowner warrants the information disclosed to the Department and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowner hereby promises to hold harmless and indemnify Department and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any hazardous materials on, at, beneath or from the Protected Property, or arising from or connected with a violation of any Environmental Laws by Landowner or any other prior owner of the Protected Property. Landowner indemnification obligation will not be affected by any authorizations provided by Department or the United States to Landowner with respect to the Protected Property or any restoration activities carried out by Department at the Protected Property; provided, however, that Department will be responsible for any Hazardous Materials contributed after this date to the Protected Property by Department.

“Environmental Law” or “Environmental Laws” means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment.

**4. Extinguishment, Termination, and Condemnation.** The interests and rights under this Agricultural Land Easement may only be extinguished or terminated with written approval of the Department and the United States. Due to the Federal interest in this ALE, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Protected Property.

With respect to a proposed extinguishment, termination, or condemnation action, the Department and the United States stipulate that the fair market value of the ALE is \_\_\_\_\_ percent, hereinafter the “Proportionate Share,” of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time.

If this ALE is extinguished, terminated, or condemned, in whole or in part, then the Landowner must reimburse Department and the United States an amount equal to the Proportionate Share of

the fair market value of the land unencumbered by this ALE. The fair market value will be determined at the time all or a part of this ALE is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Department and the United States.

The allocation of the Proportionate Share between the Department and the United States will be as follows: (a) to the Department or its designee, \_\_\_\_\_ percent of the Proportionate Share; and (b) to the United States \_\_\_\_\_ percent of the Proportionate Share. Until such time as the Department and the United States receive the Proportionate Share from the Landowner or the Landowner successor or assign, the Department and the United States each have a lien against the Protected Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to Department, the Department must reimburse the United States for the amount of the Proportionate Share due to the United States.

**5. Amendment.** This ALE may be amended only if, in the sole and exclusive judgment of the Department and United States, by and through the Chief of NRCS, such amendment is consistent with the purposes of this ALE and complies with all applicable laws and regulations. The Department must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended ALE, such amendments must be mutually agreed upon by the Department, Landowner, and United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void

**END OF EXHIBIT E**

**EXHIBIT F**  
**WATER RIGHTS EXISTING AT THE TIME OF EXECUTION OF THIS EASEMENT**

Only those water rights listed below whose place of use is, in whole or in part, on the Land, are encumbered by this Easement.

**42K 108213 00**  
**42K 108216 00**  
**42K 108217 00**  
**42K 108218 00**  
**42K 108219 00**  
**42K 108239 00**  
**42K 108240 00**  
**42K 108265 00**  
**42K 108285 00**  
**42K 108376 00**  
**42K 128362 00**  
**42K 128363 00**  
**42K 128364 00**  
**42K 128365 00**  
**42K 128366 00**  
**42K 128367 00**  
**42K 128368 00**  
**42K 128369 00**  
**42K 128370 00**  
**42K 128371 00**  
**42K 20480 00**  
**42K 20481 00**  
**42K 30042835**  
**42K 30044188**  
**42K 58993 00**  
**42K 7668 00**  
**42K 7670 00**

**END OF EXHIBIT F**

## North Sunday Creek 2 (FWP)

### DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by Royce Ponessa, P.O. Box 171, Angela, MT 59312 (“Landowner”) to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

- Exhibit A** - Legal Description of the North Sunday Creek 2(FWP) Conservation Easement
- Exhibit B** - Map of the Land
- Exhibit C** - FWP Minimum Standards for Grazing Livestock
- Exhibit D** - Map of the Existing Residential/Agricultural Building Area, Abandoned Homestead, and Cultivated Land
- Exhibit E** - Water Rights Existing at the Time of Execution of This Easement

#### I. RECITALS

- A.** The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from willing Landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource of value.
- B.** The Landowner is the owner of certain real property in Custer County and Rosebud County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Conservation Easement Boundary is depicted in Exhibit B.
- C.** Two separate and distinct overlapping Deeds of Conservation Easement encumber all or a portion of the Horse Creek Complex. The first easement (North Sunday Creek 1 (ALE) Deed of Conservation Easement) encompasses approximately 11,371.34 acres of land, funded in part through the Agricultural Conservation Easement Program, 16 U.S.C. § 3865, *et seq.* This program facilitates and provides funding to the Department for the purchase of an Agricultural Land Easement (“ALE”) which is depicted on Exhibit B and referred to there as the “ALE Area.” For purposes of clarity, this easement shall be referred to in this document as the “ALE.” By funding this easement, the USDA-NRCS recognizes that a portion of the Land provides agricultural values worth conserving in perpetuity.

This second Easement (North Sunday Creek 2 (FWP) Deed of Conservation Easement) covers the entire 14,300.75-acre property described in Exhibit A and depicted on Exhibit B.

This Easement complements the ALE, by encumbering additional acreage and acquiring additional rights from the Landowner not acquired through the ALE. Thus, the land is encumbered by both the ALE and also this second larger Easement. This Easement is in addition to the ALE and in no way amends, modifies, or supersedes the terms of the ALE.

- D.** The Land possesses significant agricultural values and communities of native plants, fish and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.
- E.** The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- F.** Landowner and Department agree that the Conservation Values of the Land will be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- G.** The Land provides important opportunities for public recreational hunting, trapping, and wildlife viewing and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and for wildlife management purposes.
- H.** The Landowner intends, by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

### **III. AGREEMENT**

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department’s wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown on Exhibit B.

#### **A. PURPOSES**

- 2.** A purpose of this Easement is to preserve, protect, and restore, upon mutual agreement with the Landowner, in perpetuity, the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of fish and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to

those activities that are consistent with the Conservation Values and the purposes of the Easement.

2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
4. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

## **B. RIGHTS CONVEYED TO THE DEPARTMENT**

The rights conveyed to the Department in perpetuity by this Easement are the following:

3. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
4. **Access.** Upon **Prior Notice** to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.
3. **Injunction and Restoration.** To enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a

significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.

4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, and wildlife viewing on the Land and across the Land to adjacent publicly accessible land in accordance with the following terms and conditions:
  - a. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including livestock.
  - b. The public may hunt game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
  - c. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 400 hunters on the Land per year ("hunter days") on a first-come, first-served basis.
    4. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from midnight to midnight.
    5. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days." The term "immediate family" is defined to include spouses, children, in-laws, and parents.
    6. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
  - d. The hunting seasons during which the public is allowed access to the Land for hunting under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
  - e. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby this grant creates a conservation easement for the purpose of protecting significant open-

space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall have motor vehicle access to Parking Areas as described in the Management Plan. The public may not drive off these roads, routes, and trails for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public may travel on foot from Parking Areas, or from other publicly accessible areas to hunt, trap, and/or view wildlife throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the parking areas to access the adjacent publicly accessible land that allows public recreational use. Upon agreement with the Landowner, the Department may open additional designated roads and parking areas, as allowed for in the Management Plan.

g. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

h. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

i. Public access for trapping and wildlife viewing will be directed by the Management Plan. Those members of the public participating in these activities will not count toward the minimum hunter days outlined in Paragraph II B.5. above.

j. Except as specifically set forth in this Paragraph II.B.5., this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

k. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the Landowner and the Department acknowledge that any such hunter-impact program is administered separately from this Easement; that such program may or may not persist through time; that such program may or may not be offered for the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.

## **C. LANDOWNER'S RIGHTS**

The Landowner reserves to itself, and to its heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the

purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval** or **Prior Notice** as described in Paragraph II.G. of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities in this Conservation Easement set forth in Paragraph II.D. hereof, the Landowner expressly reserves the following rights;

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "Standards for Grazing Livestock," more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to the FWP Minimum Standards for Grazing Livestock as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with **Prior Approval**.
2. **Agricultural Activities.** The right to use the Land and to use equipment on the Land for agricultural purposes and to manage habitat for wildlife, all in a manner consistent with the following provisions:
  - a. The areas cultivated at the time the Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan. If the cultivated land is used for grazing, livestock grazing will comply with the terms of the Easement and the Management Plan.
  - c. Areas not designated in the Baseline Report as "Residential/Agricultural Building Areas", or "cultivated" areas" shall be considered "rangeland" and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.
3. **Leasing the Land.** With **Prior Notice**, the Land may be leased to another agricultural operator for agricultural purposes, provided that:
  - a. A written lease must be entered into by the Landowner and the lessee(s);
  - b. The lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and
  - c. A copy of the executed lease must be provided to the Department.

d. Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s).

4. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.
5. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, riparian vegetation, or wildlife habitat, wildlife movement, or migration on or through the Land is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations.
6. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.5.):
  - a. **Residential/Agricultural Building Areas.** The purpose of the Residential/Agricultural Building Areas is to allow Landowner flexibility in the use of the residences and outbuildings and to cluster residential uses and agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Residential/Agricultural Building Areas.
    - i. There is presently one existing Residential/Agricultural Building Area of approximately 10 acres on the Land as shown on Exhibit D.
    - ii. With **Prior Approval**, the Landowner may delineate two additional Residential/Agricultural Building Areas, each no more than 15 acres in size. Landowner must submit the proposed location and dimensions of said new Residential/Agricultural Building Areas to the Department.
    - iii. If a new Residential/Agricultural Building Area is approved pursuant to this Paragraph II.C.6, the Department may file in the public records of the affected county a “Notice of Exercise of Reserved Development Right” that documents the

location of the approved new Residential/Agricultural Building Area for the information and benefit of Landowner, Department, and their respective successors and assigns, and the public.

iv. No more than three Residential/Agricultural Building Areas are permitted on the Land.

b. Residences. The right to place or construct, alter, improve, remove, replace, and maintain four single-family residences, and associated non-residential improvements to be located within the three Residential/Agricultural Building Areas. Landowner may relocate or replace any of the four single-family residences and associated non-residential improvements to any one or more of the three allowed Residential/Agricultural Building Areas.

i. All new residential structures and related improvements must be located within the Residential/Agricultural Building Areas.

ii. Landowner reserves the right to construct, maintain, repair, remove, and replace additional outbuildings and commercial buildings within the existing 10 acre Residential/Agricultural Building Area (Exhibit D).

iii. There is an existing residence, associated residential outbuildings, and agricultural outbuildings located on the Land in the W ½ NW ¼ Section 36, T10N, R44E as described here and as shown on Exhibit D as Abandoned Homestead. Within 15 years of executing this Easement, Landowner shall: a) remove or dispose of any existing structures that Landowner does not wish to retain on the Land; or b) designate 15 acres or less of the above described land as one of the allowed Residential/Agricultural Building Areas as described in Paragraph II.C.6.a. above.

iv. Unless the Landowner designates 15 acres or less of the above described land as one of the allowed Residential/Agricultural Building Area as described in Paragraph II.C.6.a. above, Landowner is prohibited from maintaining, repairing, or replacing the existing residence or associated residential outbuildings at this location.

v. If the site is not designated as Residential/Agricultural Building Area, Landowner shall reclaim the disturbed area as specified in the Management Plan.

vi. Landowner shall notify the Department once removal of existing structures and reclamation is complete.

c. Agricultural/Commercial Structures. The right to construct, remove, maintain, renovate, repair or replace agricultural and commercial structures, including, but not limited to corrals, loafing sheds, machine sheds, and barns as long as these structures are located within the Residential/Agricultural Building Areas. The right to place agricultural/commercial structures outside of the Residential/Agricultural Building Areas with **Prior Approval**.

d. Fences. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “wildlife friendly” as described in the Management Plan. This does not apply to corrals, fences, windbreaks and other structures necessary to contain livestock, or protect silage storage, haystacks, or gardens.

7. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings as herein permitted. Any road, bridge, or waterway crossings constructed shall be sited and maintained so as to minimize adverse impacts on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department’s approval shall be contingent on confirmation that (a) the road’s intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowner’s written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

8. **Noncommercial Recreational Use.** Landowner reserves to themselves and to their immediate family the right to use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with Section II.B.5. and Section II.D.9.

9. **Utilities.**

a. Existing Utilities. Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines (“Utilities”).

b. New Utilities on the Land. Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.9.d. (“Utility Plan”) below.

c. New Utilities Serving Adjacent Properties. Subject to **Prior Approval**, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.9.d. below.

d. Utility Plan. Prior to preparation of the Utility Plan, the Landowner shall contact the Department to obtain the required information for inclusion in the Utility Plan. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department's approval of the Utility Plan. Any new and expanded Utilities and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of affected counties, signed by the Landowner, the Department, and the utility service provider prior to construction.

**10. Renewable Energy Generation for Use On the Land. With the **Prior Approval**,**

Landowner reserves the right to construct wind, solar, hydropower and other types of renewable energy generation facilities ("renewable energy production") solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to the provisions of Paragraph II.C.9.

**11. Pesticide Application and Weed Management.**

a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) in Man-Made Structures as described in Paragraph II.C.6. Except as provided in Paragraph II.C.11.b. below, **Prior Approval** is required to use pesticides on the Land in other than Development Areas. Any pesticide use should be only in the amount and frequency constituting the minimum necessary based on pesticide label use instructions and all applicable state and federal regulations concerning use to accomplish reasonable control of the targeted pest species.

b. Weed Management. The right to use herbicides for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**.

c. **Prior Approval** is required for aerial application of any pesticide or biological control agent on the Land.

d. Prairie dog colonies currently occupy approximately 150 acres on the Land. With **Prior Approval**, the Landowner may use pesticides as described in Paragraph II.C.11.a. to control prairie dogs when the minimum of 150 acres of active prairie dog colonies is exceeded. Landowners shall not be held responsible if the acreage is reduced below the 150 acre minimum due to natural causes of mortality such as plague, predation or other environmental factors.

**12. Regulation of Public Use.** The right to regulate public use of the Land at all times; subject, however, to the right of public hunting and wildlife viewing access granted to the Department in Paragraph II.B.5.

**13. Oil, Gas, or Mineral Exploration and Extraction.** Subject to, and without limiting any obligations of Landowner under, Montana Code Annotated § 82-11-202, Landowner shall not mine or extract soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method; provided however, with **Prior Approval**, Landowner may conduct limited mining activity for materials (e.g., sand, gravel, rock) used for agricultural operations on the Land where the extraction of materials used for such agricultural operations is limited, localized, and does not harm the Conservation Values or the agricultural uses of the Land.

d. The existing extraction sites will be identified in the Baseline Report.

b. Landowner shall use or develop no more than two areas of no more than two acres each at any time. Extraction locations constructed by Landowner, or existing extraction locations must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.

c. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Conservation Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.

This Conservation Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

**14. Subdivision and Conveyance of Land Ownership.**

a. For the purposes of this Easement, the Land shall be considered to comprise one unit, as described in Exhibit A and shown on Exhibit B. The Landowner and the Department

mutually intend that the entire Land shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.

b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its

c. The Landowner shall provide Prior Notice to the Department of any proposed real property transfer, and such transfer must be effected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Department may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

**15. Industrial or Commercial Uses.** The right to:

a. Conduct agricultural production and related activities as provide for in this Easement and the Management Plan.

b. With **Prior Approval**, conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.

b. With **Prior Approval**, and provided it does not significantly increase vehicular traffic to or through the Land, operate home-based businesses, small-scale manufacturing of products and distribution of those products, small-scale commercial enterprises related to agriculture or forestry including but not limited to agri-tourism, processing, packaging, and marketing of farm or forest products, farm and machinery repair, and small-scale commercial enterprises compatible with agriculture or forestry.

## **D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES**

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

**1. Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, with **Prior Approval** Landowner may harvest or contract the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II.D.2.

**2. Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed

by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, the Landowner does not require **Prior Approval** to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.

**3. Wetland and Riparian Areas.**

a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table. Wild Hay Fields, Crop Fields, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.

c. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.4.

c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.

**4. Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners' association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this paragraph to the contrary, however, the Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

**5. Water Rights.** Landowner may not transfer, encumber, sell, lease, abandon, or otherwise separate water rights from the Land, including any water rights existing at the time of execution of this Easement as shown in Exhibit F, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by the Landowner after execution of this Easement. If Landowner receives notice or

becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.

6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.11 is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.7. is prohibited.
8. **Surface Alteration.** The cultivation or farming of any portion of the Land is prohibited, except as allowed for in II.C.2, or for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting, fishing, or wildlife viewing operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, or wildlife viewing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Extraction.** Landowner may not engage in, authorize, or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.13. Any other mineral exploration, development, or extraction is prohibited.
11. **Man-Made Structures.** The construction of any Man-Made Structures on the Land or any portion thereof is prohibited, other than as provided for in II.C.
12. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
13. **Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner have the right to have ranch dogs and household pets on the Land. This prohibition does not apply to common

domestic livestock, or to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land. Domestic livestock is allowed per II.C.1

14. **Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, outfitting, restaurant, campground, trailer park, motel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes expressly permitted under Paragraph II.C. of this Easement is prohibited.
15. **Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited, except within a single landfill for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. Abandoned homesteads and preexisting dump sites described in the Baseline Report are exempt from this provision, and with **Prior Notice** may be buried on-site or otherwise disposed of. No new material may be added to these preexisting sites. The deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.5., are not considered waste disposal.
16. **Hazardous Materials.** Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided in this Easement. The installation of underground storage tanks is prohibited.

#### **E. MANAGEMENT PLAN**

The parties to this Easement developed a Management Plan for grazing management, public access and public use management, wildlife habitat enhancement and restoration, wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. The Management Plan has been signed by the Landowner and the Department, and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Management Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner (“Successor in Interest”), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement and protection of the Conservation Values. The Successor in Interest may sign, acknowledge, and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

#### **F. EASEMENT BASELINE REPORT**

The parties agree that Conservation Easement Baseline Report (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and acknowledged by them in writing, to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner’s compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowner and the Department, the improved conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

#### **G. PRIOR NOTICE AND PRIOR APPROVAL**

Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date the Landowner intends to

undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform the Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department may provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

If the Department fails to respond to Landowner's notice of Prior Approval within 60 days of their receipt of the notice, the proposed activity shall be deemed to be inconsistent with the terms of this Easement and thereby denied.

The Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email, addressed as follows:

To Landowner:

Royce Ponessa  
P.O. Box 171,  
Angela, MT 59312

To Department:

Department of Fish, Wildlife & Parks  
Attention: Administrator, Wildlife Division  
1420 E. Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620-0701

With a copy to:

Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
352 I-94 Business Loop  
Miles City, MT 59301

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

## **H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES**

If the Department determines that the Landowner have violated the terms of this Easement, or if the Landowner undertake any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowner:

1. fails to cure the violation within 30 days after receipt of notice from the Department, or
2. under circumstances where the violation cannot reasonably be cured within a 30-day period, fails to begin curing the violation within the 30 day period (or, within 30 days of Landowner's receipt of notice from the Department, if Landowner fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or
3. fails to continue diligently to cure such violation until finally corrected,

the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

If the Department, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this paragraph without prior notice to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowner agree that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic,

aesthetic, or natural resource values. Without limiting Landowner' liability therefore, the Department, in its sole discretion may apply any damages recovered to the cost of undertaking any corrective action on the Land. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner' control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowner' violation or breach of the terms of this Easement shall be borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In the event of such litigation to enforce the terms of this Conservation Easement, each side shall bear its own costs and attorneys' fees.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

## **I. HOLD HARMLESS AND INDEMNITY**

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the

Landowner or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

#### **J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT**

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is \_\_\_ percent, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by the Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party \_\_\_ percent of the unencumbered value of the real property and the Department shall be entitled to receive \_\_\_ percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

#### **K. SUBORDINATION**

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of \_\_\_\_\_[Bank], [address] (“Lienholder”). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, under Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana (the “Mortgage”), the Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purposes of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **L. ASSIGNMENT**

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of any assignment, the Department shall require that the conservation purposes of this Easement are to be carried out in perpetuity.

#### **M. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department’s Amendment Policy, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or §170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to the Landowner or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of affected counties.

#### **N. RECORDING**

The Department shall record this instrument in a timely fashion in the official records of the affected counties and may re-record it at any time as may be required to preserve its rights in this Easement.

#### **O. REPRESENTATIONS AND WARRANTIES**

Landowner represent and warrant that, after reasonable investigation and to the best of their knowledge:

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.
3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

## **P. GENERAL PROVISIONS**

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Landowner shall be joint and several.

TO HAVE AND TO HOLD unto the Department, its successors, and assigns FOREVER.

IN WITNESS WHEREOF, the Landowner and the Department have set their hands on the day and year first above written.

**GRANTED BY: LANDOWNER**



\_\_\_\_\_ This instrument was acknowledged before me on  
\_\_\_\_\_, 201\_\_\_\_, by\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**Legal Description of the North Sunday Creek 2 (FWP) Conservation Easement**  
**Legal checked 11-16-17 still questions see comments**

<b>Rosebud County. MT</b>
<b>Legal Description</b>
<b>T11N, R44E MPM Rosebud County</b>
Section 25: All Section 26: All Section 36: All
<b>T10N, R44E MPM Rosebud County</b>
Section 1: Lots 1, 2, 3, 4, S ½ N ½ , S ½ Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 021, under Document # 0099289, records of Rosebud County, MT.
Section 2: Lots 3, 4, E ½ SE ¼, NW ¼ SE ¼, SE ¼ NE ¼, NE ¼ SW ¼, SE ¼ NW ¼ Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 021, under Document # 0099289, records of Rosebud County, MT.
Section 11: All
Section 12: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 021, under Document # 0099289, records of Rosebud County, MT.
Section 13: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 021, under Document # 0099289, records of Rosebud County, MT.
Section 24: E ½ E ½ , NW ¼ NE ¼, N ½ NW ¼
<b>T11N, R44E MPM Rosebud County</b>
Section 21: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 037, under Document # 0099291, records of Rosebud County, MT.
Section 27: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 037, under Document # 0099289, records of Rosebud County, MT.
Section 28: All
Section 29: All
Section 33: All

Section 34: E ½ NE ¼ , W ½ , SE ¼ , W ½ NE ¼ Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 029, under Document # 0099290, records of Rosebud County, MT.

Section 35: All Except that part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded March 24, 2006, in Book 98 of Deeds, Page 029, under Document # 0099289, records of Rosebud County, MT.

**T10N, R44E MPM Rosebud County**

Section 3: Lots 1, 2, 3 and 4, S ½ N ½, S ½

**Custer County, MT**

**T10N, R45E MPM Custer County**

Section 7: Lots 1, 2, 3, 4, E ½ W ½, E ½

Section 15: All

Section 17: All

Section 18: Lots 1, 2, 3, 4, SE ¼ SW ¼, SW ¼ SE ¼, E ½ E ½, Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134407, real estate records of Custer County, Montana.

Section 19: Lots 1, 2, 3, 4, E ½ W ½, E ½, Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

Section 29: All Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

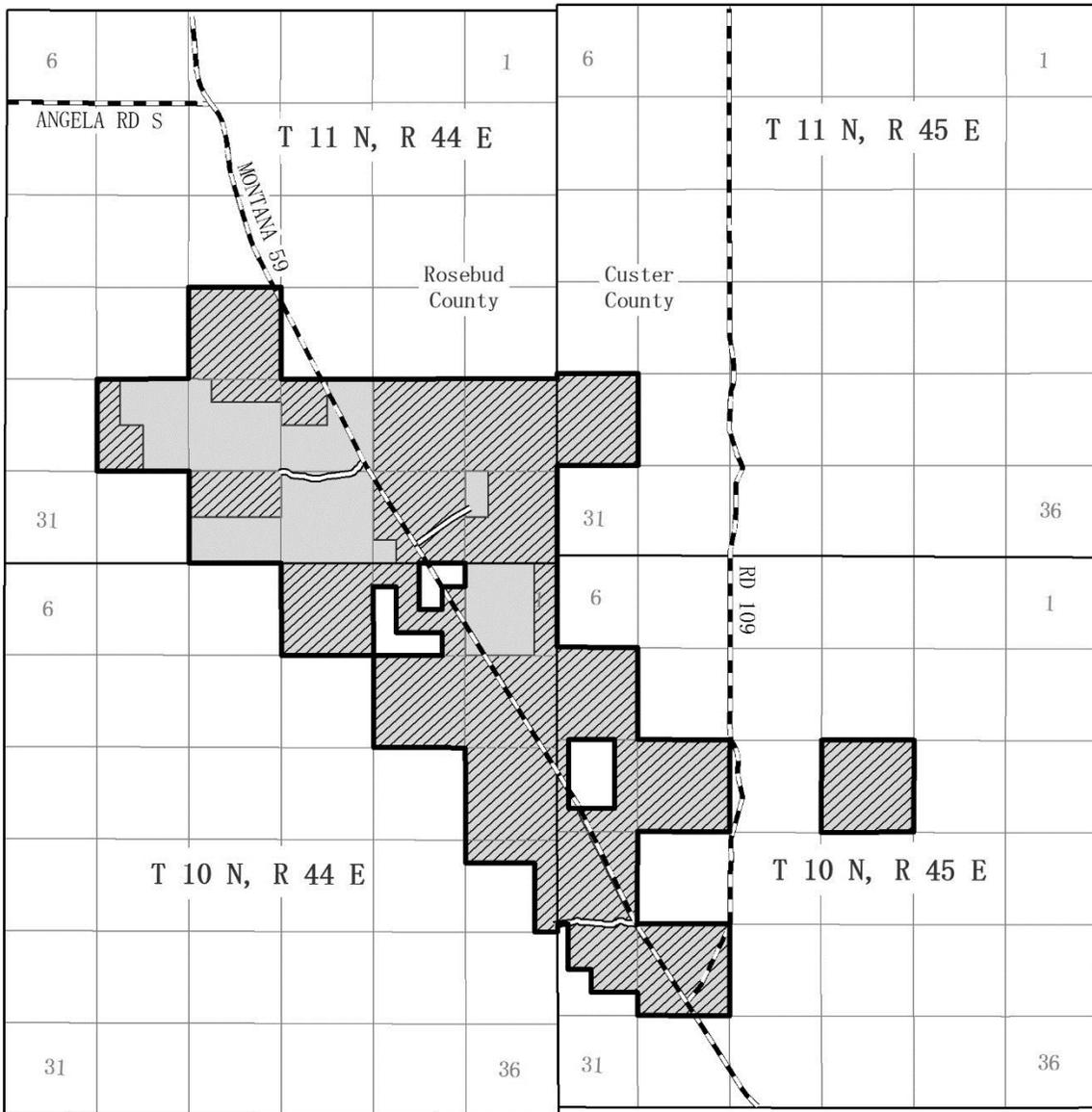
Section 30: NE ¼, E ½ NW ¼, N ½ SE ¼, Less a strip of land conveyed to the Montana Department of Transportation, by Bargain and Sale Deed, recorded February 24, 2006 as Document No. 134406, real estate records of Custer County, Montana.

**T11N, R45E MPM Custer County**

Section 30: Lots 1, 2, 3, 4, E ½ W ½, E ½

**END OF EXHIBIT A**

## EXHIBIT B MAP OF THE LAND



- North Sunday Creek Conservation Easement 1 (ALE)
  - North Sunday Creek Conservation Easement 2 (FWP)  
FWP conservation easement overlays ALE conservation easement and encompasses additional land
  - Land not under Conservation Easement
  - Improved Road
  - Unimproved Road
- 0 0.5 1 Miles

## EXHIBIT C

## **FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK**

### **Introduction**

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP-managed Wildlife Management Areas (WMAs), wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also on WMAs, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

### **Why a minimum standard?**

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially important in implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every

year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards is to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches and to provide flexibility to conserve and protect habitat needs on WMAs where wildlife habitat is the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

### **Grazing Plan**

Prior to grazing livestock, the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the Management Plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects, the management plan will be included as an attachment to the grazing lease or contract. On conservation easements, the grazing plan will be enforceable only on lands covered by the easement.

### **Upland Minimum Grazing Standard for Summer/Fall Systems**

This standard applies to upland pastures in native plant communities (i.e. generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing to allow native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e. grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1.

Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to

allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show how the landowner

might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

**Table 1. Livestock Grazing Formula using a three pasture approach as an example.**

<b>Grazing Seasons</b>	<b>Pasture 1</b>	<b>Pasture 2</b>	<b>Pasture 3</b>
<b>Year One</b>	A	B	C
<b>Year Two</b>	B	C	A
<b>Year Three</b>	C	A	B
When all treatments have been applied to all pastures, the grazing rotation begins again at year one.			
A = livestock grazing allowed during the growing season; B = livestock grazing begins after seed-ripe time; C = rest from livestock grazing yearlong.			

### **Winter and/or Early Spring Grazing**

In some situations, an early grazing treatment (prior to mid- May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two (2) years. Hay, grain, salt, protein or other supplements will not be placed in riparian areas during winter or any other season.

Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in the table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designated for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree- dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody

vegetation can be kept to a small portion of the area. If this is not the case, it might be necessary to fence a portion of the woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e. a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

## **Scope**

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

## **Non-native Pasture**

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture, a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in year one then deferred from grazing until near seed-ripe in year 2 (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In such situations, it may be necessary to apply the guideline *Series entitled: The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances, it might be necessary to fence out riparian from the hayfield to protect it from grazing.

## **Stocking Rate**

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words, the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

## **Mineral and Other Supplements**

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

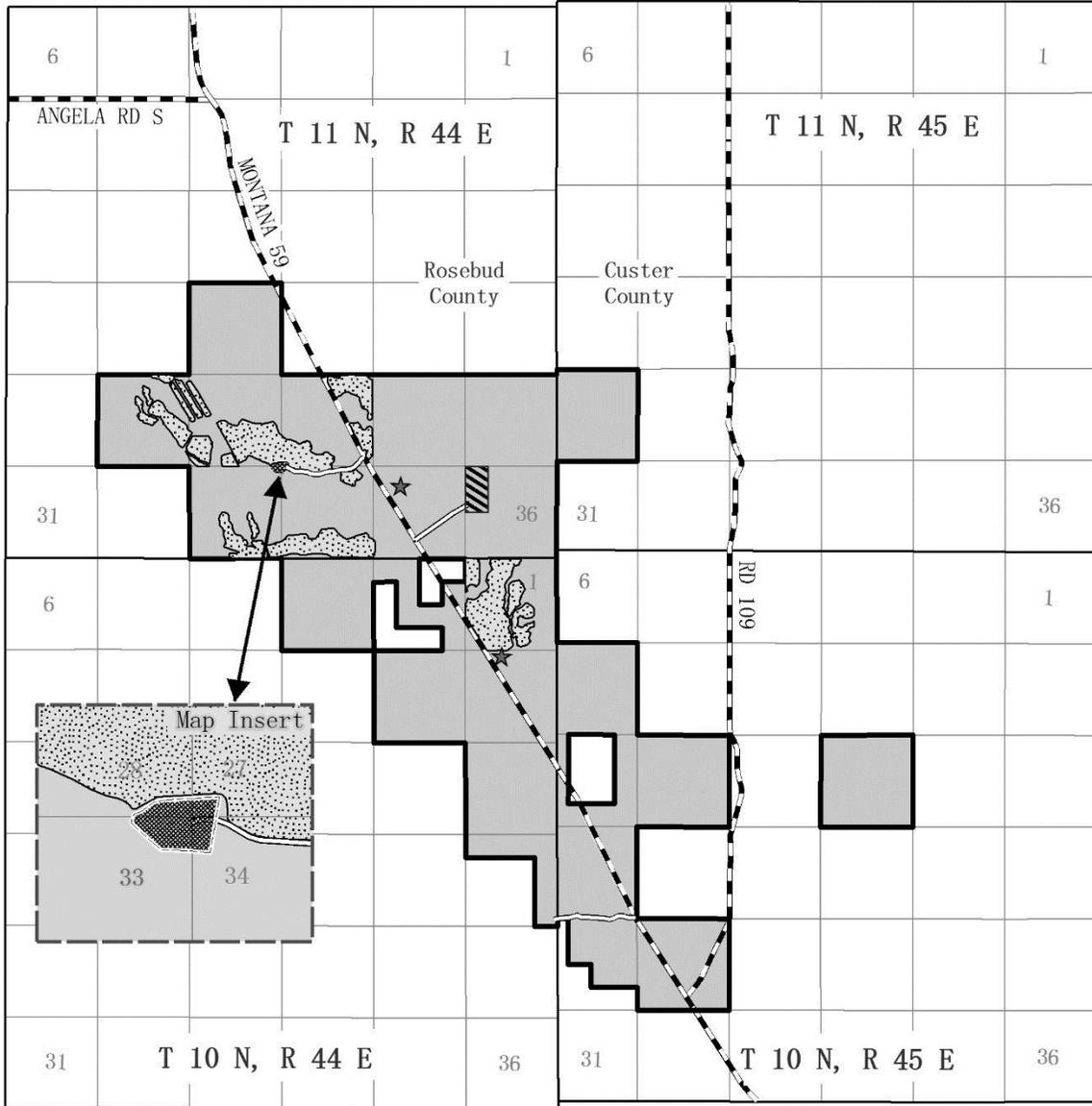
## **Flexibility**

Rarely, a severe environmental influence (i.e. fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

**End of Exhibit C**

**EXHIBIT D**

**Map of Existing Residential/Agricultural Building Area, Abandoned Homestead, Existing Borrow/Excavation Areas, and Cultivated Land.**



- North Sunday Creek 2 (FWP) Conservation Easement
- Cultivated Land
- Residential/Agricultural Building Area
- Abandoned Homestead
- Borrow Pits/Excavation Areas
- Improved Road
- Unimproved Road



0 0.5 1 Miles

**END OF EXHIBIT D**

**EXHIBIT E**

**WATER RIGHTS EXISTING AT THE TIME OF EXECUTION OF THIS EASEMENT**

42K 108213 00  
42K 108216 00  
42K 108217 00  
42K 108218 00  
42K 108219 00  
42K 108239 00  
42K 108240 00  
42K 108265 00  
42K 108285 00  
42K 108376 00  
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42K 30042835  
42K 30044188  
42K 58993 00  
42K 7668 00  
42K 7670 00

**B. Draft North Sunday Creek Conservation Easement Management Plan**

## 1. INTRODUCTION

Two distinct overlapping Deeds of Conservation Easement (“Easement(s)”) have been granted by Royce Ponessa, P.O. Box 171, Angela, MT 59312 (“Landowner”) to Montana Department of Fish, Wildlife and Parks whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“FWP”). The Easements encumber all or a portion of the Ponessa Ranch deeded property depicted in Figure 1.1 as follows: The North Sunday Creek Ranch 1 Agricultural Land Easement (ALE) Deed of Conservation Easement was granted by the Landowner to FWP on DATE, YEAR and recorded in Book XX, Page XX of the records of Custer County, Montana and Book XX, Page XX of the records of Rosebud County, Montana AND the North Sunday Creek Ranch 2 (FWP) Deed of Conservation Easement granted by the Landowner to FWP on DATE, YEAR and recorded in Book XX, Page XX of the records of Custer County, Montana and Book XX, Page XX of the records of Rosebud County, Montana. The United States Department of Agriculture Natural Resources Conservation Service (NRCS) maintains a right of enforcement for the ALE Conservation Easement. The FWP Conservation Easement is in addition to the ALE Conservation Easement and in no way amends, modifies, or supersedes the ALE Conservation Easement terms. This Management Plan incorporates the provisions of the Easements into one document that is relevant to the entire North Sunday Creek Ranch Conservation Easement (hereafter referred to as the “Land”).

This Management Plan, dated as of DATE, YEAR, is entered into as an agreement between the Landowner and FWP. As required by both Easements, this and future management plans will be consistent with “FWP Minimum Grazing Standards for Grazing Livestock vers. 1.2” which meets and exceeds NRCS grazing practice requirements of the Agricultural Lands Easement Program administered by the NRCS. As applicable to the ALE Conservation Easement, this management plan also serves as both the ALE Management Plan and Grasslands Component Plan.

Whereas conservation easements are intended to endure in perpetuity, the purpose of a management plan is to document strategies that are consistent with the terms and intent of the conservation easements while meeting the current needs of the Landowner and FWP. By design, management plans are intended to be periodically reviewed and updated, upon mutual agreement by the Landowner and FWP, to accommodate changing conditions on the land, fluctuating wildlife populations, advancing technologies, improved scientific knowledge, changing agricultural practices, and other as-yet unidentifiable future situations.

## 2. GRASSLAND COMPONENT DESCRIPTION

The North Sunday Creek Ranch Conservation Easement is located 2 miles south of Angela, Montana, and 18 miles north of Miles City, Montana. In addition to the 14,300 acres of deeded lands under conservation easement, the Landowner currently holds leases on 874 acres of BLM and 1,640 acres of DNRC lands, for a total management footprint of 16,814 acres (Figure 1.1 and 2.1).

Figure 1.1. North Sunday Creek Conservation Easement showing lands encumbered by two distinct overlapping Deeds of Conservation Easement: North Sunday Creek Conservation Easement #1 (ALE) and North Sunday Creek Ranch Conservation Easement #2 (FWP).

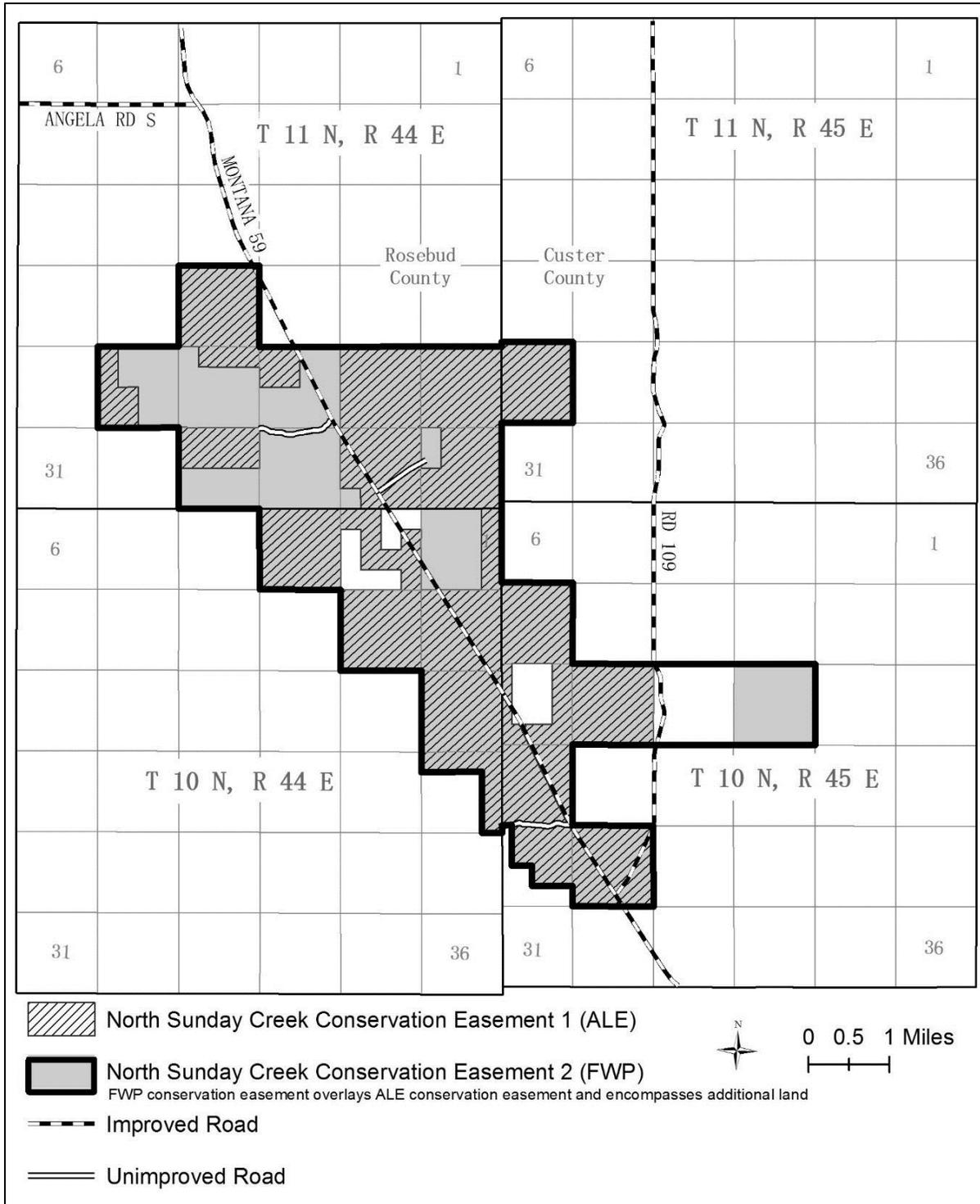
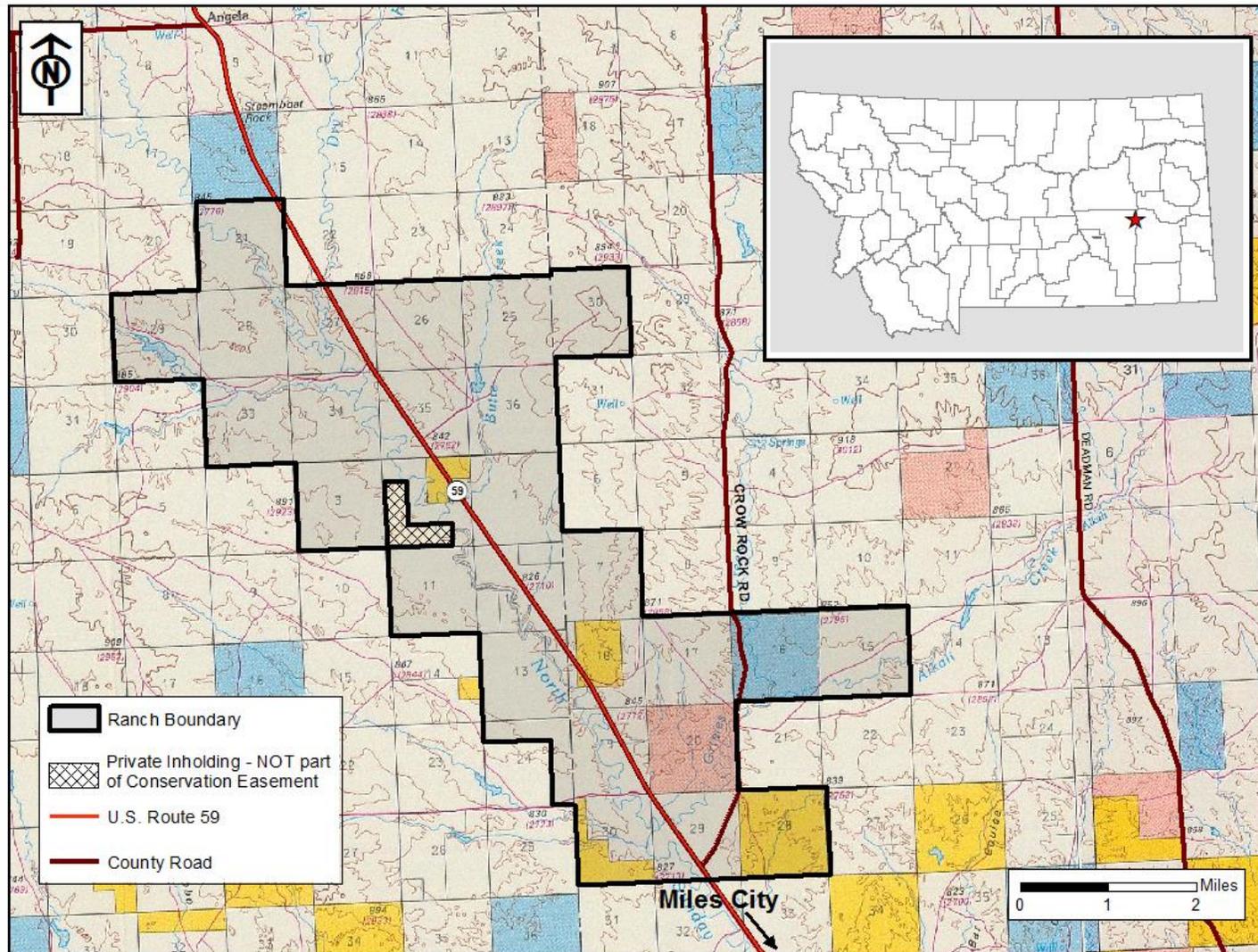


Figure 2.1. Boundary of the North Sunday Conservation Easement and associated public land leases (black outline). The Easements only encumbers deeded lands (white). DNRC lands (blue) and BLM lands (yellow and pink) leased by the Landowner are shown to demonstrate the footprint of the project. Inset map: the general location of the project (red star).



The North Sunday Creek Conservation Easement is comprised of a variety of landcover types and associated ecological systems (Table 2.1, Figure 2.2). The Land is dominated by grasslands and shrub grasslands, comprising of Great Plains Mixedgrass Prairie interspersed Big Sagebrush Steppe. The Land is within sage-grouse general habitat area and provides year-round habitat for sage-grouse and other sagebrush-associated species such as antelope, mule deer, sharptailed grouse, black-tailed prairie dogs and burrowing owls. Extensive land conversion has occurred in this general area, as a result the sagebrush grasslands on this property provide critical habitat for wintering pronghorn and mule deer. Prairie stream systems and associated riparian habitat exist along North Sunday Creek, Dry House Creek, Butte Creek and Grimes Creek as well as other minor ephemeral tributaries. Although portions of the Land have been converted to non-native grasses or crops, most of the Land is native prairie and provides excellent wildlife and agricultural values. The long-term viability of native plant communities within this ecological system is expected to be maintained or improved under the grazing system described herein. Soil types and Ecological Site Descriptions for the Land can be found in Table 2.2 and Figure 2.3.

Table 2.1. Landcover of ecological systems within the North Sunday Creek Conservation Easement. Montana Level 3 Landcover data from the Montana State Library. Colors correspond with map, Figure 2.3.

<b>Ecological System</b>	<b>Acres</b>	<b>% of Total Acres</b>
 Great Plains Mixedgrass Prairie	6860.4	45.87%
 Big Sagebrush Steppe	4119.2	29.73%
 Cultivated Crops	1216.1	7.45%
 Great Plains Badlands	696.8	6.92%
 Great Plains Riparian	627.1	4.79%
 Great Plains Sand Prairie	497.9	3.55%
 Pasture/Hay	222.7	1.31%
 Great Plains Wooded Draw and Ravine	27.2	0.17%
 Open Water	29.0	0.17%
 Greasewood Flat	1.6	0.03%
 Great Plains Closed Depressional Wetland	0.2	0.00%

Great Plains Mixedgrass Prairie<sup>1</sup>. The Great Plains Mixedgrass Prairie ecological system occurs on uplands, slopes, and creek bottoms, and is the most common ecological system on the Land, comprising of over 45% of the Land. This system occurs on a variety of soils (primarily fine to medium-textured soils) and ecological sites. Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) - western wheatgrass (*Pascopyrum smithii*) associations are common within the Great Plains Mixedgrass Prairie ecological system. These sagebrush grasslands commonly contain moderate density (10-25% canopy cover) sagebrush, especially where they occur near or adjacent to Big Sagebrush Steppe systems. The result is extensive sagebrush grasslands that are valuable to a variety of wildlife species.

Common grass species in the Great Plains Mixedgrass Prairie ecological system include western wheatgrass, thickspike wheatgrass (*Elymus lanceolatus*), green needlegrass (*Nassella viridula*), blue grama (*Bouteloua gracilis*), and needle and thread (*Hesperostipa comata*). Within these systems, western wheatgrass tends to be the dominant grass species, especially on finer-textured soils, with dominance decreasing under prolonged periods of heavy grazing. Sites with a strong component of green needlegrass indicate a more favorable moisture regime and moderate grazing pressure, whereas needle and thread increase with coarser soil textures, or under heavy grazing pressure. Cool season exotics such as Kentucky bluegrass (*Poa pratensis*), smooth brome (*Bromus inermis*), Japanese brome (*Bromus japonicus*), and crested wheatgrass (*Agropyron cristatum*) are common in eastern Montana mixedgrass prairies and tend to increase in dominance with heavy grazing. These non-native cool-season grasses are ubiquitous throughout eastern Montana grassland systems. This property is no exception, but in general these nonnative species occur at low density within native systems on the Land. Forb diversity tends to be high within these systems, with common species including yarrow (*Achillea millefolium*), scarlet globemallow (*Sphaeralcea coccinea*), western sagewort, (*Artemisia ludoviciana*), silver lupine (*Lupinus argenteus*), fuzzytongue (*Penstemon eriantherus*), waxleaf penstemon (*Penstemon nitidus*), Missouri goldenrod (*Solidago missouriensis*) and clover (*Dalea* species). Common shrub species include western snowberry (*Symphoricarpos occidentalis*), creeping juniper (*Juniperus horizontalis*), silver sage (*Artemisia cana*) and Wyoming big sagebrush.

The dominant land uses within Great Plains Mixedgrass Prairie are grazing and dryland farming (Luna and Vance 2017<sup>2</sup>). Nearly 90% of the ecological system on the Land remains uncultivated; the Conservation Easement contains a total of 1438.8 acres with a history of tillage: 222.7 of those once tilled acres now function as rangelands dominated by non-native grasses such as crested wheatgrass that will be managed as a Seeded Area and 1216.1 acres of croplands that will be managed as Cultivated Areas. The Landowner is interested in seeding Cultivated Areas to a perennial grass and forb mixed to be incorporated in the grazing management plan. Wyoming big sagebrush reestablishment is an option in the Seeded Areas. For maps and

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<sup>1</sup> Information about each ecological system is derived from the Montana Natural Heritage Program Field Guide to Ecological Systems, available online at [http://fieldguide.mt.gov/displayES\\_LCLU.aspx](http://fieldguide.mt.gov/displayES_LCLU.aspx), as well as field observation and unpublished data.

<sup>2</sup>Luna, T. and L. K. Vance. 2010. Great Plains Mixedgrass Prairie. Montana Field Guide. Montana Natural Heritage Program. [http://FieldGuide.mt.gov/displayES\\_Detail.aspx?ES=7114](http://FieldGuide.mt.gov/displayES_Detail.aspx?ES=7114).

information on management of Seeded and Cultivated Areas see Section II.C.2 in the FWP Easement, maps found in Exhibit D of both Easements, and Chapter 4 of this Management Plan. *Big Sagebrush Steppe.* Big Sagebrush Steppe comprises over 29% of the Land and occurs as patches interspersed within badlands and mixed grass prairie. The soils are typically deep and non-saline, often with a microphytic crust. These areas are dominated by Wyoming big sagebrush with western wheatgrass, with shrub canopy cover ranging from 10-25% and herbaceous cover typically greater than 25%. Big Sagebrush Steppe, in conjunction with sagebrush on adjacent mixedgrass prairie sites, provides important year-round habitat for a variety of sagebrush-associated wildlife species. Other shrub species present include silver sagebrush, greasewood (*Sarcobatus vermiculatus*) and saltbush (*Atriplex gardneri*). Other grass and sedge species include Indian ricegrass (*Achnatherum hymenoides*), blue grama, Sandberg's bluegrass (*Poa secunda*), bluebunch wheatgrass (*Pseudoroegneria spicata*), threadleaf sedge and needleleaf sedge (*Carex duriuscula*). Japanese brome and cheatgrass (*Bromus tectorum*), indicators of disturbance in this system, typically occur at low density on the Land. Common forbs include Hood's phlox (*Phlox hoodii*), prickly pear (*Opuntia* species), scarlet globemallow, purple prairie clover (*Dalea purpurea*), gayfeather (*Liatris punctata*), and milkvetch (*Astragalus* species).

*Great Plains Badlands.* The Great Plains Badlands ecological system comprises approximately 7% of the Land and occurs within the mixed grass and sand prairie systems of eastern and southeastern Montana. Great Plains Badlands are characterized by rugged, eroded land formations and sparse vegetative cover. Soils are typically consolidated clayey soils with bands of sandstone or isolated consolidates. Characterized by clay soils, steep slopes, and limited vegetation, badlands tend to be erosive and received precipitation contributes little to soil moisture. Vegetation communities associated with this ecological system are adapted to soils that are dry throughout the growing season. Common plant associations include greasewood, saltbush or few-flowered buckwheat (*Eriogonum pauciflorum*), threadleaf snakeweed (*Gutierrezia sarothrae*). Grass cover tends to be sparse, with species such as western wheatgrass, bluebunch wheatgrass, and Indian ricegrass. Common forbs include few-flowered buckwheat, threadleaf snakeweed, curlycup gumweed (*Grindelia squarrosa*), longleaf wormwood (*Artemisia longifolia*), and Nutall's povertyweed (*Monolepis nuttalliana*). Other shrubs that may be present include Wyoming big sagebrush, silver sagebrush, rabbitbrush (*Chrysothamnus viscidiflorus* and *Ericameria nauseosa*), saltbush (*Atriplex* species), and Rocky Mountain Juniper (*Juniperus scopulorum*).

*Great Plains Riparian.* Great Plains Riparian Systems comprise approximately 5% of the Land associated with North Sunday, Hay, Dry House, Butte and Grimes Creek, and their tributaries. The primary inputs of water to these systems overland flow from local precipitation and groundwater inflow (Decker, 2007)<sup>3</sup>. Flooding is the key ecosystem process, creating suitable sites for seed dispersal and seedling establishment, and changing vegetation succession. Great Plains Riparian systems that occur on the Land include shrublands, mixed grass wet meadows, herbaceous wetlands, and gravel/sand flats. Plains cottonwood (*Populus deltoides*) is present in

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<sup>3</sup> Decker, Karin. 2007. *Western Great Plains riparian woodland and shrubland ecological system ecological integrity assessment*. Ft. Collins, Colo: Colorado State University, Colorado Natural Heritage Program.

the riparian system and common woody species in riparian systems include western snowberry, chokecherry, and woods rose. In areas where the channel is incised, the understory may be dominated by Wyoming big sagebrush or silver sagebrush. Riparian areas can have a high herbaceous species richness but are also prone to invasion by exotic grasses and forbs. Primary threats to floodplain systems include overgrazing and conversion to agriculture. The health of these systems may be heavily influenced by the condition of the surrounding landscape, because the quality and quantity of ground and surface water inputs into riparian areas depends on the quantity and health of vegetation in the uplands. The grazing system prescribed in Chapter 3 of this Management Plan will address these threats by preventing additional conversion, providing periods of rest from grazing to benefit riparian systems, and providing residual cover on a landscape scale which will slow erosion, improve moisture retention, and reduce sediment loads in overland flow.

Great Plains Sand Prairie. Great Plains Sand Prairie comprises approximately 4% of the Land and occurs on coarse-textured soils that have weathered in place from sandstone caprock or marine shale formations. Soils in sand prairies are highly permeable and susceptible to wind erosion (blowouts) and vegetation loss. Within the Land, sand prairies are intermixed with Great Plains Mixedgrass Prairie. Needle and thread is often the dominant grass species. Other common species include little bluestem (*Schizachyrium scoparium*), threadleaf sedge (*Carex filifolia*), bluebunch wheatgrass, and purple threeawn (*Aristida purpurea*). Forb species include scurf pea (*Psoralidium* species), Indian breadroot (*Pediomelum*), and Narrowleaf purple coneflower (*Echinacea angustifolia*). Common shrubs include silver sage, Wyoming big sagebrush, horizontal juniper, skunkbush sumac (*Rhus trilobata*), and Soapweed yucca (*Yucca glauca*). The grazing system described in Chapter 3 of this Management Plan incorporates periods of rest which will allow plants to recover from grazing and minimize the occurrence of blowouts and vegetation loss within Great Plains Sand Prairie systems.

Great Plains Wooded Draw and Ravine. This ecological system makes up less than 1% of the Land. These narrow, linear bands of woody vegetation provide critical wildlife cover, browse and mast production. Snow entrapment and seasonal, short-duration flooding provide critical moisture that promotes woody species and contributes to deep loamy soils. Common understory species include Rocky Mountain Juniper, chokecherry (*Prunus virginiana*) and western snowberry. The herbaceous layer is often dominated by sedges (*Carex* species) and grasses such as northern reedgrass (*Calamagrostis stricta*), western wheatgrass, bluebunch wheatgrass, and thickspike wheatgrass. Common forbs include American licorice (*Glycyrrhiza lepidota*), yarrow, meadow rue (*Thalictrum dasycarpum*), and bedstraw (*Galium* species). Exotics such as yellow sweetclover (*Melilotus officinalis*) and Kentucky bluegrass occur in these systems. Shade and moisture draw livestock into woody draws and ravines, concentrating use, and causing mechanical damage to woody species. Browsing and trampling by livestock can limit the growth and recruitment of woody species. The grazing system described in Chapter 3 of this Management Plan will provide periods of growing-season rest, allow woody species to recruit out of the browse zone, and is designed to improve the long-term viability of woody draws on the Land.

Open Water and Emergent Marsh. Open water on the Land is primarily represented by stock dams, most notably a 20-acre stock dam along Hay Creek and another 5-acre stock dam on the along Butte Creek. Emergent marshes are associated with North Sunday, Hay Creek Dry House, Butte and Grimes Creek, and their tributaries creating small sites throughout the land where seeps, springs, or water-holding depressions occur in association with riparian areas.

Figure 2.2. Landcover for ecological systems within the North Sunday Creek Conservation Easement. Acreages for each ecological system can be found in Table 2.1. Montana Level 3 Landcover data from the Montana State Library.

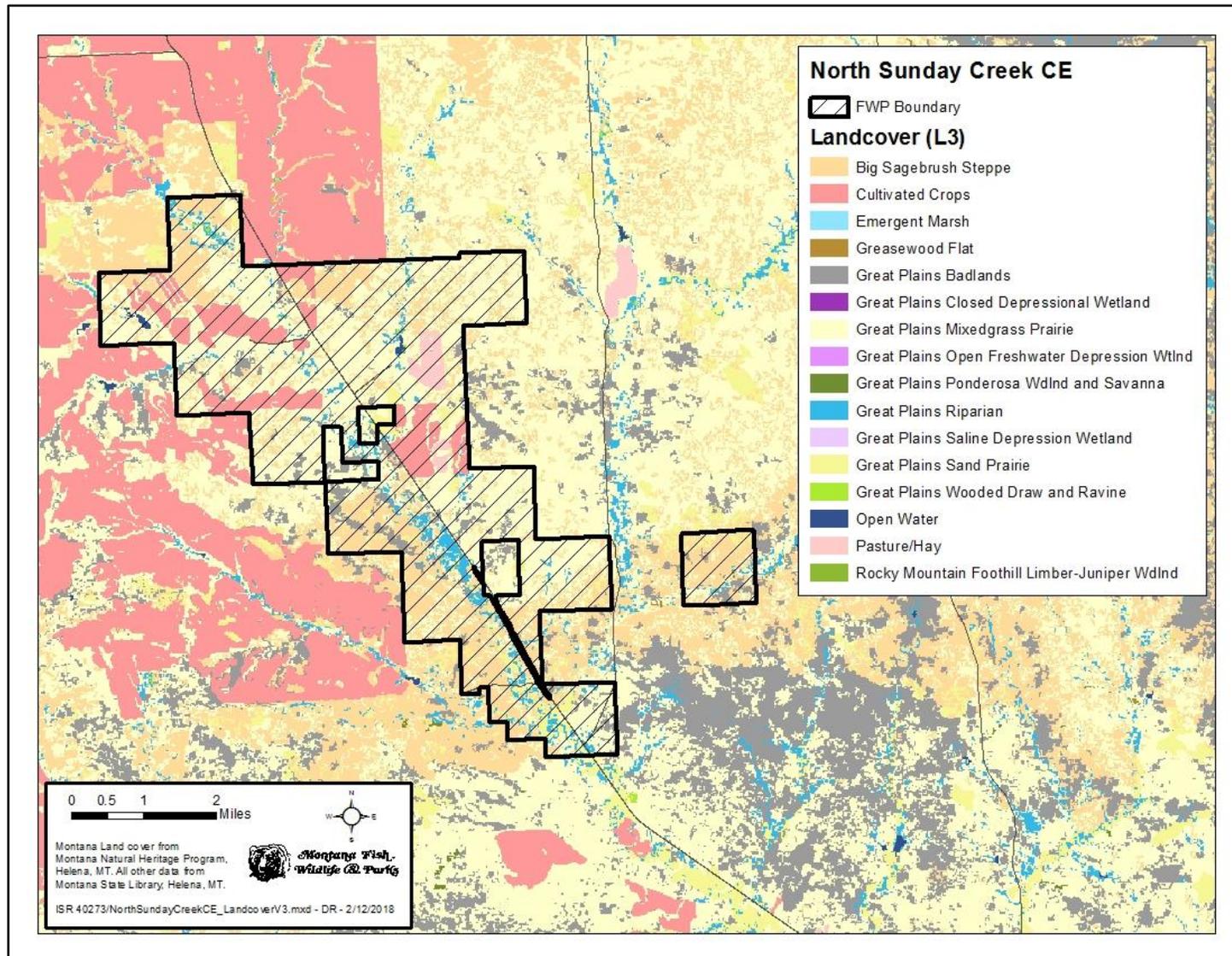


Figure 2.3. Ecological Sites and soil types within the North Sunday Creek Conservation Easement. Acreages for each soil and ecological site and associated ecological systems can be found in Table 2.2.

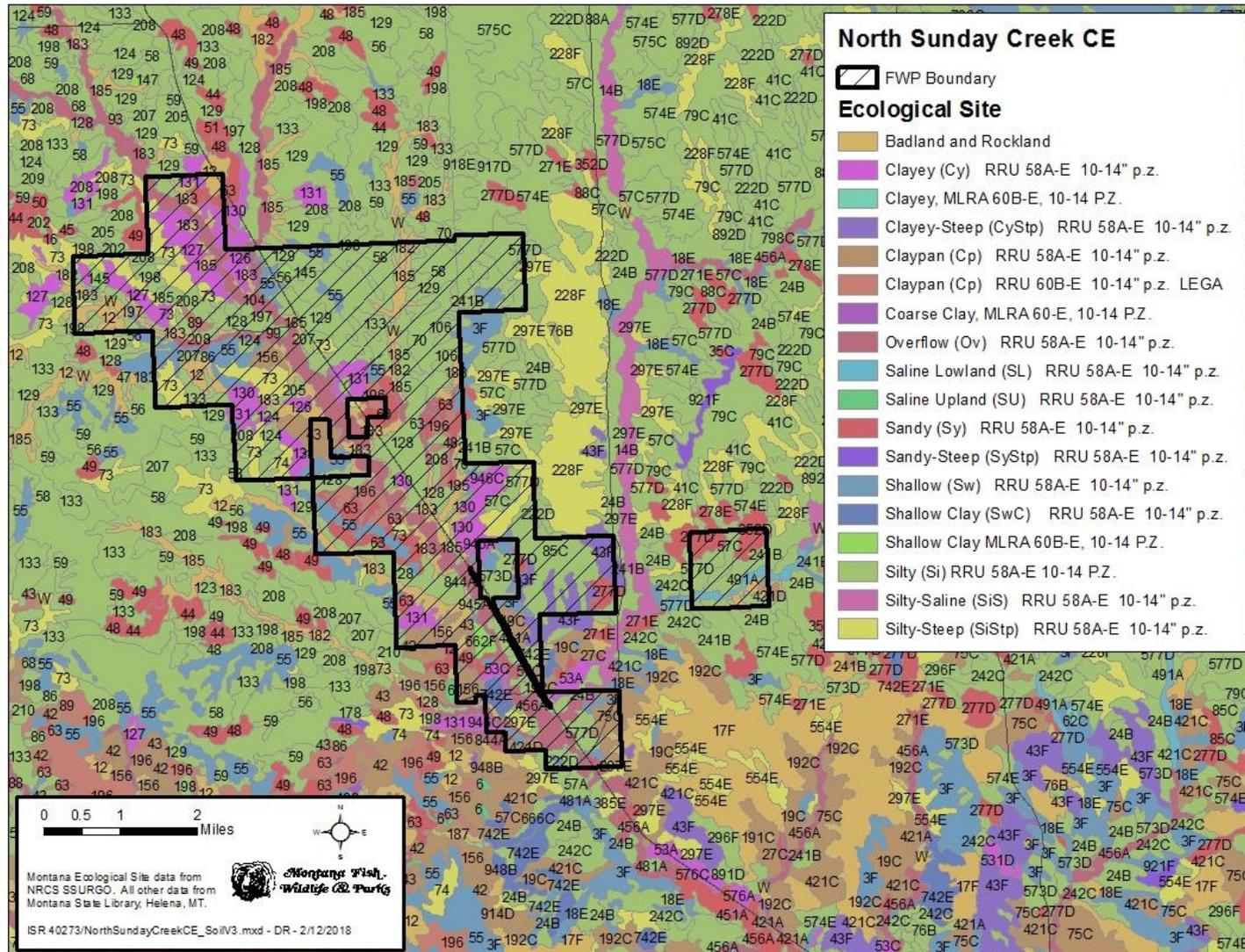


Table 2.2. Soil types, corresponding major plant community types, and Ecological Sites within the North Sunday Creek Conservation Easement. Data from NRCS SSURGO. Landcover of ecological systems is mapped in Figure 2.3. Ecological Sites and soil types are mapped in Figure 2.4.

<b>Map Unit Symbol</b>	<b>Soil Type</b>	<b>Acres in CE</b>	<b>Ecological Site</b>	<b>Major Plant Community Type(s) MT Landcover Level 3</b>
126	Lonna silty clay loam, 0 to 2 percent slopes	146.1	Clayey (Cy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie
127	Lonna silty clay loam, 2 to 8 percent slopes	402.9	Clayey (Cy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
130	Lonna-Antwerp silty clay loams, 0 to 2 percent slopes	165.9	Clayey (Cy) RRU 58A-E 10-14" p.z.	Great Plains Badlands, Great Plains Mixedgrass Prairie
131	Lonna-Antwerp silty clay loams, 2 to 8 percent slopes	389.3	Clayey (Cy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
53A	Kobase silty clay loam, 0 to 2 percent slopes	16.2	Clayey (Cy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian
53C	Kobase silty clay loam, warm, 2 to 8 percent slopes	46.7	Clayey (Cy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine
946A	Lonna-Antwerp silty clay loams, 0 to 2 percent slopes	126.6	Clayey (Cy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian
946C	Lonna-Antwerp silty clay loams, 2 to 8 percent slopes	96.2	Clayey (Cy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
43F	Abor-Lilsheep complex, 8 to 45 percent slopes	306.7	Clayey-Steep (CyStp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie

<b>Map Unit Symbol</b>	<b>Soil Type</b>	<b>Acres in CE</b>	<b>Ecological Site</b>	<b>Major Plant Community Type(s) MT Landcover Level 3</b>
156	Rominell fine sandy loam, 1 to 4 percent slopes, eroded	188.1	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian
192C	Archin-Davidell-Bullock complex, 2 to 8 percent slopes	26.5	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
19C	Archin loam, 2 to 8 percent slopes	69.2	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
42	Bullock, eroded-Rallod, warm, clay loams, 2 to 15 percent slopes	53.9	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie
421D	Gerdrum-Creed complex, 4 to 15 percent slopes, gullied	44.4	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
43	Bullock, eroded-Rominell complex, 2 to 8 percent slopes	154.5	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian
75C	Weingart-Ivanell clay loams, 2 to 8 percent slopes	146.0	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian
914D	Bullock, eroded-Ralore clay loams, 2 to 15 percent slopes	9.1	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
948B	Rominell fine sandy loam, 1 to 4 percent slopes, eroded	4.3	Claypan (Cp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
196	Weingart-Niler-Rock outcrop complex, dissected, 2 to 25 percent slopes	242.5	Claypan (Cp) RRU 60B-E 10-14" p.z. LEGA	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie

<b>Map Unit Symbol</b>	<b>Soil Type</b>	<b>Acres in CE</b>	<b>Ecological Site</b>	<b>Major Plant Community Type(s) MT Landcover Level 3</b>
104	Havre, Harlake, and Glendive soils, channeled, 0 to 2 percent slopes	936.4	Overflow (Ov) RRU 58A-E 10-14" p.z.	Cultivated Crops, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie, Pasture/Hay
456A	Havre and Glendive soils, channeled, 0 to 2 percent slopes, frequently flooded	347.8	Overflow (Ov) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine
844A	Havre, Harlake, and Glendive soils, channeled, 0 to 2 percent slopes	66.2	Overflow (Ov) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
491A	Ismay silty clay loam, 0 to 2 percent slopes, occasionally flooded	68.5	Saline Lowland (SL) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Greasewood Flat, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian
6	Antwerp silty clay loam, 0 to 4 percent slopes	0.1	Saline Upland (SU) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe
271E	Busby-Twilight-Blacksheep fine sandy loams, 8 to 35 percent slopes	24.8	Sandy (Sy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
277D	Busby-Twilight fine sandy loams, 2 to 15 percent slopes	159.6	Sandy (Sy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie
352D	Chinook-Twilight fine sandy loams, 2 to 12 percent slopes	74.1	Sandy (Sy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie
48	Busby-Twilight-Blackhall, warm, fine sandy loams, 2 to 8 percent slopes	62.7	Sandy (Sy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie, Pasture/Hay
49	Busby-Twilight-Blacksheep fine sandy loams, 8 to 35 percent slopes	35.1	Sandy (Sy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie

Map Unit Symbol	Soil Type	Acres in CE	Ecological Site	Major Plant Community Type(s) MT Landcover Level 3
63	Chinook fine sandy loam, alkali substratum, 2 to 8 percent slopes	498.8	Sandy (Sy) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
18E	Cabbart-Havre loams, 0 to 35 percent slopes	45.6	Shallow (Sw) RRU 58A-E 10-14" p.z.	Great Plains Badlands, Great Plains Mixedgrass Prairie
386F	Cabbart-Rock outcrop-Delpoint complex, 15 to 50 percent slopes	11.2	Shallow (Sw) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
3F	Cabbart-Rock outcrop-Yawdim complex, warm, 15 to 70 percent slopes	149.4	Shallow (Sw) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
55	Cabbart-Rock outcrop-Yawdim complex, warm, 15 to 70 percent slopes	603.5	Shallow (Sw) RRU 58A-E 10-14" p.z.	Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie
742E	Neldore-Abor silty clays, 4 to 25 percent slopes	78.3	Shallow Clay (SwC) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie, Great Plains Wooded Draw and Ravine
145	Neldore-Neldore, saline, silty clays, 4 to 15 percent slopes	60.2	Shallow Clay MLRA 60B-E, 10-14 P.Z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie
662F	Neldore-Abor silty clays, 25 to 60 percent slopes	60.0	Shallow Clay MLRA 60B-E, 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
106	Ivanell-Davidell complex, 2 to 8 percent slopes	106.8	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Pasture/Hay
124	Lonna silt loam, 2 to 8 percent slopes	80.4	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie

<b>Map Unit Symbol</b>	<b>Soil Type</b>	<b>Acres in CE</b>	<b>Ecological Site</b>	<b>Major Plant Community Type(s) MT Landcover Level 3</b>
128	Lonna-Alona silt loams, 0 to 2 percent slopes	1070.8	Silty (Si) RRU 58A-E 10-14 P.Z.	Cultivated Crops, Great Plains Mixedgrass Prairie
129	Lonna-Alona silt loams, 2 to 8 percent slopes	582.1	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
133	Lonna-Cambeth silt loams, 2 to 8 percent slopes	343.5	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie
197	Yamacall loam, warm, 0 to 2 percent slopes	47.6	Silty (Si) RRU 58A-E 10-14 P.Z.	Cultivated Crops, Great Plains Mixedgrass Prairie
198	Yamacall loam, warm, 2 to 8 percent slopes	223.8	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie
202	Yamac-Birney complex, 8 to 15 percent slopes	2.1	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
205	Yamacall-Busby complex, 2 to 8 percent slopes	33.6	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie
207	Yamac-Cabbart loams, 8 to 25 percent slopes	51.2	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
208	Yamac-Delpoint loams, 4 to 15 percent slopes	275.1	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie
210	Yamac-Rominell, eroded, complex, 2 to 8 percent slopes	11.1	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie
222D	Floweree-Cambeth, noncalcareous-Lilsheep complex, 4 to 15 percent slopes	17.8	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie

<b>Map Unit Symbol</b>	<b>Soil Type</b>	<b>Acres in CE</b>	<b>Ecological Site</b>	<b>Major Plant Community Type(s) MT Landcover Level 3</b>
241B	Davidell-Antwerp silty clay loams, 0 to 4 percent slopes	198.4	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
24B	Davidell silty clay loam, 0 to 4 percent slopes	127.0	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
296F	Cambeth-Cabbart-Rock outcrop complex, 8 to 45 percent slopes	3.2	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands
481A	Havre loam, 0 to 2 percent slopes, occasionally flooded	84.0	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
56	Cambeth silt loam, 2 to 8 percent slopes	26.9	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
573D	Lonna, Cambeth, and Yamacall soils, gullied, 8 to 15 percent slopes	1.0	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie
574E	Lonna-Cambeth-Cabbart silt loams, 12 to 25 percent slopes	10.1	Silty (Si) RRU 58A-E 10-14 P.Z.	Great Plains Mixedgrass Prairie
575C	Lonna-Cambeth silt loams, 2 to 8 percent slopes	218.4	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
577D	Lonna-Cambeth-Cabbart silt loams, 4 to 12 percent slopes	265.9	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
57A	Lonna silt loam, 0 to 2 percent slopes	23.4	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian
57C	Lonna silt loam, 2 to 8 percent slopes	212	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie

Map Unit Symbol	Soil Type	Acres in CE	Ecological Site	Major Plant Community Type(s) MT Landcover Level 3
58	Cambeth-Cabbart silt loams, 4 to 15 percent slopes	878.9	Silty (Si) RRU 58A-E 10-14 P.Z.	Great Plains Mixedgrass Prairie
70	Davidell-Antwerp silty clay loams, 0 to 4 percent slopes	315.4	Silty (Si) RRU 58A-E 10-14 P.Z.	Cultivated Crops, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
79C	Yamacall loam, warm, 2 to 8 percent slopes	0.1	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Sand Prairie
845C	Ivanell-Davidell complex, 2 to 8 percent slopes	4.0	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
85C	Foreleft loam, 2 to 8 percent slopes	511.9	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
86	Forelle, warm-Gerdrum complex, 2 to 8 percent slopes	5.7	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
917D	Cambeth-Cabbart silt loams, 4 to 15 percent slopes	226.7	Silty (Si) RRU 58A-E 10-14 P.Z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
945A	Lonna-Alona silt loams, 0 to 2 percent slopes	13.5	Silty (Si) RRU 58A-E 10-14 P.Z.	Great Plains Mixedgrass Prairie, Great Plains Riparian
99	Havre loam, 0 to 2 percent slopes	13.4	Silty (Si) RRU 58A-E 10-14 P.Z.	Cultivated Crops, Great Plains Mixedgrass Prairie, Great Plains Riparian
14B	Alona silt loam, 0 to 4 percent slopes	11.8	Silty-Saline (SiS) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian

<b>Map Unit Symbol</b>	<b>Soil Type</b>	<b>Acres in CE</b>	<b>Ecological Site</b>	<b>Major Plant Community Type(s) MT Landcover Level 3</b>
297E	Cambeth-Cabbart-Yawdim complex, 15 to 25 percent slopes	72.2	Silty-Steep (SiStp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
73	Delpoint-Yamacall-Cabbart loams, 8 to 25 percent slopes	748.4	Silty-Steep (SiStp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Mixedgrass Prairie
74	Delpoint-Cabbart-Yawdim complex, 25 to 70 percent slopes	58.8	Silty-Steep (SiStp) RRU 58A-E 10-14" p.z.	Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie
12	Badland	227.1		Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian, Open Water
17F	Badland	79.0		Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Sand Prairie
181	Ustic Torrifuvents, 0 to 2 percent slopes, frequently flooded	23.2		Big Sagebrush Steppe, Great Plains Mixedgrass Prairie, Great Plains Riparian
182	Ustic Torrifuvents, saline, 0 to 2 percent slopes, frequently flooded	55.7		Big Sagebrush Steppe, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine
183	Ustic Torriorthents, 15 to 35 percent slopes	684.8		Big Sagebrush Steppe, Cultivated Crops, Great Plains Badlands, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie
185	Ustic Torriorthents, moderately saline, 0 to 70 percent slopes	311.9		Big Sagebrush Steppe, Cultivated Crops, Great Plains Mixedgrass Prairie

### **3. GRAZING MANAGEMENT**

#### **3.1 Land Unit Description**

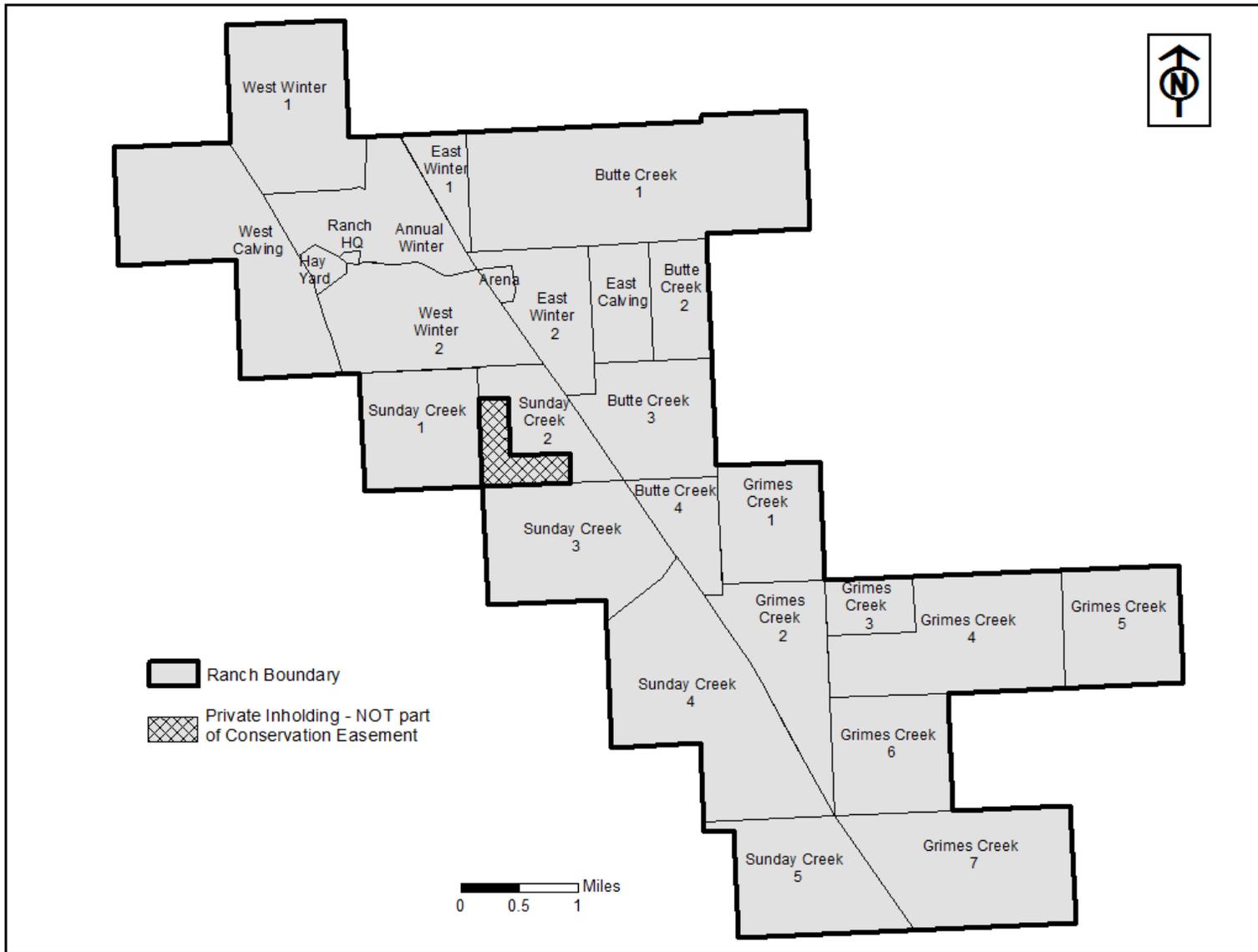
The grazing system for the North Sunday Creek Conservation Easement encompasses a total of 16,958 acres (14,444 deeded acres, 874 BLM, and 1,640 DNRC acres; Figure 2.1). The deeded acres include 1,266 acres of Cultivated Area and 222 acres of Seeded Area. These areas may be used for agricultural purposes as described in Section II.C.1 of both Conservation Easements and Chapter 4 of this Management Plan. The Easements also allow for up to three 15-acre Residential/Agricultural Building Areas as described in Section II.C.5 of the ALE Conservation Easement and Section II.C.6 of the FWP Conservation Easement. The remaining 12,956 deeded acres are native rangelands described in Chapter 2, the Grassland Component Description, of this Management Plan. The primary historic use of the Land has been livestock grazing for both sheep and cattle. For the past 15 years the Land has been used for cattle production and with this conservation easement, the Land will continue to be managed as a working cattle ranch. The grazing system described below follows cattle through an annual grazing cycle and adheres to the ALE Grassland Component plan and Minimum Standards for Grazing (Exhibit C in both Easements).

#### **3.2 Previous Management Narrative**

This section describes what has occurred with grazing management on the ranch for the past 15 years under the ownership of Royce Ponessa prior to adoption of this grazing plan. The Land has supported about 350 cow/calf pairs, 35-50 replacement heifers, 15 bulls and 6 horses annually. The main herd, consisting of productive mother cows over 3-years old would generally winter and calve in the northern pastures around the ranch headquarters (Figure 3.1). After calving, the herd would move to the Sunday Creek 1 pasture, then the Sunday Creek 2 pasture and work down to the corrals in the Sunday Creek 3 pasture for branding around June 1. The herd would continue to move through Sunday Creek pasture set through pasture 4 and into pasture 5 by the end of July. The herd would then move to the Grimes Creek pasture set and work back to the corrals in the Sunday Creek 3 pasture for shipping which typically occurred between October 20<sup>th</sup> and November 1<sup>st</sup>. Yearlings and replacement heifers were kept separate from the main cow/calf herd. These young cows would typically be kept in pastures east of the Highway 59 to avoid conflict with the adjacent neighbor's yearling herd on the west boundary of the ranch. After the third winter of their life, the heifers would calve the following spring as three-year old's and assimilate into the main cow/calf herd.

When not out with cows, the bulls were kept in dry lot at the ranch headquarters. Horses were confined in corrals at the ranch headquarters or in the Arena Pasture.

Figure 3.1: Schematic of the current pasture configuration on the North Sunday Creek Conservation Easement.



### **3.3 Planned Management Narrative with Tables and Maps**

#### **Overview**

The ranch is comprised of one contiguous parcel of land, currently consisting of several permanent pastures as shown in Figure 3.1. Some of these pastures will be cross fenced and some additional watering sources may be necessary to implement the rest rotation grazing system. There is one cow-calf herd that will be managed year-long on the Land.

To keep within FWP grazing standards for summer grazing, three sets of pastures will be developed accommodate each of the treatments prescribed in a 3-treatment rest rotation grazing system on an annual basis. In this case, a portion of the ranch will be available for an early treatment (growing season grazing), a portion will be available for a late treatment (post-seed ripe grazing) and the remaining portion of the summer pastures will receive the rest treatment (no livestock grazing occurs during that calendar year).

To comply with FWP grazing standards for winter grazing, as many pastures as possible that are used during the late fall, winter, and early spring will receive alternating use, where some pastures are used during even years and rested during odd years, and other pastures are used during odd years and rested during even years.

It is acknowledged that some areas are needed to conduct annual ranch activities, such as calving, weaning, shipping and other animal husbandry practices. In addition, there are areas of the ranch that include Cultivated or Seeded Areas that are needed to produce livestock feed or commercial crops. These identified portions of the ranch are not included in the grazing system and therefore not subject to a particular grazing rotation.

#### **Cow/Calf Grazing Rotation and Schedules**

##### **Summer/Fall**

Throughout the summer and fall, cow/calf pairs will be managed using a 3-treatment rest-rotation grazing system from branding time which typically takes place around June 1, until weaning and shipping takes place which typically occurs between October 20<sup>th</sup> and November 7<sup>th</sup>. Each pasture set will receive only one grazing treatment per year and the treatments are rotated annually. The rest-rotation grazing system for this Ranch is setup up with three pasture sets comprising a total of 16 pastures. The Sunday Creek pasture set has five pastures, the Grimes Creek pasture set has seven pastures, and the Butte Creek pasture set has four pastures as shown in Figure 3.2, 3.3 and 3.4.

- *Early Treatment:* Each year, one pasture set is grazed during the growing season. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). The minimum

amount of rest required for any pasture grazed in one year during the plant growing season will be rested throughout the following year's growing season (i.e., grazing deferred until seed-ripe), followed by one year of yearlong rest. The Early Treatment is color coded green in the yearly grazing schematics.

- *Late Treatment*: Each year, one pasture set is grazed after seed-ripe (generally early August). The approximate dates for the Late Treatment is August 1<sup>st</sup> to November 1<sup>st</sup> or when the cow/calf pairs are brought home for weaning. The Late Treatment is color coded yellow in the yearly grazing schematic.
- *Rest Treatment*: Each year, one pasture set is rested yearlong. The Rest Treatment is color coded red in the yearly grazing schematics.

Branding takes place during the early-treatment, or growing season grazing period. Cows and calves will be taken to the corrals for branding, and then returned into the pasture set that is currently open for the growing season grazing treatment. Due to grazing rotation, construction of a second corral site east of the highway will likely be required to accommodate when the Butte Creek and Grimes Creek pasture sets are grazed during the growing season and the Sunday Creek pasture with the corrals are scheduled to be rested. When the cow/calf pairs leave this system for weaning, they will go to the late fall and winter grazing system. Within each pasture set, rotation between pastures is at the Landowner's discretion, meaning that all pastures within a set/grazing treatment could be grazed at once, or cow/calf pairs could be rotated through each pasture within pasture sets as the Landowner sees fit, likely as each pasture gets utilized, then moving to the next, as long as the Early, Late, and Rest schedules are adhered to.

### Winter

An alternating year of use grazing system will be applied from when weaning/shipping has been completed until calving is completed the following spring. Livestock will use winter pasture and the two animal husbandry areas located around the ranch headquarters that are designated for use each year. The year is defined as of the start of the winter period (e.g., winter 2020 starts in November 2020 and ends March 15, 2021).

There are two winter pasture sets made up of two pastures each. Each year, one pasture set will be available for livestock grazing from after weaning and shipping has been completed until the onset of calving, or between the dates of November 1 and March 15<sup>th</sup> as shown in Figure 3.5. The pasture set located on the west side of the highway will be grazed starting in even years (2020, 2022, 2024, etc.) and the pasture set located east of the highway will be rested from grazing during that time. The following winter, starting in an odd year (2019, 2021, 2023, etc.), the pasture set located east of the highway will be grazed and the pasture set west of the highway will be rested from grazing. Each year, the pasture located near the ranch headquarters west of the highway and directly North of McRae Road (labeled as Annual Winter in Figure 3.8) will be used in conjunction with whichever winter pasture set is available for use.

### **Spring**

There is one calving pasture associated with each of the winter pasture sets. These pastures are available from approximately March 15 until June 1. As with the winter rotation, the calving pasture located on the west side of the highway will be utilized starting in even years (2020, 2022, 2024, etc.) and the calving pasture located east of the highway will be rested from grazing during that time. The calving pasture located east of the highway will be used in odd years (2019, 2021, 2023, etc.) and the pasture set west of the highway will be unoccupied. With the onset of the calving period, livestock will leave their winter pasture set and move to the associated calving pasture until the calving period is complete. During the calving period, livestock can return into the winter pasture set they were in prior to calving if necessary.

### **Yearling and Replacement Heifers**

Periodically the structure and composition of the cattle herd will need to be revitalized and depending on drivers such as range conditions, feed prices and cattle markets, the Landowner may want to retain yearling heifers. Because several pastures are available in each pasture set, the Landowner has the flexibility to split the cow/calf herd from the yearling or replacement heifers within the scheduled grazing prescription. In addition, the Landowner may elect to dry lot or utilize Cultivated and/or Seeded Areas to stage these animals until they are integrated into the cow/calf herd, or the Landowner may also choose to not retain yearlings from existing stock but to purchase bred heifers to sustain herd vitality.

It is the responsibility of the Landowner to integrate yearling and replacement heifers into the grazing system in compliance with the established grazing rotation and FWP Minimum Grazing Standards.

Figure 3.2: Schematic of the summer grazing schedule for Year One (2020, 2023, 2026, etc.).

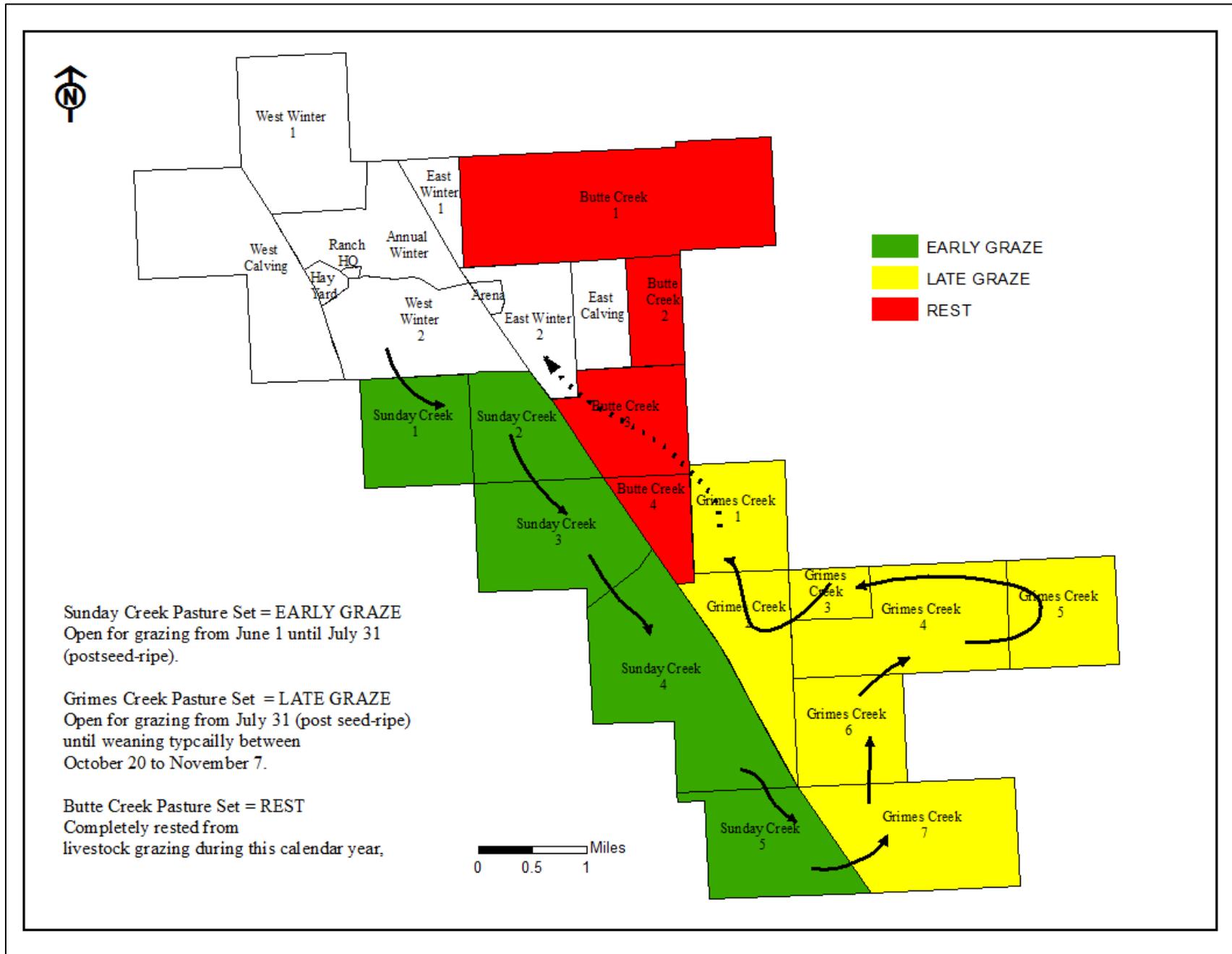


Figure 3.3: Schematic of the summer grazing schedule for Year Two (2021, 2024, 2027, etc.).

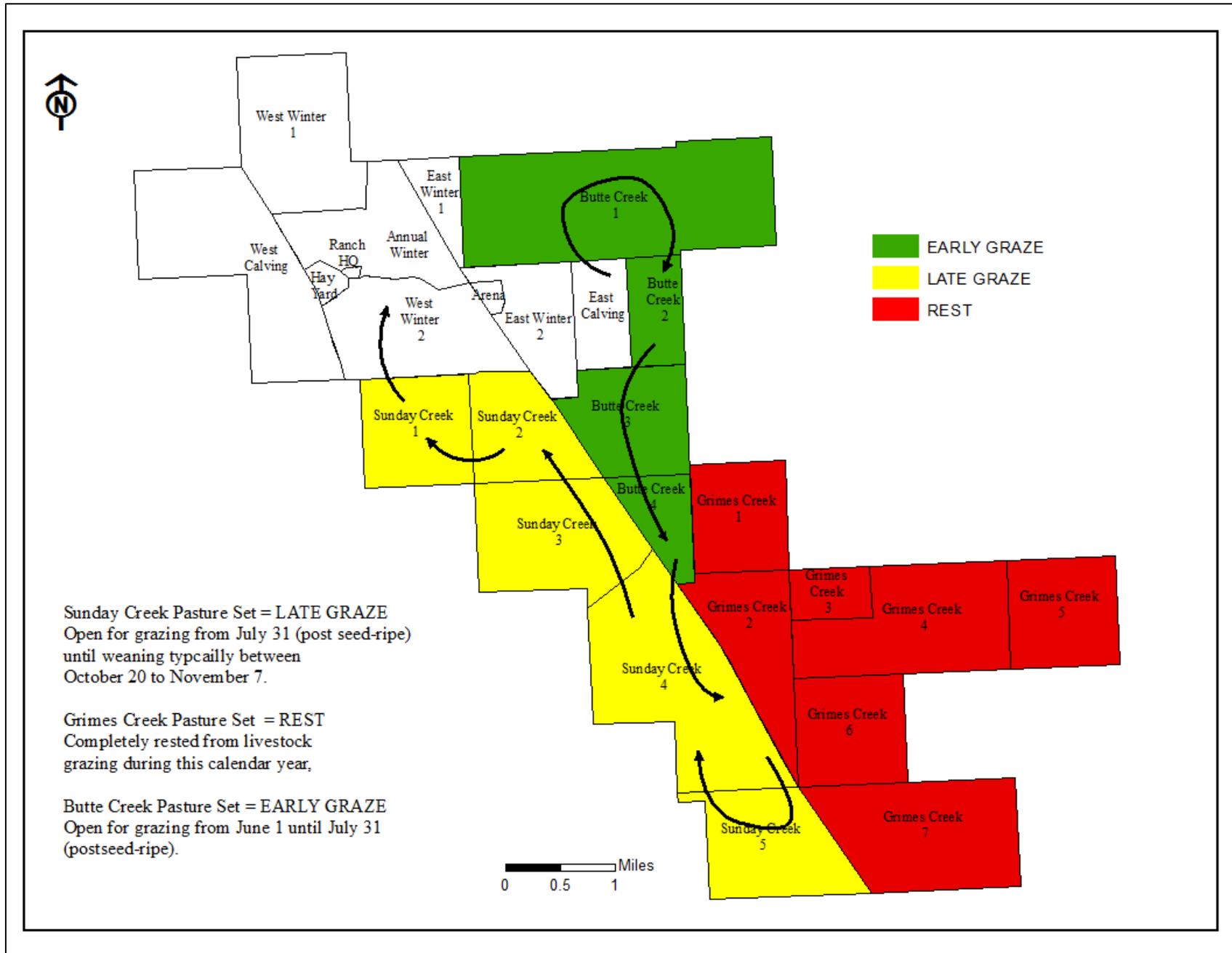


Figure 3.4: Schematic of the summer grazing schedule for Year 3 (2020, 2022, 2026, etc.).

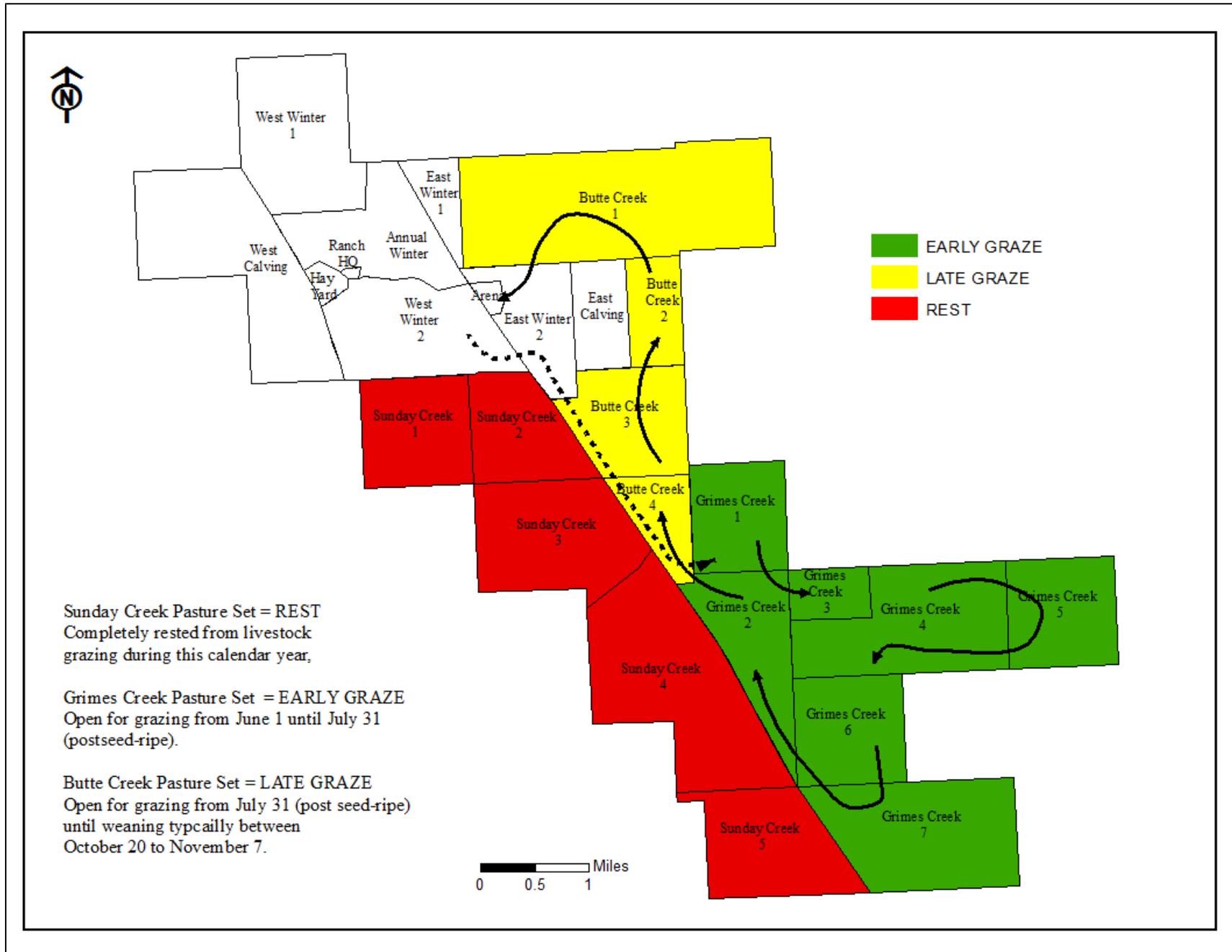


Figure 3.5: Schematic of the winter grazing schedule for Even Years (2020, 2022, 2024, etc.).

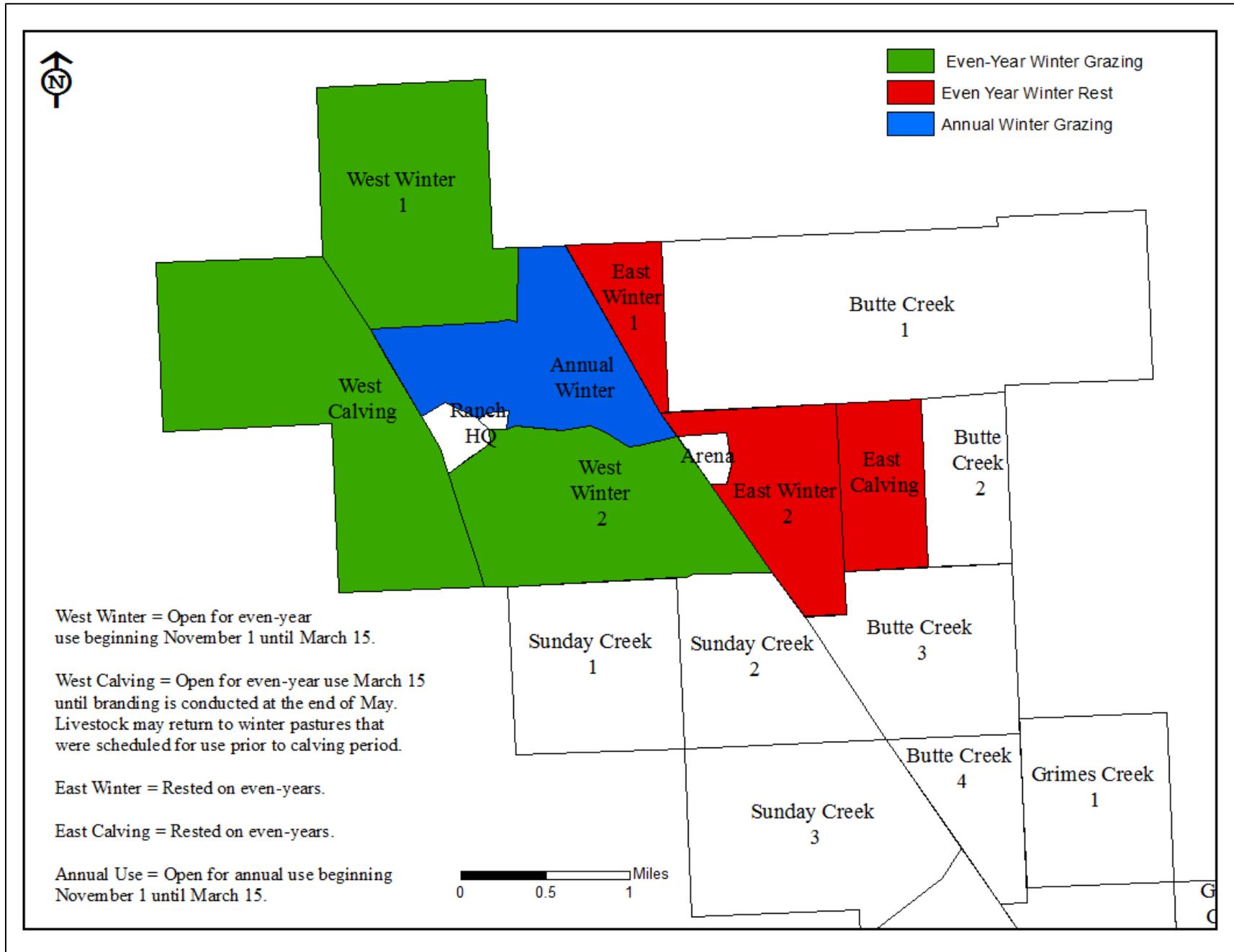


Figure 3.6: Schematic of the winter grazing schedule for Odd Years (2021, 2023, 2025, etc.).

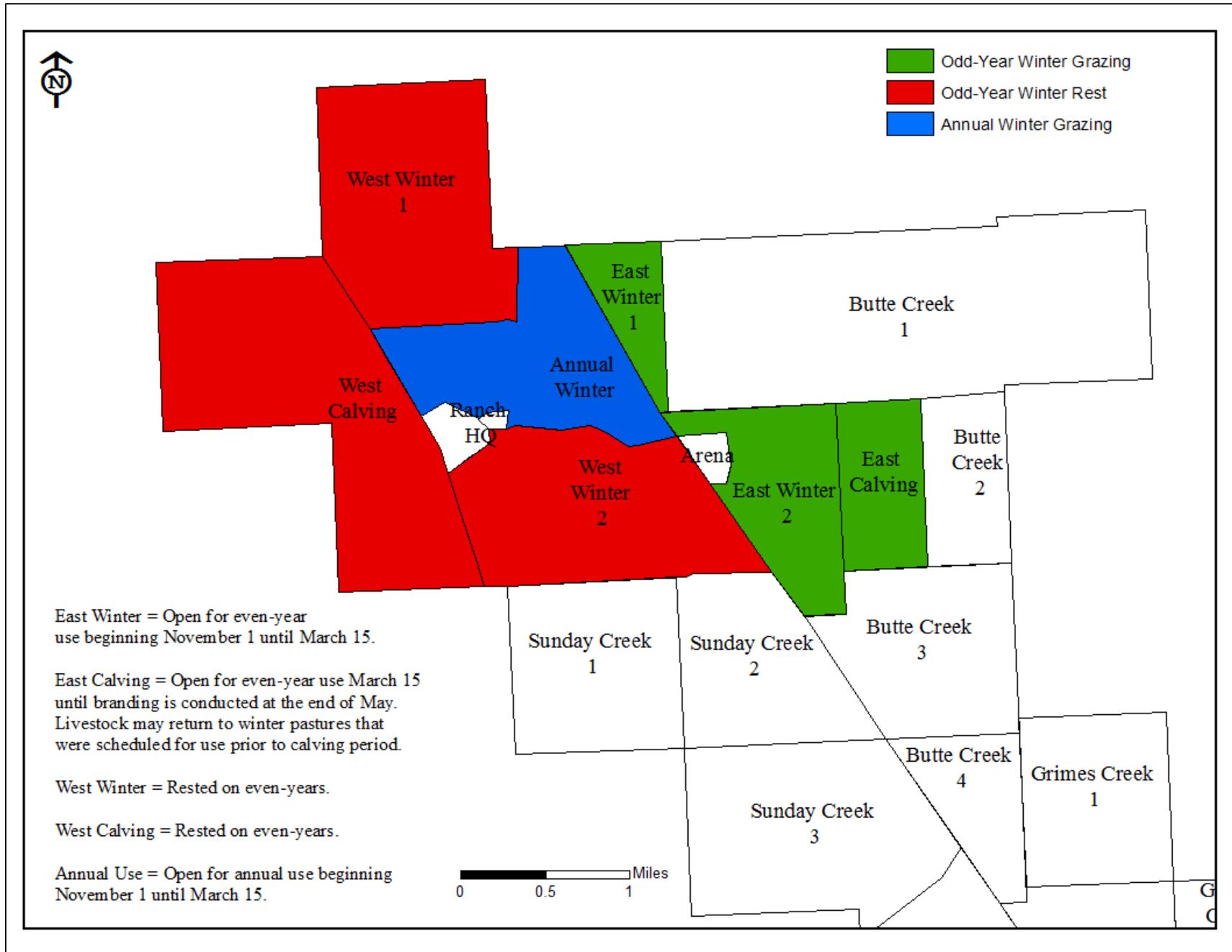


Table 3.1: Table of summer grazing schedules.

<b>Year</b>	<b>Sunday Creek Pasture Set</b>	<b>Grimes Creek Set Pasture Set</b>	<b>Butte Creek Pasture Set</b>
<b>2020</b>	Early	Late	Rest
<b>2021</b>	Late	Rest	Early
<b>2022</b>	Rest	Early	Late
<b>2023</b>	Early	Late	Rest
<b>2024</b>	Late	Rest	Early
<b>2025</b>	Rest	Early	Late
<b>2026</b>	Early	Late	Rest
<b>2027</b>	Late	Rest	Early
<b>2028</b>	Rest	Early	Late
Early = June 1 <sup>st</sup> – July 31 <sup>st</sup> Late = August 1 <sup>st</sup> – November 1 <sup>st</sup> Rest = No grazing			

### 3.4 Stocking Rate

This grazing plan does not set a specific stocking rate. On deeded lands covered by the Conservation Easement, the maximum stocking rate will be based on compliance with the grazing system. As long as the Landowner remains in compliance with the grazing system, FWP will not be concerned about the stocking rate. If pasture forage consistently runs out before the scheduled timing is complete, that is an indication of too many livestock. Conversely, if excess pasture forage remains after use, there would likely be room to pasture additional livestock. It is the responsibility of the Landowner to determine appropriate stocking rates for their livestock operation.

### 3.5 Salt and Mineral Management

When salt and mineral supplements are used, they will be located away from riparian and wetland zones in a manner that will minimize impacts to these areas. Sites will also be located away from any known grouse breeding leks.

### 3.6 Range Improvements

There are two types of range improvement planned to increase the Conservation Values of the Land. The first type of improvements need to be completed for the grazing system to function. The second type of improvements will enhance wildlife passage on and through the Land. Improvements needed for the grazing system to be operational include new pasture fencing and a winter stock tank as shown in Table 3.2 and Figure 3.6. These necessary improvements shall be completed within three years from the signing of the Conservation Easement Purchase Agreement, barring unforeseen circumstances that prevent completion. During the period of infrastructure construction, that include the grazing seasons of 2019 and possibly 2020, the grazing systems will be followed as improvements are completed. However, full compliance with the grazing schedules will not be required during this construction period. The total cost of range improvements to implement the grazing system is estimated to be \$43,750.

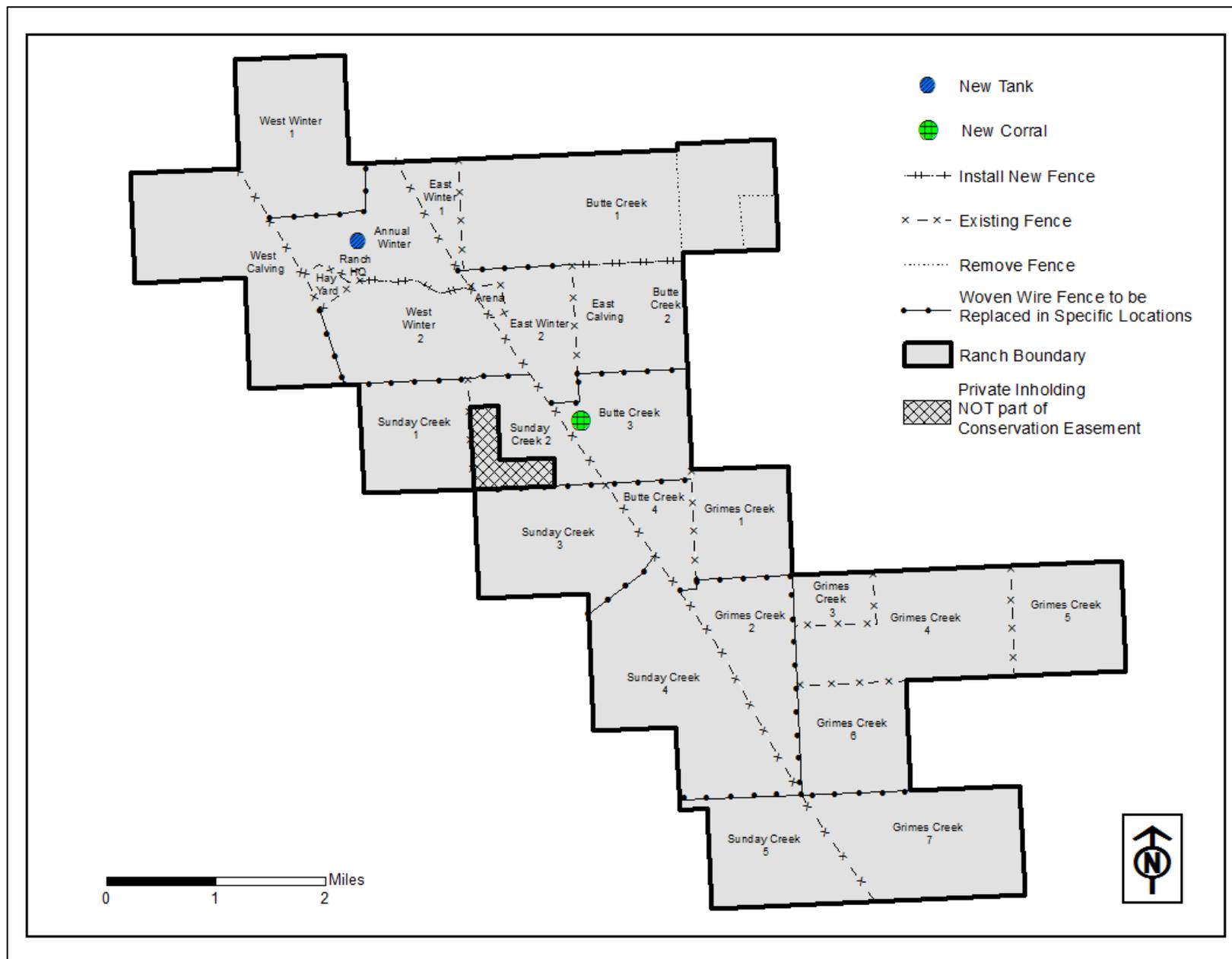
The goal of the second type of range improvements is to increase the Conservation Values of the Land by enhancing wildlife passage. As stated in Section 6 of this Management Plan, the Land is a critical area for wintering antelope. Removing and replacing portions of woven-wire fence with wildlife friendly fencing will facilitate wildlife usage of and passage through the Land. The total cost of the effort is estimated to be \$60,560 (\$54,912 to remove and replace existing fence and \$5,648 to remove unneeded fence). To stay within the grazing schedule these improvements will need to be staggered over time. They are scheduled to be initiated in 2019 and completed within 5 years (Year 2024). Reimbursement will be provided as fence is replaced.

The Landowner and FWP will incorporate a cost-share agreement as part of the Conservation Easement Purchase Agreement for the improvements identified in Table 3.2. Landowner/FWP cost share will involve two options: Option 1, FWP pays for materials through reimbursement to the Landowner and the Landowner completes the installation as in-kind cost share. Option 2, the Landowner hires contracted services and all work is split 50/50 through reimbursement to the Landowner. As improvements are completed, FWP will reimburse the Landowner based on original or copies of original receipts for materials and services upon FWP inspection of completed work. FWP's share of costs for items listed in Table 3.2 will not exceed \$52,155.00.

Table 3.2: Range improvements cost estimates. Based on FWP Habitat Bureau's 2018-2019 Cost-list.

<b>Improvement</b>	<b>Quantity</b>	<b>Estimated Rate</b>	<b>Completion Date</b>	<b>Cost</b>
New Fence Installation	15,840 ft	\$ 2.00/ft	2021	\$ 31,680.00
Remove and Replace Woven Wire Fence	21,120 ft	\$ 2.60/ft	2024	\$ 54,912.00
Remove Woven Wire Fence	9,414	\$ 0.60/ft	2024	\$ 5,648.00
Branding/Shipping Site	2,500 ft	\$ 3.00/ft	2021	\$ 7,500.00
Winter Stock Tank	1,000 gallons	\$ 4.57/ga	2021	\$ 4,570.00
		Estimated Total		\$ 104,310.00
		50% Cost-Share		\$ 52,155.00

Figure 3.7. Diagram of range improvements planned on the North Sunday Creek Conservation Easement.



### **3.7 How the grazing plan addresses Fish and Wildlife Objectives**

The overall objective of this grazing system is to maintain and enhance the quality and vigor of native vegetation on lands incorporated into the Conservation Easement. Periods of rest offered by the grazing system are intended to improve species diversity, forage quality and palatability. Pastures incorporated into summer/fall grazing systems follow a three-pasture rest-rotation which creates rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively. These periods of rest allow plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock utilize the Late pasture following seed-ripe, hoof action tramples mature seeds into the soil and facilitates regeneration. The following year's Rest treatment allows these seedlings to develop root systems and achieve growth before livestock grazing resumes the following spring. The practice of rotational rest improves the health of perennial species by allowing them to recover following grazing for two growing seasons and improves the diversity of annual species by providing an opportunity to reproduce during periods of two growing seasons of rest. The abundance and health of highly palatable plants is improved relative to grazing regimes that do not incorporate regular growing season rest, because the more palatable plants are the first to be grazed by livestock, thereby reducing their vigor and survival, and giving less palatable species a competitive advantage. Pastures incorporated into winter grazing systems will be afforded year-long rest on alternate years, and complete growing season rest, providing similar advantages for plant vigor and species diversity as those pastures in the summer system.

The grazing system will enhance forage and cover for a wildlife using upland and riparian habitats. An increase in early spring forage in the post seed-ripe pastures will benefit mule deer and antelope as they recover from the negative energy balance of winter as they get ready to fawn. Residual vegetation associated with the rest pastures will provide valuable cover for ground nesting and brooding birds, including Sage and Sharp-tailed Grouse and deer and antelope fawns. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures.

Because varied species of passerines require diverse vegetation structures and diversity cover heights, this grazing system will promote a diversity of niche habitats for grassland birds by the alternating grazing treatments. For example, the Early pasture will benefit Long-billed curlews that prefer short-cover areas, and the Late and Rest pasture will benefit Lark bunting that prefer taller cover. Woody draws throughout much of eastern Montana are in decline, typically due to grazing without sufficient rest that allows for woody species to reproduce or grow above the browse line. Rest provided by the grazing system will improve recruitment and growth of woody species that provide critical nutrition in the form of browse and mast production, as well as hiding and thermal cover for a variety of wildlife.

In addition to benefiting native vegetation and wildlife, the grazing system will contribute to overall ecosystem health. Residual cover will reduce runoff and erosion, thereby contributing to moisture retention, water quality and overall soil health. Implementation of the grazing system will benefit plant species diversity which will lead to improved abundance and diversity of pollinator and native insect populations. Finally, the grazing system will serve as an example of how livestock production and wildlife habitat conservation are compatible, as livestock production and wildlife populations will benefit under this grazing management plan.

#### 4. MANAGEMENT OF CULTIVATED AND SEEDED AREAS

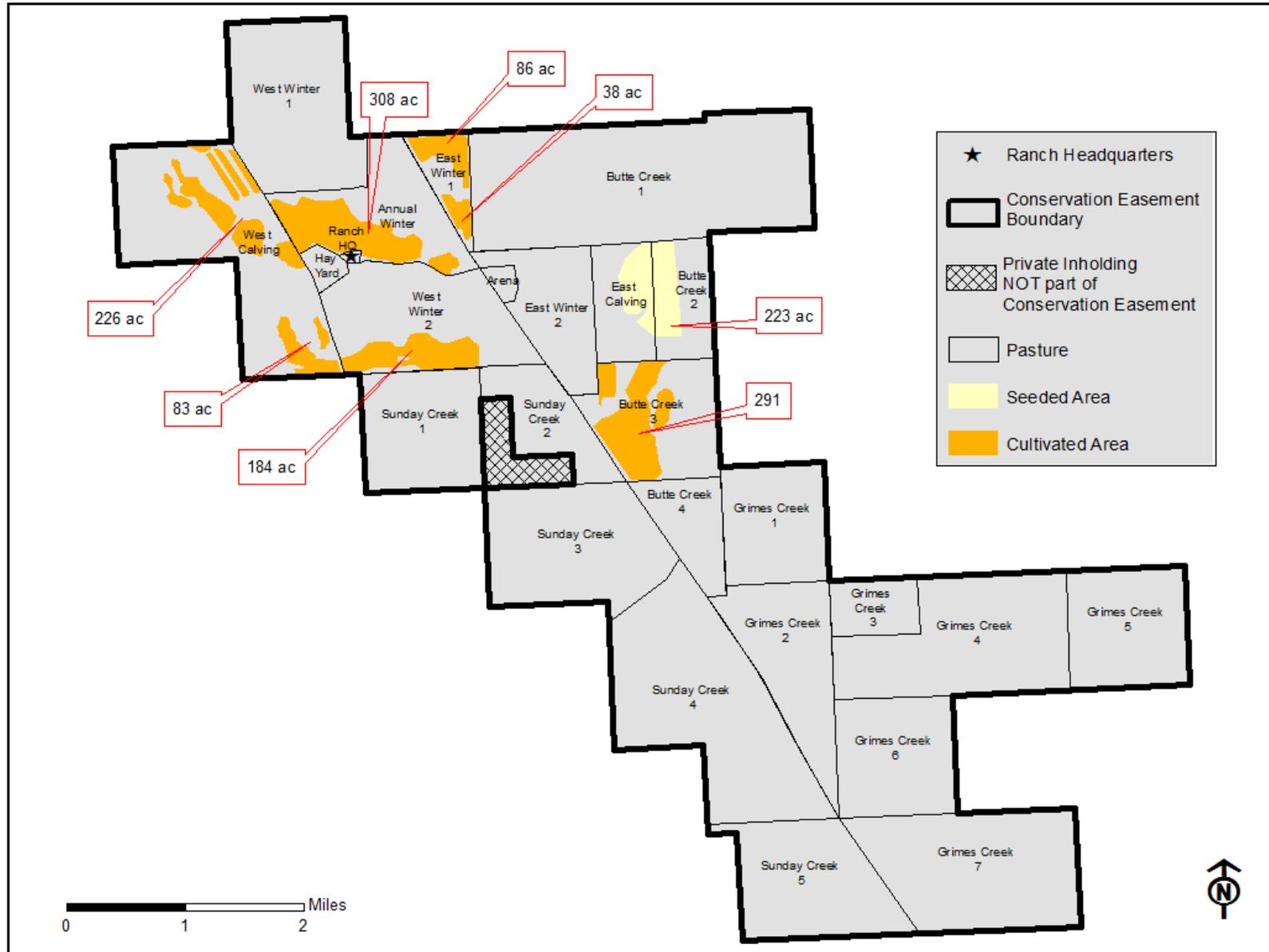
**Objective:** *Allow the Landowner to manage Cultivated and Seeded Areas (described in section II.C.2 and Exhibit D of the FWP Easement) to benefit the livestock operation and enhance the Conservation Values of the Land.*

**Strategy:** The Cultivated Areas are primarily located on the northern end of the property as shown in Figure 4.1. In recent years, these areas have produced annual crops such as winter wheat and peas. The Landowner shall have flexibility within Cultivated Areas to produce crops of their choosing, including native or tame grass, cover crops, forage mixes, pulse crops or small grains. As part of a normal agricultural operation, the Landowner may utilize generally-accepted agricultural practices, such as chemical fallow or other practices, on an as-needed basis. Per the terms of the Easements, within a given year, Cultivated Areas may be cropped, hayed, grazed, used for grassland restoration or conservation, or any combination of these activities, whereas Seeded Areas may not be cultivated for annual crop production and must be used for grazing or grassland restoration or conservation. **With Prior Approval from FWP,** Seeded Areas maybe mechanically renovated to increase forage production or to enhance wildlife habitat.

**Strategy:** The long-term goal is to retire all 1,216 acres of Cultivated Areas from cultivation and establish perennial grasses, forbs and shrubs to improve livestock forage, improve forage, browse and cover for wildlife, reduce soil erosion, and improve water quality on the Land. This goal includes all Cultivated Areas shown in Figure 4.1 Planting would be completed over the course of four to six years, retiring approximately 300 acres per year as activities are deemed successful by FWP and the Landowner. There are no specific funding commitments at the of developing this management plan. Possible funding sources, where appropriate, include: Upland Game Bird Habitat Enhancement Program, FWP Grassland Initiative funds and USDA Farm Bill programs. These restoration efforts would follow relative program requirements.

The planting of invasive, non-native plants that are known to degrade wildlife habitat such as smooth brome and crested wheatgrass is prohibited on the Land. Cultivated Areas are fenced in common with the range land as a result, incorporating these areas into the grazing system if seeded to perennial cover will provide rest from grazing during growing season aid in stand establishment. The Upland Game Enhancement Program User's Manual, the NRCS technical specification, Range Planting (Code 550) and other referenc materials may serve as guidelines for the seeding of Cultivated Areas.

Figure 4.1. Location of Seeded and Cultivated Areas on the North Sunday Creek Conservation Easement.



## 5. WEED MANAGEMENT

**Objective:** *Prevent noxious weeds from degrading the conservation and agricultural values of the Land.*

**Strategy:** The Landowner is responsible for managing noxious weeds in compliance with State law and best management practices, implementing an integrated pest management philosophy to meet weed control goals. Control may include a combination of chemical, mechanical and biological controls as appropriate to meet conservation goals.

## 6. WILDLIFE FRIENDLY FENCES

**Objective:** *Section II.C.5.d. of the ALE Easement and Section II.C.9.d of the FWP Easement (Landowner’s Rights – Man-made Structures) states that “Any new or renovated fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “wildlife friendly” as provided in the Management Plan.” For the purposes of this management plan, the term “wildlife friendly” does not refer to a specific fence design but rather in a broader context of providing for wildlife passage without inhibiting the ability of the fence to contain livestock.*

**Strategy:** The Land is a working cattle ranch, but it once supported domestic sheep. As a result, there is an estimated 16 miles of woven wire fence as shown in Figure 3.7 and Table 3.2. Because the Land is an important antelope wintering area and corridor, FWP and the Landowner will partner to remove or replace sheep fence in strategic locations with wildlife friendly fence to improve wildlife, and specifically antelope usage on and passage through the Land . **With prior notice to FWP**, when a fence is proposed to be constructed or replaced, the Landowner and FWP wildlife biologist will jointly design a fence that considers the wildlife species present, habitat and landscape features. The FWP wildlife biologist can provide input on the proposed fence route and may be able to suggest modifications that would benefit wildlife such as re-routing a fence that would pass near a grouse lek. The design may specify wire spacing to allow passage over and under fences and minimize entanglement or markers to improve wire visibility. Paige 2012<sup>4</sup> provides an overview of current wildlife friendly designs.

Oftentimes it is not necessary to alter the entire fence and modifications at specific crossing spots may provide sufficient wildlife passage. FWP will work with the Landowner to identify key areas to improve wildlife passage. Of the estimated 16 miles of woven-wire fence, replacing four miles with wildlife friendly fence is anticipated to facilitate adequate wildlife movement. The default design will be a fence of not more than 4 strands of barbed wire with the height of the top wire set at 42 inches or lower and the height of the lowest wire set 18 inches from the ground or higher. Due to the nature of fencing on uneven ground, there may be places where

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<sup>4</sup> Paige, C. 2012. A Landowner’s Guide to Wildlife Friendly Fences. Second Edition. Private Land Technical Assistance Program, Montana Fish, Wildlife & Parks, Helena, MT. 56 pp

the top wire is higher, or bottom wire is lower than specifications, this is expected so long as most of the fence conforms to height requirements.

Fence requirements in the Easements apply only to internal fences and those external fences that the Landowner is responsible for maintaining. It does not obligate adjacent landowners to wildlife friendly fence designs. In cases where the default fence design is inadequate to exclude livestock belonging to adjacent landowners, it may be necessary to modify this standard to adequately exclude those livestock. Provisions such as seasonal lay-downs or other fence modifications may be utilized to improve wildlife passage in this scenario.

Internal gates except those along public roadways will be left open whenever they are not needed to contain livestock. External gates will be left open whenever possible and agreeable to adjacent landowners.

## 7. NON-CATTLE DOMESTIC LIVESTOCK

**Objective:** *Section II.C.1 (Landowner's Rights – Livestock Grazing) of each Easement provides for "The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock," and later states "For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with Prior Approval." It would be burdensome for both parties if the Landowner were required to ask permission from FWP each time they desired to purchase a new non-cattle animal. The objective of this chapter is to allow the Landowner flexibility to keep non-cattle livestock.*

**Strategy:** This management plan grants Prior Approval for the Landowner to keep up to 10 non-cattle livestock (such as riding horses, livestock for food or fiber, 4-H projects, guardian animals, companion animals, pack animals, show animals), provided that the animals do not pose a risk to resident wildlife from disease or other factors. The grazing of these animals must conform to the grazing plan in Chapter 3.

## 8. PUBLIC ACCESS

**Objective:** *Utilize public hunting as a tool to provide public hunting opportunity and manage game populations on the Land.*

**Strategy:** The Landowner will provide hunter access for all legal species and sex of game animals for the duration of all Fish and Wildlife Commission-approved seasons. If the Landowner and FWP determine that hunting limitations are warranted for a certain species and/or sex of game animal, the Landowner may limit the species and/or sex of game taken on the Land **with prior written approval from FWP.**

Because general season hunting is the primary tool available to help prevent game damage problems, the Landowner will not be required to limit hunting for any species/sex of game animal. If public hunting during standard Fish and Wildlife Commission-approved hunting seasons is insufficient to prevent game damage issues, game damage assistance may be provided on an “as needed” basis in accordance with FWP’s Game Damage Policies.

**Objective:** *To provide public hunting opportunity in a manner that is compatible with standard agricultural activities and facilitates sustainable use of the wildlife resource.*

**Strategy:** Per Sections I.F. of the Ale Easement and Section I.G of the FWP Easement and Section II.B.5 both Conservation Easements, the Landowner will be required to provide public recreational access for hunting and wildlife watching. The Easements require that the Landowner provide a minimum 400 hunter days annually when demand exists.

Per Section II.B.5.K of each Conservation Easement, the Landowner may participate in programs offered by FWP or other entities intended to reimburse or compensate the Landowner for the impacts of allowing public hunting access on the Land. The Landowner may manage hunting permission using one of four options: unlimited walk-in access with no permission required, hunter administered sign-in boxes, permission administered from the Landowner (in person, via telephone, text, social media, or email) or permission administered by FWP. If permission is administered by FWP, the Landowner may allow family, friends and other members of the public to access the Land for hunting, wildlife watching, or any other reason. Such access may be in addition to but may not exclude those members of the public that were granted reservations or permission by FWP.

The Landowner may temporarily close all or a portion of the Land to public access due to fire danger **with prior written approval from FWP.**

The Landowner may, but is not required to:

- Limit the number of individuals and/or parties on the Land to facilitate public safety and minimize crowding.
- Require hunters and wildlife watchers provide information such as: name, ALS number, telephone, address, vehicle license plate number.
- Require hunters and wildlife watchers to provide notification when leaving.
- Limit the hours that the wildlife watchers can access the Land. Hunters must be allowed on the Land two hours before and two hours after legal shooting hours to accommodate prime hunting hours. Hunters in the act of tracking or retrieving harvested game animals will not be subject to these limitations.
- Specify certain days or times of day which they will be available to provide permission and/or communicate with the public, provided that such limitations are reasonable.
- Prohibit the use of motorized vehicles on the Land. The use of game carts by hunters to retrieve game must be allowed.
- Limit public access to walk-in only from designated parking areas shown in Figure 8.1.
- Provide more leniency than the ranch rules on a case-by-case basis. For example, the Landowner may allow physically challenged hunters to use a motorized vehicle for the purposes of game retrieval.

Additional access rules may include the following:

- Park vehicles in such a manner as to not to obstruct traffic or block gates.
- Leave all gates as you find them.
- No fires or open flames.
- No removal of fossils or artifacts.

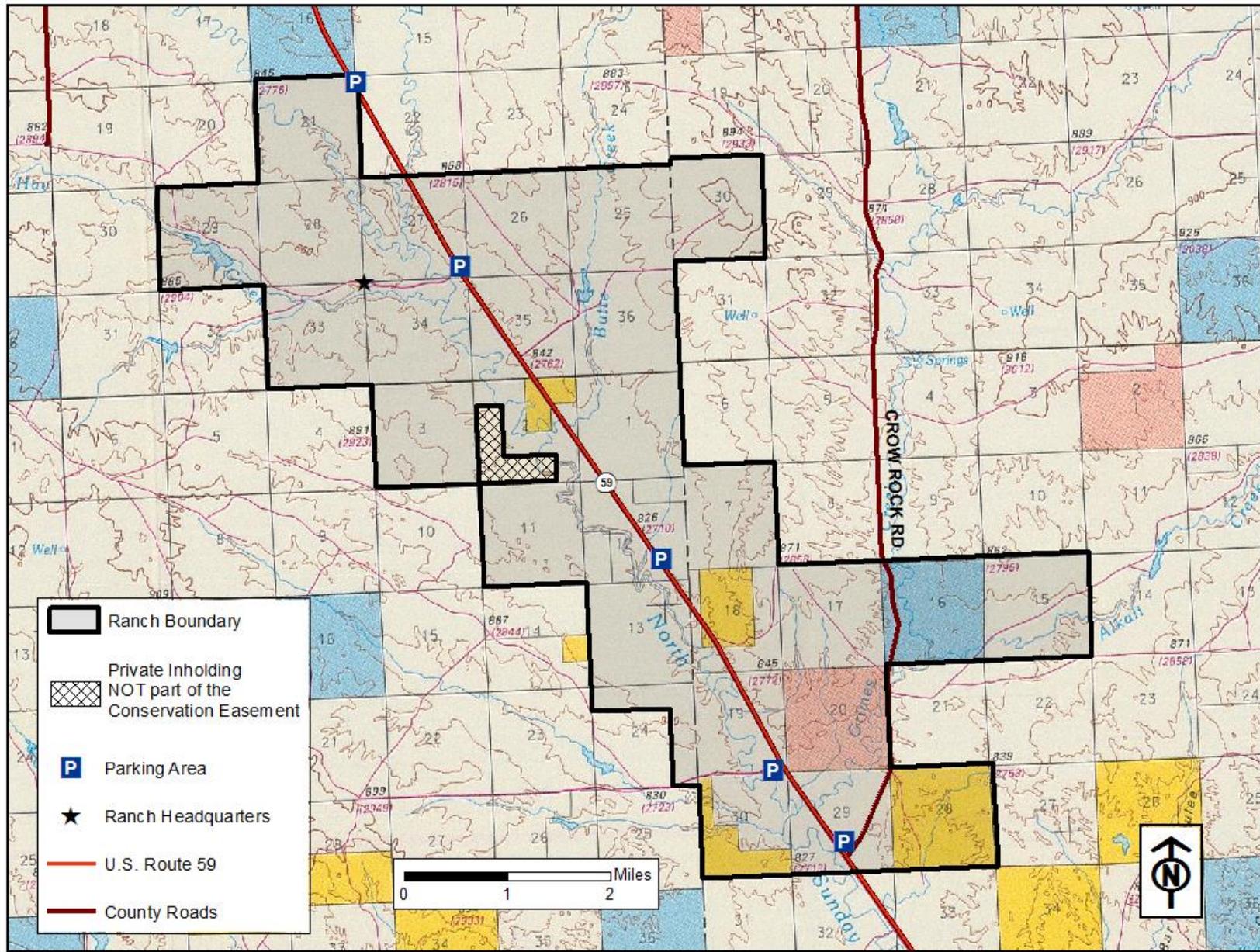
To ensure that public access requirements specified in the Easements are upheld, FWP may:

- Place signs delineating Conservation Easement boundaries and/or rules.
- Require that the Landowner document hunter days provided.
- Manage public hunting access on the Land if the Landowner fails to provide public access as specified in the Easements and this Management Plan.

***Objective:*** *To provide public recreational opportunity outside of hunting in a manner that is compatible with standard agricultural activities and facilitates sustainable use of the wildlife resource.*

**Strategy:** Public recreational activities that are compatible with the Conservation Values of the Land, in addition to hunting on the Land are encouraged. However, the amount of non-hunting recreational access will be at the discretion of the Landowner. Examples of such activities include, but are not limited to the following: hiking, bicycling, camping, photography, videography, wildlife viewing, horse riding, shed antler hunting, fossil hunting and artifact hunting. The Landowner or FWP may prohibit recreational access activities that interfere with standard ranching operations or wildlife management goals. If a conflict arises between non-hunting public recreational opportunity and public hunting opportunity, the public hunting opportunity will take precedence.

Figure 8.1. Map of Designated Parking Areas for walk-in public access on North Sunday Creek Conservation Easement.



## 9. NUISANCE WILDLIFE AND TRAPPING

*Objective:* Allow the Landowner to manage nuisance wildlife species.

**Strategy:** The Landowner will not be required to limit the take of unregulated wildlife species, provided that control measures used comply with all applicable laws. At the present time unregulated species include coyotes, badgers, skunks, raccoons, foxes, and rodents (including prairie dogs), among others. The hunting of these species is at the Landowner's discretion.

The Landowner and FWP recognize the Conservation Values prairie dog colonies provide. The Baseline Report identifies two active prairie dog colonies. As described in Section II. C.10.d of the ALE Conservation Easement and Section II. C.11.d of the FWP Conservation Easement, the Landowner may control prairie dogs when the minimum of 150 acres of active prairie dog colonies is exceeded. Landowners shall not be held responsible if the acreage is reduced below the 150-acre minimum as a result of natural causes of mortality such as plague, predation or other environmental factors.

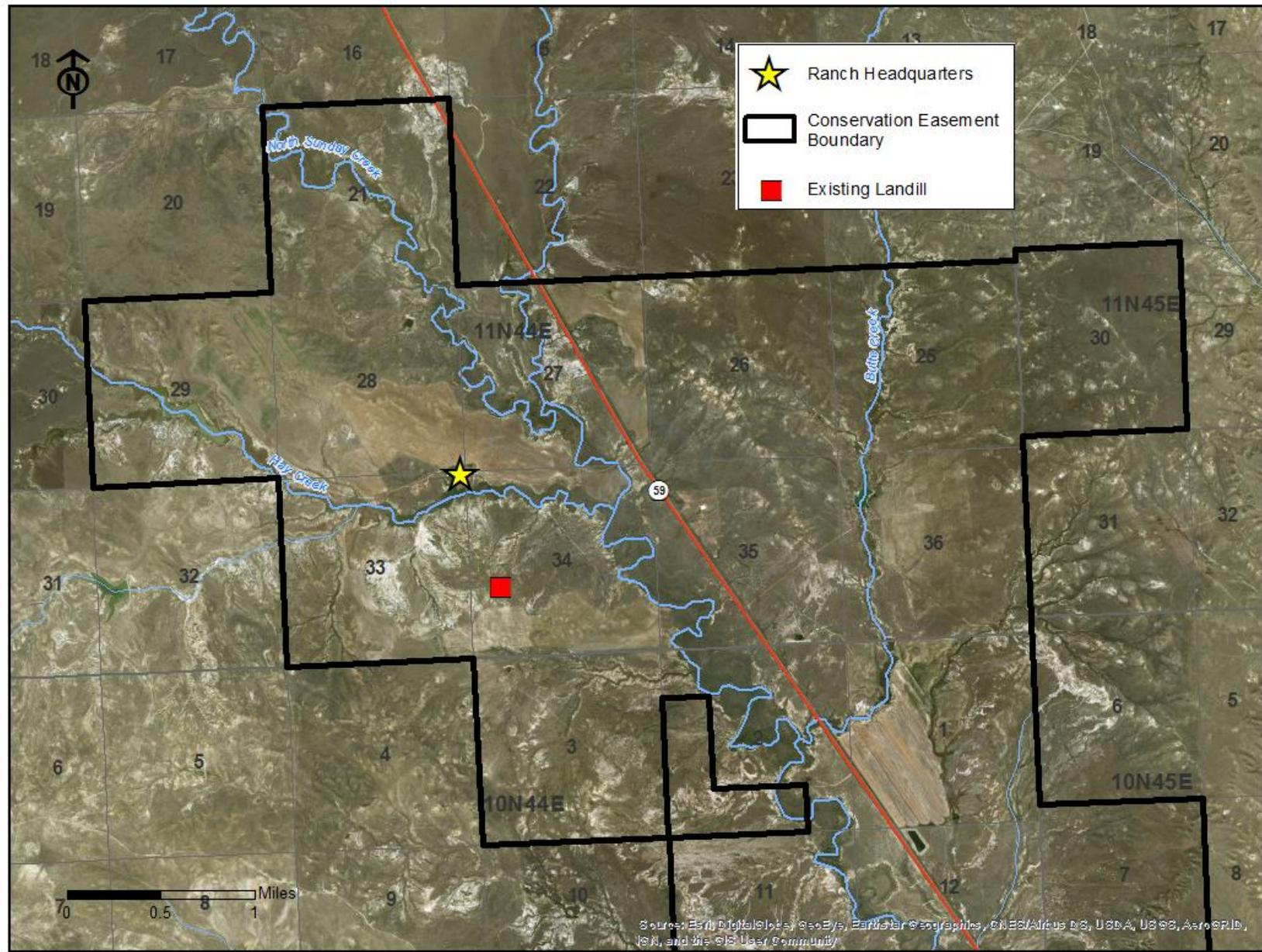
The Landowner must allow a minimum of one member of the public to trap on the Land during established trapping seasons when demand exists. They may select the individual that is allowed to trap on the Land and may retain that individual for as long as they wish. They may require a minimum setback up to 100 yards from roads and trails, and 1 mile from homes, buildings and corrals. They may prohibit trapping in pastures with livestock present. They may require notification when the individual(s) will be on the Land, of trap locations, and animals caught. The trapper(s) may be required to follow the same access rules as other members of the public described in Chapter 8 of this Management Plan.

## 10. WASTE DISPOSAL

*Objective:* Allow the Landowner to dispose of personal household rubbish and other non-toxic materials per Section II.D.15 (Waste Disposal) of each Conservation Easement.

**Strategy:** The Easements allow for a single landfill for personal use by the Landowner. There is one existing landfill located in the southeast ¼ of section 34, 11N44E as shown in Figure 10.1 of this Management. The total footprint of this landfill shall not exceed 10,000 square feet at any given time. The landfill pit may remain open for an unlimited amount of time. **With prior written approval from FWP**, the Landowner may move the location of the landfill. The Landowner shall be responsible for reclamation of the retired landfill site, including fill dirt, replacement of topsoil, control of noxious weeds and replanting the site as provided in Chapter 4 (Management of Cultivated and Seeded Areas) of this management plan. The Landowner will surround the landfill pit with exclusionary fence to discourage wildlife from entering and minimize the risk of wildlife entanglement.

Figure 10.1. Map of designated landfill area for personal use on North Sunday Creek Conservation Easement.



## 11. RECLAMTION OF ABANDONED HOMESITE

*Objective: To enhance the agricultural and Conservation Values at the abandoned Fillafer homesite.*

**Strategy:** The Landowner purchased the “Fillafer Place” in 2016. On this property is an abandoned homesite located on 80 acres in the W ½ NW ¼ Section 36, T10N, R44E as shown in Exhibit D of the FWP Conservation Easement. The homesite consists of an abandoned residence and related outbuildings as detailed in the Baseline Report.

Although not obligated to do so, the Landowner verbally consented to allow the Fillafer family 10 years to gather remaining vehicles, farm equipment and other personal items from the property. The Landowner would like to fulfill the good-will gesture made to the Fillafer Family. However, a management goal of the Landowner and FWP is to make the area more serviceable to livestock and increase the Conservation Values of the Land. This will be achieved in part by removing the dilapidated structures, vehicles, farm equipment, appliances, fencing and reclaiming the abandoned homesite area. The Landowner will have 15 years to complete the reclamation of this site as specified in Section II C.5.b.iii of the FWP Conservation Easement. The Landowner is required, within 15 years of executing this Easement, to remove existing structures and debris and reclaim the site, including fill dirt, replacement of topsoil where necessary, control of noxious weeds and replanting the site as provided in Chapter 4 (Management of Cultivated and Seeded Areas) of this Management Plan.

As described in the FWP Conservation Easement, should the Landowner NOT complete the reclamation of the abandoned homesite on the Fillafer Place within 15 years, he must designate up to 15 acres of the Fillafer Place as one of the three Residential/Agricultural Building Areas, **with prior written approval from FWP**. The remaining acres (less the designated Residential/Agricultural Building Areas) will be managed as described in Chapter 4 of this Management Plan.

## 12. MONITORING

*Objective: Review management actions to assure FWP’s and the Landowner’s goals are being met.*

**Strategy:** Maintain open communication through annual monitoring of all Conservation Easement lands. This assessment shall be conducted by FWP or a designated third party and will involve meeting with the Landowner and completing field reviews to assess Management Plan effectiveness and to review Landowner compliance with the terms of each Conservation Easement. The Landowner is encouraged to thoroughly familiarize themselves with the

Management Plan including the grazing system schedule, the terms in the Deeds of Conservation Easement and to contact FWP with any questions or concerns to prevent non-compliance. FWP may also work with the Landowner to establish a system of vegetation monitoring to evaluate vegetation response and management effectiveness, as also described in the Conservation Easement.

**Final Management Plan Approved By:**

\_\_\_\_\_  
Royce Ponessa, Landowner

\_\_\_\_\_  
Date

\_\_\_\_\_  
John Ensign, FWP Region 7 Wildlife Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brad Schmitz, FWP Region 7 Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ken McDonald, FWP Wildlife Division Administrator

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Date