

**Draft
Environmental Assessment**

**White Deer Meadows
Conservation Easement**



August 27, 2018



***Montana Fish,
Wildlife & Parks***

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MEPA, NEPA, MCA 23-1-110 CHECKLIST

PART I. PROPOSED ACTION DESCRIPTION

Proposed state action

The proposed action is for the Montana Department of Fish, Wildlife and Parks (MFWP) to purchase a conservation easement on approximately 405 acres of private land in the Bridger Mountain foothills of Gallatin County, Montana. The White Deer Meadows Property (hereafter referred to as the Property) is currently owned by Six Bears Holdings LP, who are offering MFWP the opportunity to purchase a conservation easement. The proposed Conservation Easement would ensure the Property would remain un-subdivided, would protect wildlife habitat and vegetation resources, and would allow public hunting access to portions of the Property in perpetuity. The Property provides critical mule deer winter range, and the Property abuts other conservation areas.

Agency authority for the proposed action

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 Montana Code Annotated (MCA) 87-1-209 from willing landowners by voluntary, cooperative means.

Parts II and III of this EA include comprehensive analysis of the factors required by MCA 87-1-241, rules for acquisition of any interest in land for wildlife habitat. These will appear with citations throughout this document and as follows:

- a) Wildlife populations and use currently associated with the Property (Part I, Narrative Summary; Part II, Physical Environment, E)
- b) Potential value of the land for protection, preservation, and propagation of wildlife; (Part I, Narrative Summary; Part II, Physical Environment, E)
- c) Management goals proposed for the land and wildlife populations, and where feasible, any additional uses of the land such as livestock grazing or timber harvest (Part I, Narrative Summary, Part II, Physical Environment, D; Appendix A, Management Plan)
- d) Any potential impacts to adjacent private land resulting from proposed management goals, and plans to address such impacts (Part II, Human Environment)
- e) Any significant potential social and economic impacts to affected local governments and the state (Part II, Human Environment)
- f) Land maintenance program to control weeds and maintain roads and fences (Part I, Narrative Summary; Appendix A, Management Plan)

This analysis will be made available for review by each owner of land adjacent to this Property, and to any member of the public. A public hearing will be held in the affected area. See Part IV for more information on public outreach and distribution.

Anticipated Schedule

EA Released for public comment August 31, 2018
Public comment period 27 days, public comment ends September 27, 2018.
Public meeting held Tuesday, September 11, 6-8pm at 1400 S. 19 Ave., Bozeman.
Comment prepared and summarized for decision notice to the Fish and Wildlife Commission
October 2, 2018

Location affected by proposed action

The 405-acre proposed Conservation Easement exists in Gallatin County on the west side of the Bridger Mountains south of North Cottonwood Creek, with legal description as follows:

- Township 2 North, Range 5 East SE ¼ of Section 23 (161.62 acres)
- Township 2 North, Range 5 East S ½ of the SW ¼ of Section 23 (81.62 acres)
- Township 2 North, Range 5 East NW ¼ of Section 26 (161.62 acres)

Project size

The total acreage of the proposed Conservation Easement is approximately 405 acres. The Property is surrounded by other conservation lands: the Maher easement (MFWP; 881 acres) to the south, the Armstrong easement (Gallatin Valley Land Trust; 400 acres) to the north, and US Forest Service land to the east. There is an approximately 10-acre building envelope where there currently exists an old farmhouse with two outbuildings. Terms in the proposed Conservation Easement allow for one single-family residence, a guest home, and associated outbuildings to be placed in this 10-acre building envelope.

Permits, Funding, and Overlapping Jurisdiction

Permits N/A

Funding

The appraised value of the Property before easement is \$3,077,000. The after-easement value appraised at \$1,215,000. Therefore, the value of the Conservation Easement is \$1,862,000. The landowners have agreed to donate a portion of that value in the amount of \$100,000. The majority of the funding for the Conservation Easement would come from Habitat Montana. Some funding may also be derived from the Mule Deer Auction License account or other funding sources.

| | |
|---------------------------|------------------|
| FWP | \$1,762,000 |
| <u>Landowner Donation</u> | <u>\$100,000</u> |
| Total | \$1,862,000 |

Other Overlapping or Additional Jurisdictional Responsibilities

| <u>Agency Name:</u> | <u>Type of Responsibility</u> |
|--------------------------------|-------------------------------|
| FWP Fish & Wildlife Commission | easement purchase approval |

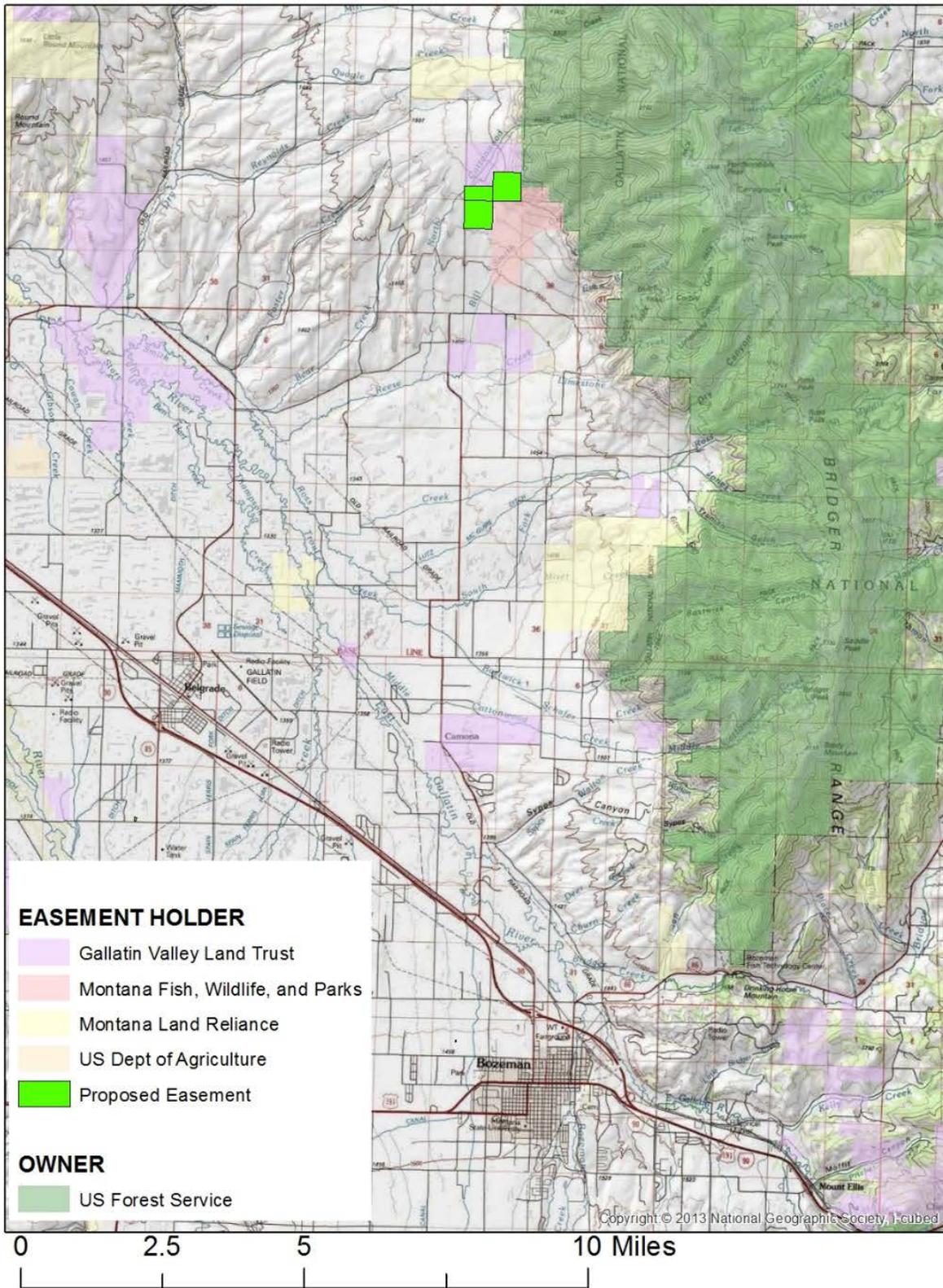


Figure 1: General area map showing Bozeman and Belgrade with the Bridger mountain range, nearby conservation easements, and the White Deer Meadows Property for the proposed Conservation Easement (green).

Alternatives

Alternative A: No Action

Under the No Action alternative, MFWP would not purchase a conservation easement on the Property. The owners would either seek another easement buyer or may not place the Property into conservation easement at all. Public access to the Property may not be allowed. Current or future owners could subdivide and develop the Property.

Alternative B: Proposed Action

MFWP proposes to purchase a 405-acre Conservation Easement on the Property. The Easement would prevent future subdivision, would enable public hunting access to a portion of the Property, and would protect habitat values through Conservation Easement terms. These acres provide critical mule deer winter range on grassland, sagebrush, and south-facing and habitat for elk and white-tailed deer, black bear, mountain lion, blue grouse, ruffed grouse, turkey, and a variety of nongame wildlife.

Narrative Summary of Proposed Action

The Property possesses a mosaic of deciduous shrubland, sagebrush steppe, coniferous forest, and montane grassland on a south-facing aspect that makes it high-value ungulate winter range. Approximately 30 acres of riparian vegetation include aspen clone, willow, and mature cottonwood. Approximately 160 acres of shrub-steppe include antelope bitterbrush, sagebrush, snowberry, chokecherry, serviceberry, and Rocky Mountain juniper. Approximately 180 acres of montane grasslands include native components (Idaho fescue, western wheatgrass, and prairie junegrass) and non-native components (smooth brome, orchard grass, Kentucky bluegrass, and mountain timothy), with non-native components mainly aligned with the hay pastures on the south end of the Property. Approximately 30 acres of conifer-dominated forest mainly include Douglas fir and Rocky Mountain juniper. Approximately 1,000 yards of North Cottonwood Creek flows through the Property. There are 2 springs on-site, and 1 spring that flows into the Property. The Property has 2 historic ditches for irrigating the hay pastures

The Property is part of a critical winter range that supports 200-400 mule deer in the Northwest Slope population, also known as Population Habitat Unit 1 (Pac et al. 1991). The Property is a “keystone” piece of the land, the last remaining foothills area to be secured to protect this important mule deer winter range (Figure 2). Development of private land is one of the highest potential threats to Bridger Mountain mule deer. The area may also provide habitat for 3 mammal species of concern and 5 bird species of concern (Montana Natural Heritage Program, accessed 8/13/2018). Other wildlife values include use by 100-150 elk, white-tailed deer, black bear, mountain lion, bobcat, coyote, red fox, Merriam’s turkey, ring-necked pheasant, blue grouse, ruffed grouse, golden eagle, red-tailed hawk, northern goshawk, and prairie falcon (Cunningham personal observation, MFWP 1994).

The current owners recently purchased the Property from the family of its long-time owner. Their goals are to manage the Property for its aesthetic, intrinsic, wildlife, recreational, and agricultural values for the benefit of both current and future generations. The two primary management goals (MCA 87-1-241 item c) of the proposed White Deer Meadows Conservation Easement are to: 1) maintain and/or improve the quality and amounts of native habitats and important agricultural habitats for wildlife without displacing private land use and 2) to provide a guaranteed public hunting access opportunity. Management areas of the Property include: the approximately 160 acres of mountain foothills and native conifer/shrub-steppe lands (the Hunting Zone), the approximately 80 acres of riparian habitat near the building envelope (the Riparian Area), and approximately 160 acres of agricultural land (the Agricultural Area), currently used for seasonal cattle grazing (Figure 3).

These management goals would be met through multiple terms in the Conservation Easement (Appendix B) and Management Plan (Appendix A). Terms include:

- Restriction of residential structures (1 single-family home and 1 guest home with associated outbuildings) to the 10-acre building envelope. The 405-acre site currently is made of 3 distinct parcels, and the proposed Conservation Easement would unify these into a single unified title as a single unit. This term ensures the 405-acre parcel would not be subject to further subdivision, and that the wildlife habitat would not be fragmented.
- Native grasslands and riparian areas would be protected from removal or manipulation, such as conversion to tillage agriculture.
- A grazing management plan would be adhered to for protection of the grassland resources for wildlife habitat, following MFWP grazing standards.
- Timber harvest could occur only through Management Plan allowances.
- Provisions for public hunting access to the Hunting Zone and adjacent US Forest lands, and prohibitions against sale or lease of hunting or fishing access to the land or charging trespass fees.

The emphasis on public hunting access opportunity in the Conservation Easement aligns with the Hunting Zone due to concerns for safety around residential structures. Landowners may allow additional hunting across the Property at their discretion. The Easement would allow hunting game animals and game birds of all sex and age classes within the Hunting Zone in accordance with the hunting regulations adopted by the State of Montana. When demand exists during the general hunting seasons, the landowner would be required to permit up to 3 hunting parties per day, approximately 170 public hunter days on the land per year. This number is based off the same calculation that provides hunting access to the neighboring MFWP Maher easement (1994). MFWP would provide one-time funding to improve an existing road and create a parking area for hunter access to the Hunting Zone (Figure 4). The cost of these improvements is estimated to be between \$6,000 and \$12,000 from Habitat Montana operations fund. Further details are included in the Management Plan (Appendix A)

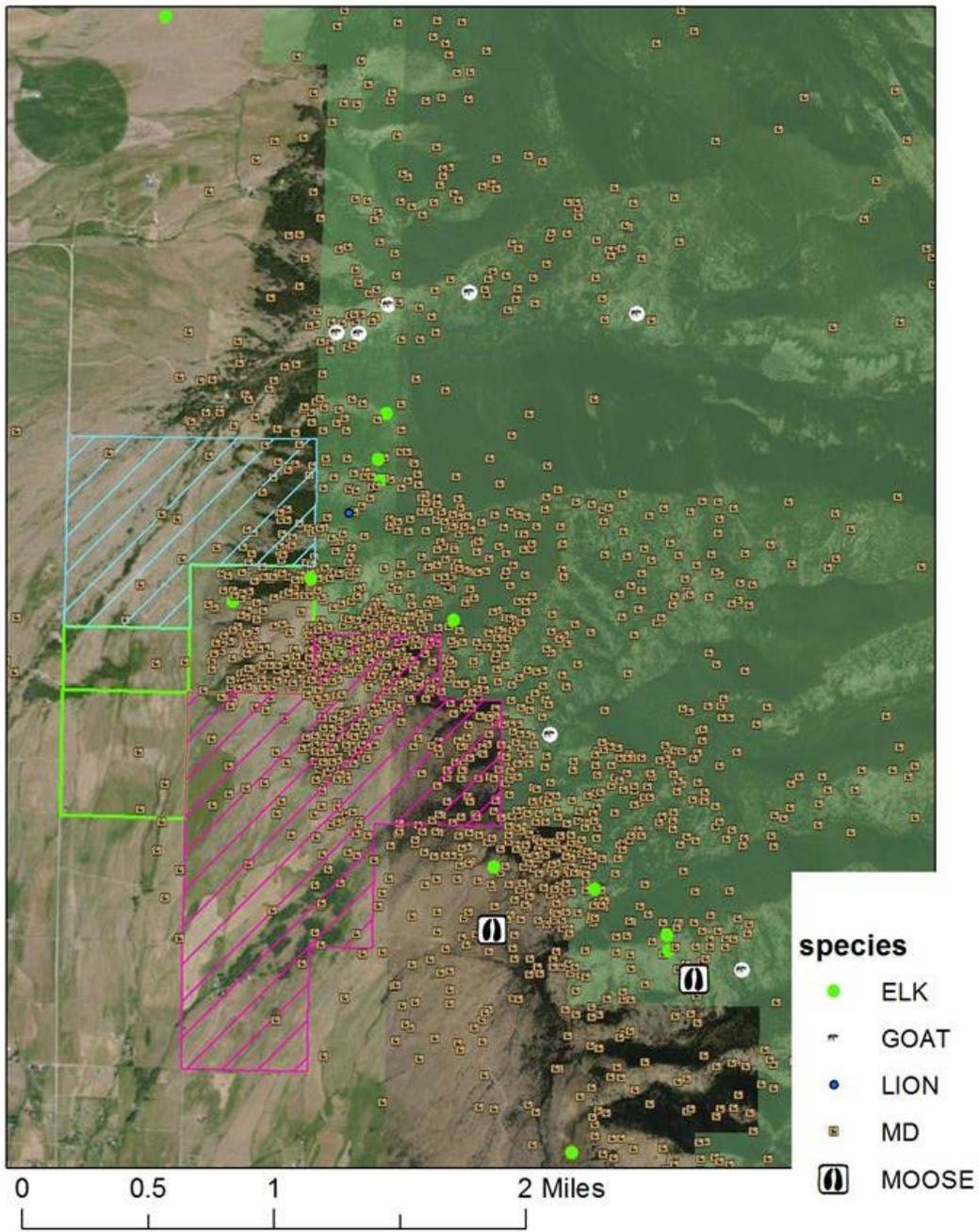


Figure 2: Area map with wildlife sighting data overlay from mule deer survey and inventory from 2008-present, including mule deer radio telemetry locations November-April 1975-1996. The Property is outlined in bright green. The land with the blue hash lines is the Armstrong property (Gallatin Valley Land Trust easement) to the north. The land with the pink hash lines is the Maher property (MFWP easement) to the south. Animal icons represent distribution of sightings of groups ranging from 1 to 52 individual animals.

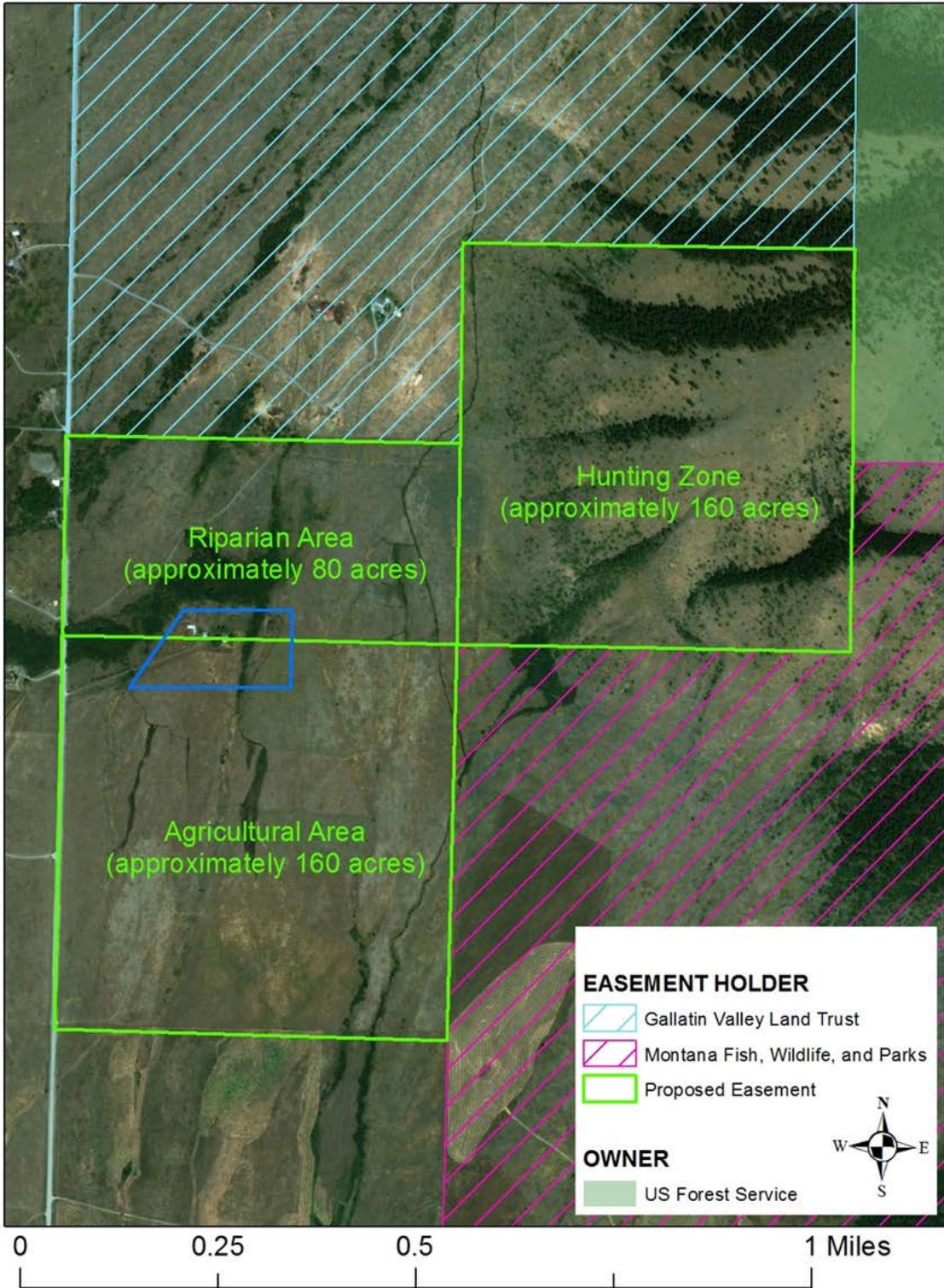


Figure 3: The White Deer Meadows Property outlined in green showing approximate acreage for the three areas of management interest. The 10-acre building envelope is outlined in blue. Adjacent US Forest Service and neighboring conservation easements as shown.

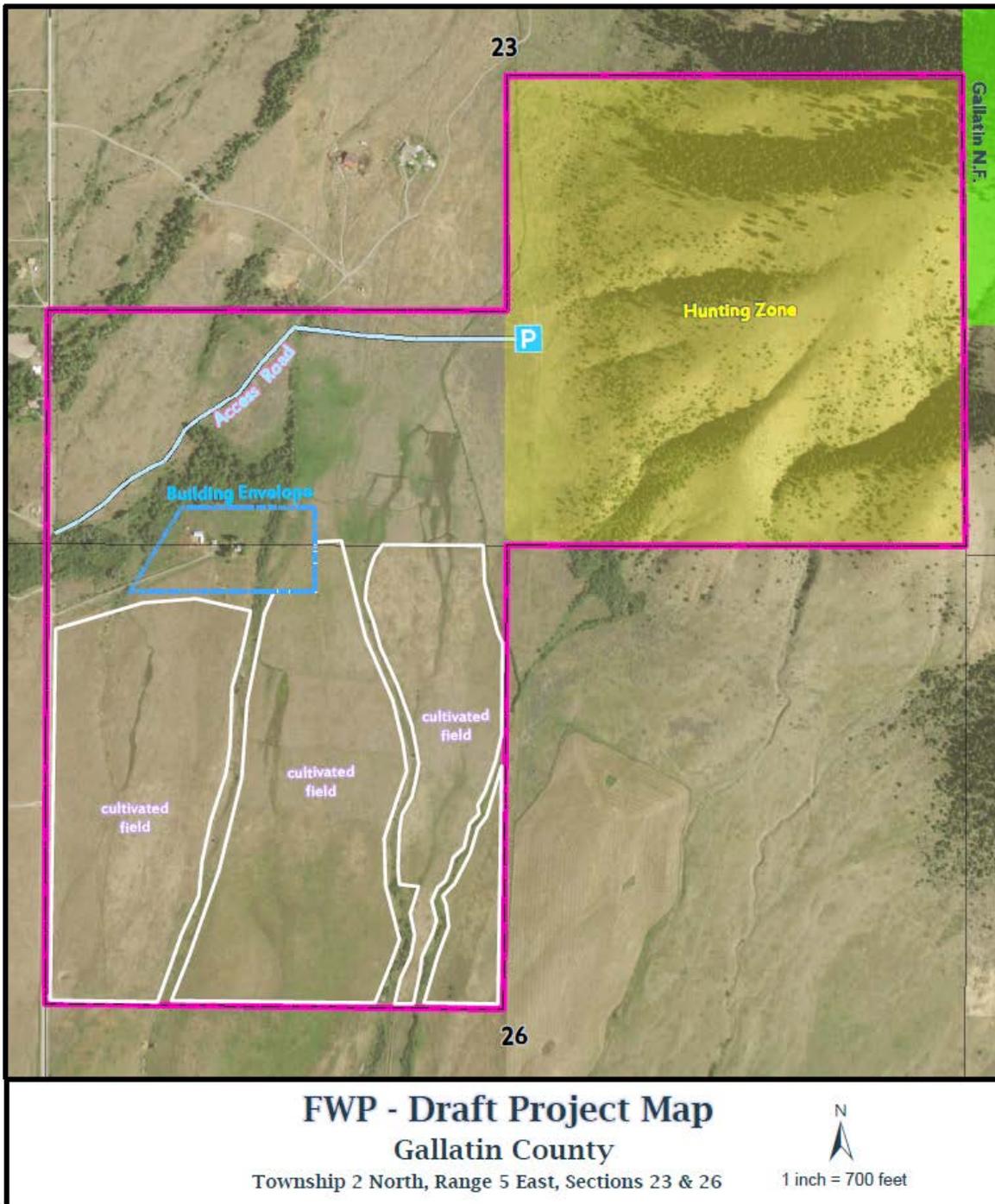


Figure 4: Proposed access road and parking area leading past the building envelope to the Hunting Zone.

PART II. ENVIRONMENTAL REVIEW CHECKLIST

Physical Environment

A) Land Resources

Will the proposed action result in:

- a) Soil instability or changes in geologic substructure?**
- b) Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?**
- c) Destruction, covering, or modification of any unique geologic or physical features?**
- d) Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?**
- e) Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?**

The proposed Conservation Easement would result in minor positive changes to area land resources. The Easement would prevent further conversion of native grasslands, thereby preventing potential disruption, erosion, or moisture loss of existing soils. The Easement would confine building activities to a 10-acre envelope with existing development, rather than allow development of additional home sites which could over-cover soil.

As a part of the proposed Easement, FWP would improve an existing route to provide for hunter access to the Hunting Zone. The existing road is approximately 0.61 miles long, 0.35 miles of which do not need additional work. The work on the remaining 0.18 to 0.25 miles would entail at a minimum bringing in gravel for road stabilization and to prevent erosion, and grading and gravelling a parking area. At maximum, the road improvement may require crossing a shallow agricultural irrigation ditch with a rock substrate which would entail bringing in additional cobble to further harden the substrate. The road work would be designed to prevent erosion throughout. The parking area would be approximately 1,000 ft² and would be located in an area to minimize disturbance to native soils and vegetation.

B) Air

Will the proposed action result in:

- a) Emission of air pollutants or deterioration of ambient air quality?**
- b) Creation of objectionable odors?**
- c) Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?**
- d) Adverse effects on vegetation, including crops, due to increased emissions of pollutants?**
- e) For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regulations**

The proposed Conservation Easement would have no impact on air pollution.

C) Water

Will the proposed action result in:

- a) **Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?**
- b) **Changes in drainage patterns or the rate and amount of surface runoff?**
- c) **Alteration of the course or magnitude of floodwater or other flows?**
- d) **Changes in the amount of surface water in any water body or creation of a new water body?**
- e) **Exposure of people or property to water related hazards such as flooding?**
- f) **Changes in the quality of groundwater?**
- g) **Changes in the quantity of groundwater?**
- h) **Increase in risk of contamination of surface or groundwater?**
- i) **Effects on any existing water right or reservation?**
- j) **Effects on other water users as a result of any alteration in surface or groundwater quality?**
- k) **Effects on other users as a result of any alteration in surface or groundwater quantity?**
- l) **For P-R/D-J, will the project affect a designated floodplain?**
- m) **For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations?**

The proposed Conservation Easement has few provisions related to water. The landowners would retain their rights to use, develop, and maintain water resources. Any new developments or changes in water use that could have adverse impact on streams/wetlands/riparian areas would be prohibited. The landowners retain their right to develop a fish pond. If the hunting access road crosses the agricultural ditch, the crossing would be designed to prevent erosion and mitigate turbidity through hardened crossing. No change to water resources is expected as a result of the proposed action.

D) Vegetation

Will the proposed action result in:

- a) **Changes in the diversity, productivity, or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?**
- b) **Alteration of a plant community?**
- c) **Adverse effects on any unique, rare, threatened, or endangered species?**
- d) **Reduction in acreage or productivity of any agricultural land?**
- e) **Establishment or spread of noxious weeds?**
- f) **For P-R/D-J, will the project affect wetlands, or prime and unique farmland?**

The vegetative quality and condition of the land is expected to improve under the proposed action through specific provisions in the Conservation Easement and in the Management Plan.

Native vegetation may not be removed, damaged, or manipulated except for reasons of protection and maintenance of the Property, or for habitat enhancement or disease control. Timber harvest may only occur for specific forest management actions for improvement of wildlife habitat and if both MFWP and the landowners agree to the plan. The agricultural portions of the land would be maintained as agricultural with no potential changes to reduction in acreage or productivity. The landowner would retain the right to use chemicals to control noxious weeds in a manner that would minimize damage to native plants.

A Montana Natural Heritage search for plant species of concern for the Township 2N Range 5E (8/13/2018) revealed only white bark pine, which does not exist on this low-elevation site.

E) Fish and Wildlife

Will the proposed action result in:

- a) Deterioration of critical fish or wildlife habitat?**
- b) Changes in the diversity or abundance of game animals or bird species?**
- c) Changes in the diversity or abundance of nongame species?**
- d) Introduction of new species into an area?**
- e) Creation of a barrier to the migration or movement of animals?**
- f) Adverse effects on any unique, rare, threatened, or endangered species?**
- g) Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?**
- h) For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat?**
- i) For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location?**
- j) As per MCA 87-1-241 address a) the wildlife populations and use currently associated with the property, and b) the potential value of the land for protection, preservation, and propagation of wildlife.**

The proposed Conservation Easement would result in benefits to wildlife including mule deer, elk, white-tailed deer, black bear, mountain lion, mountain grouse, Merriam's turkey, and other game and nongame species (Figure 2). The Property provides critical winter range for mule deer (Pac et al. 1991). Mule deer in this winter range are genetically unique from neighboring areas suggesting site-fidelity of female mule deer to this winter range going back thousands of years (Cronin et al. 1991). The proposed Conservation Easement would be expected to maintain and improve the wildlife habitat of the land (see above section on vegetation), protecting the ability of wildlife to move across the landscape through the proposed and adjacent conservation lands. The proposed Conservation Easement prohibits subdivision of these 405 acres. Under the proposed Conservation Easement, the tracts would be unified, and the 405 acres would remain intact in perpetuity. Any fences that would be used on the land must not be barriers for wildlife. The proposed agreements related to vegetation (timber, agriculture, native plants) are designed to

benefit wildlife populations. No wildlife species would be moved or exported in this proposed action.

Species of concern would generally benefit from the proposed action by conserving native wildlife habitats in perpetuity. A search of the Montana Natural Heritage Program (8/13/2018) for Township 2N, Range 5E indicated three mammal species of concern: wolverine, hoary bat, and little brown myotis. Bird species of concern included ferruginous hawk, flammulated owl, golden eagle, gray crowned rosy-finch, and great gray owl. No amphibian, reptile, fish, or invertebrate species of concern were reported in this Township.

Human Environment

A) Noise/Electrical Effects

Will the proposed action result in:

- a) Increases in existing noise levels?**
- b) Exposure of people to serve or nuisance noise levels?**
- c) Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?**
- d) Interference with radio or television reception and operation?**

The proposed Conservation Easement would not result in any increases in noises or electrical effects. The proposed Conservation Easement could result in positive benefits, as a single home on 405 acres would have less noise than multiple homes would in the event the Property was subdivided.

B) Land Use

Will the proposed action result in:

- a) Alteration of or interference with the productivity or profitability of the existing land use of an area?**
- b) Conflict with a designated natural area or area of unusual scientific or educational importance?**
- c) Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?**
- d) Adverse effects on or relocation of residences?**
- e) Impacts on adjacent private lands (MCA 87-1-241 item d)?**

The proposed action brings a benefit to the nearby natural areas (described in Narrative Evaluation) and to areas with special scientific and educational interest. The Property holds a wildlife enclosure where vegetation has been studied since the 1950s, and the area is critical winter range a mule deer herd (Pac et al. 1991). Generations of Montana State University students and professors have studied the vegetation and wildlife in this area.

There are no anticipated conflicts with any existing land uses on or around the Property. The sole structures on the Property are within the proposed 10-acre building envelope, so no residences need to be relocated. The Easement would allow grazing and farming to continue.

As Gallatin County faces extreme population growth, demand for subdivision lots is high: the potential profitability of the Property would be reduced through the prohibition of subdivision. However, the proposed Conservation Easement would conserve the Property as open space and assure the conservation values unique to the Property would be retained. The addition of a conservation easement to the Property would complement the adjacent properties, two of which are also in conservation easements, creating a net benefit to the larger landscape as critical habitat functions would be retained (MCA 87-1-241 item d).

FWP would help improve an existing farm road from the county road (Rocky Mountain Road) to the Hunting Zone. Afterward, the landowner would continue to be responsible for managing the Property including control of noxious weeds (MCA 87-1-241 item f)

C) Risk/Health Hazards

Will the proposed action result in:

- a) Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?**
- b) Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?**
- c) Creation of any human health hazard or potential hazard?**
- d) For P-R/D-J, will any chemical toxicants be used?**

The proposed action would not increase risks or health hazards in the area and may provide benefits through Easement restrictions. The Easement explicitly states:

“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.”

The Easement allows for use of agricultural chemicals to control noxious weeds in a manner that would minimize damage to native plants. Limitations on future oil, gas, and mineral exploration are outlined in the Conservation Easement. Dumping, storage, and disposal of waste/refuse on the land would be prohibited.

D) Community Impact

Will the proposed action result in:

- a) Alteration of the location, distribution, density, or growth rate of the human population of an area?**
- b) Alteration of the social structure of a community?**
- c) Alteration of the level or distribution of employment or community or personal income?**
- d) Changes in industrial or commercial activity?**
- e) Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?**

The proposed action would restrict the Property to one homesite, reducing the area available for other residences. Given the relatively small scale of the Property and other nearby developments, this reduction alone is not expected to impact the overall distribution, density, or growth rate of the human population in the Gallatin Valley. As current grazing and agricultural practices are allowed through the terms of the Easement, the proposed action should not change social structures, level of employment or personal income, industrial or commercial activity. The subdivision prohibition would prevent potential increases in traffic hazards in this immediate area. The provision to allow public hunting access is in-keeping with tradition on this land and neighboring lands. MFWP does not expect the proposed action to result in any negative impacts on adjacent private lands (MCA 87-1-241 item d).

E) Public Service/Taxes/Utilities

Will the proposed action result in:

- a) An effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services (MCA 87-1-241 item e)?**
- b) An effect upon the local or state tax base and revenues (MCA 87-1-241 item e)?**
- c) A need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?**
- d) Increased use of any energy source?**
- e) Define projected revenue sources**
- f) Define projected maintenance costs**

The proposed action would increase MFWP's involvement on the Property as MFWP personnel perform annual and routine conservation easement monitoring and work with the landowner as needed to ensure conservation values are retained. Area wildlife staff would also be involved in communications about hunting access and habitat projects. MFWP already works on the neighboring lands, so overall increase in personnel capacity is not substantial. MFWP has agreed to fund the one-time improvements to the hunter access road to the mountain foothills

hunting portion of the Property at an estimated cost of between \$6,000 and \$12,000 from the Habitat Montana Operations fund. After this investment, the landowner would be responsible for management of the Property.

Power, natural gas, communications, energy use, and other governmental services would not be expected to change under the Easement terms. Local or state tax base and revenues, local schools, and private businesses, would not change from the current situation under the proposed action, and the land would continue as a single owner on the Property (MCA 87-1-241 item e).

F) Aesthetics/Recreation

Will the proposed action result in:

- a) Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?**
- b) Alteration of the aesthetic character of a community or neighborhood?**
- c) Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report.)**
- d) For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted?**

The proposed action would protect and potentially improve the natural scenic vista, aesthetic character, and recreational qualities of the area through prevention of further subdivision and the allowance for public hunting access on a portion of the land. The guaranteed public access component includes provision for up to 3 hunting parties per day, or approximately 170 hunter-days per year. The public access would include access to adjacent US Forest Service lands in the Bridger Mountains that would otherwise be difficult to reach. The proposed Easement would continue the agricultural and open-space character of the area. The Property does not include any designated or proposed wild or scenic rivers, trails, or wilderness areas.

G) Cultural/Historical Resources

Will the proposed action result in:

- a) Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?**
- b) Physical change that would affect unique cultural values?**
- c) Effects on existing religious or sacred uses of a site or area?**
- d) For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance.**

The proposed Easement does not involve any physical change to the landscape, so it should not affect any potential historic or cultural resources. There is an existing road from the county road (Rocky Mountain Road) to the proposed Hunting Zone. MFWP proposes to help improve this existing road, not create a new road.

Significance Criteria

Will the proposed action, considered as a whole:

- a) Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total).**
- b) Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?**
- c) Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?**
- d) Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?**
- e) Generate substantial debate or controversy about the nature of the impacts that would be created?**
- f) For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy?**

The proposed Conservation Easement would complement adjacent lands that have conservation easement protection as well as adjacent public lands. Collectively, these lands provide critical ungulate winter range habitat. Winter range habitats are sensitive to suburban development. The proposed action would help retain these conservation values by restricting development and allowing traditional uses of the Property while also providing for public hunting access. Any cumulative aspect of this proposed action would be beneficial to the Property and the immediate surrounding area. The proposed action is not expected to have significant opposition, controversy, potential risks, or adverse effects.

PART III. NARRATIVE EVALUATION AND COMMENT

The goal of the proposed Conservation Easement is to provide perpetual wildlife habitat protection to, and public hunting access on, an important property in the Bridger Mountain foothills. Land, air, water, vegetation, and wildlife resources are expected to benefit through the proposed Conservation Easement terms and associated Management Plan. The project would benefit the critical winter range for an important sub-population of Bridger Mountains mule deer. The human environment should experience benefits from this proposal. The public would be able to enjoy this Property during fall hunting seasons. The Easement would be expected to have conservation benefits beyond its size and borders, providing in integral piece of connected habitat to preserve open space and critical mule deer winter range.

PART IV. PUBLIC PARTICIPATION

Level of Public Involvement

The public will be notified in the following manners to comment on this current EA, the proposed action and alternatives:

Public notices in the Bozeman Chronicle and the Helena Independent Record.

Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>.

Copies of this environmental assessment will be distributed to interested parties and adjacent landowners (MCA 87-1-241 rule 2) to ensure their knowledge of the proposed project.

This level of public notice and participation is appropriate for a project of this limited scope.

Duration of Comment Period

The public comment period will extend for 27 days following the publication of the legal notice in area newspapers. A public meeting will be held **Tuesday, September 11, 2018** from 6-8pm at the Bozeman office of Montana Fish, Wildlife and Parks (address below; Part V). Written comments will be accepted through **Thursday, September 27, 2018** and can be e-mailed or mailed to the address below (Part V). Comments must be received by September 27, 2018.

PART V. EA PREPARATION

Based on the significance criteria evaluated in this EA, an EIS is not required. The proposed action is expected to be a benefit to the physical and human environment. The proposed Conservation Easement does not propose a new structure or development, just an improvement to an existing road.

Person responsible for preparing the EA:

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Bozeman Area Biologist
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REFERENCES CITED

- Cronin, M. A., M. E. Nelson, and D. F. Pac. 1991. Spatial heterogeneity of mitochondrial DNA and allozymes among populations of white-tailed deer and mule deer. *Journal of Heredity*. 82:118-127.
- Pac, D. F., R. J. Mackie, and H. E. Jorgensen. 1991. Mule deer population organization, behavior, and dynamics in a northern Rocky Mountain environment. *Montana Fish, Wildlife and Parks Final Report project # W-120-R-7-18*. 316 pp.
- MFWP, 1994. Maher Ranch Conservation Easement. Environmental Assessment, Management Plan, and Socio-Economic Assessment.



Montana Fish, Wildlife & Parks

WHITE DEER MEADOWS DEED OF CONSERVATION EASEMENT MANAGEMENT PLAN

This management plan, dated as of [Month, Day, Year], is entered into by **Six Bears Holdings, LP**, owner of **WHITE DEER MEADOWS**, whose principal address is 15750 Rocky Mountain Road, Belgrade, MT 59714, (hereafter referred to as the “Landowner”) and **MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (hereafter referred to as “FWP” or the “Department”).

This Management Plan is being entered into pursuant to Section II.E. of that Certain Deed of Conservation Easement granted by the Landowner to the Department on [Month, Day, Year], and recorded as County Record [Number] on [Month, Day, Year], in the records of Gallatin County, Montana.

This Management Plan serves as a flexible link between Conservation Easement (CE) terms intended to endure in perpetuity and changeable conditions and situations on the land. It is a living document, to be reviewed periodically by FWP and the Landowner, and to be amended as needed upon agreement of both parties. Its function is to document strategies for land management in which FWP and the Landowner would be cooperating to ensure consistency with the terms and intent of the CE. The principal strategy is periodic meetings with the landowner and field monitoring of compliance with CE terms. Additionally, this Management Plan details strategies for managing croplands, native, riparian, and mountain foothill habitats, controlling noxious weeds, and allowing public recreational access as guaranteed in the CE document.

I. INTRODUCTION

The purpose of the FWP/White Deer Meadows Conservation Easement is to preserve and protect the conservation and agricultural values of the Land, particularly the habitat the Land provides for wildlife species, in perpetuity. The White Deer Meadows property includes approximately 404 acres along the Bridger Mountain foothills south of North Cottonwood Creek and north of Bill Smith Creek.

The Landowner offered the sale of the White Deer Meadows conservation easement to FWP. This offer reflects the Landowner’s desire to promote conservation of the land, to prevent

subdivision, and to protect mule deer winter range along with other wildlife habitat values. Funding sources for this CE is Habitat Montana.

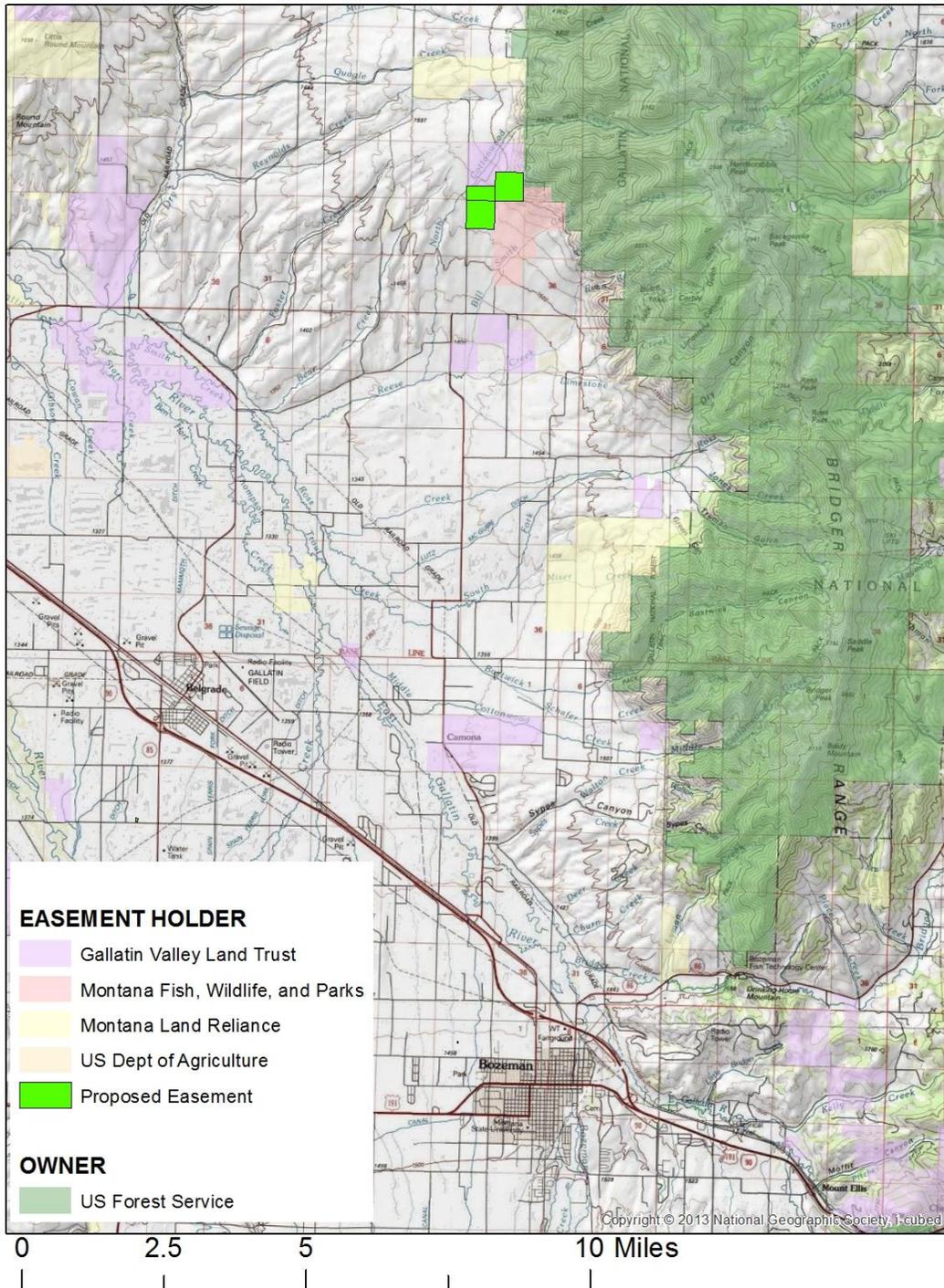


Figure 1: White Deer Meadows conservation easement project location

The property possesses a mosaic of deciduous shrubland, sagebrush steppe, coniferous forest, and montane grassland on a south-facing aspect that makes it high-value ungulate winter range. Approximately 30 acres of riparian vegetation include healthy aspen clones, willow, and mature cottonwoods. Approximately 160 acres of shrub-steppe include antelope bitterbrush, sagebrush, snowberry, chokecherry, serviceberry, and Rocky Mountain juniper. Approximately 180 acres of montane grasslands include native components (Idaho fescue, western wheatgrass, and prairie junegrass) and non-native components (smooth brome, orchard grass, Kentucky bluegrass, and mountain timothy), with increased non-native components aligned with approximately 160 acres (the agricultural use area) on the south end of the property. Approximately 30 acres of conifer-dominated forest mainly include Douglas fir and Rocky Mountain juniper.

Approximately 1,000 yards of North Cottonwood Creek flows through the property. There are 2 springs on-site, and 1 spring that flows into the property. The property has 2 historic ditches for irrigation of once-plowed hay pastures in the approximately 160-acre agricultural area where non-native species now dominate. Native grasses, desirable forbs and shrubs, and conifer communities dominate the approximately 160-acre hunting zone. An approximately 80-acre portion (Riparian Area) includes most of the riparian vegetation found on site (Figure 2).

The project site is in critical winter range for 200-400 mule deer in the Northwest Slope population, also known as Population Habitat Unit 1 (Pac et al. 1991). Mule deer winter range significantly overlaps with private land in the Bridger foothills, and development of this winter range is one of the highest threats to this population. The area is also in range of 3 mammal species of concern: wolverine, hoary bat, and little brown myotis (Montana Natural Heritage Program, accessed 2/12/2018). Other wildlife values include 100-150 elk, white-tailed deer, black bear, mountain lion, bobcat, coyote, red fox, Merriam's turkey, ring-necked pheasant, blue grouse, ruffed grouse, golden eagle, red-tailed hawk, northern goshawk, and prairie falcon (Cunningham personal observation, MFWP 1994).

The Landowner recently purchased this property from the family of its long-time owner, the Armstrong/Millage Ranch. The property will be managed for its aesthetic, intrinsic, wildlife, recreational, and agricultural values for the benefit of both current and future generations.

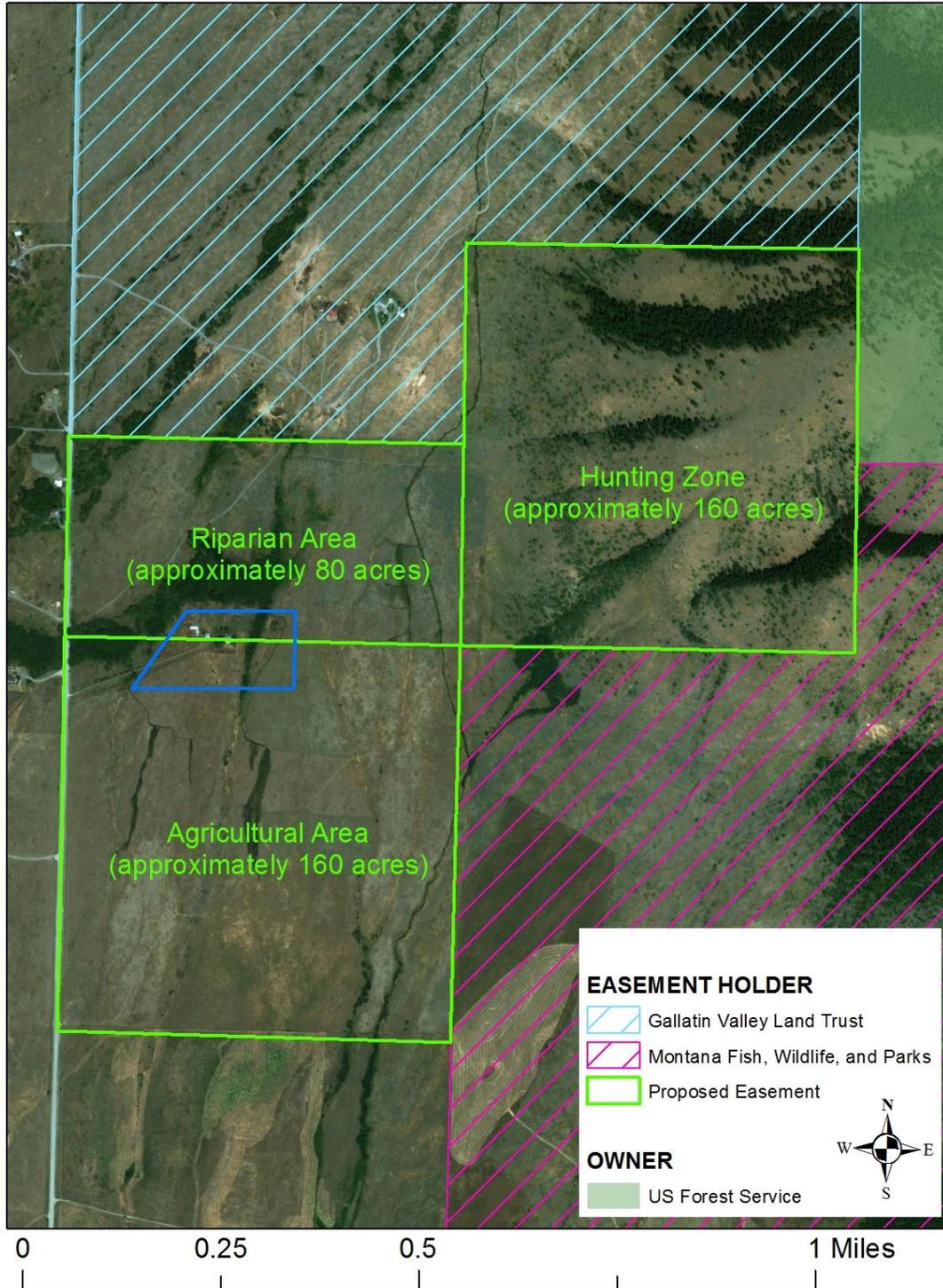


Figure 2: The White Deer Meadows property outlined in green showing approximate acreage for the three areas of management interest. The 10-acre building envelope is outlined in blue. Adjacent US Forest Service and neighboring conservation easements as shown.

II. GOALS AND OBJECTIVES

GOAL 1: BY IMPLEMENTATION OF FWP EASEMENT TERMS, THE QUALITY AND AMOUNTS OF NATIVE HABITATS, IMPORTANT AGRICULTURAL HABITATS, AND WILDLIFE USE FOUND ON WHITE DEER MEADOWS, SHALL BE MAINTAINED AND/OR IMPROVED WITHOUT DISPLACING PRIVATE LAND USE.

Objective 1: Maintain and/or enhance native grasslands, shrublands, conifers, and riparian vegetation for wildlife habitat through conservation easement protections.

Native Grasslands: Native grasslands occur along and within the riparian habitats of the riparian area and mountain foothills in the hunting zone. Removal or manipulation (such as sod-busting) of native grasslands is prohibited under the terms of the easement. Vegetation manipulation through the implementation of the grazing system will be allowed.

Shrublands and Conifers: Woody shrub and tree species are critically important to wildlife. The removal, control, or manipulation of shrub and tree species by any means is prohibited within the terms of the easement including but not limited to burning, plowing, chemical treatment, or removal of such tree and shrub species. These prohibitions do not apply to the routine clearing or control of brush in connection with the construction and maintenance of trails, roads, fences, and structures permitted under this easement. Through this management plan, and if both parties agree, conifer management projects may be designed to enhance ungulate winter range.

Riparian Vegetation: Removal or manipulation (farming, sod-busting) of riparian areas is prohibited within the terms of the easement.

Objective 2: Maintain and/or enhance existing native and wildlife-friendly plant communities, as well as agricultural habitats. If farming and grazing are desired, conservation practices to promote wildlife habitat enhancement will be employed particular to the portion of the property of the intended action.

Grazing management:

Domestic sheep and goats shall be prohibited on this property to prevent the spread of disease to native wildlife. Terms defined in the easement or this management plan do not require grazing, and grazing is currently not proposed, but this property is capable of sustaining livestock use under sound management practices. For the purposes of grazing management, there are three portions of the property to consider (Figure 2):

Building envelope: within the approximately 10-acre building envelope, up to 10 horses or other allowed domestic grazers may be kept, housed, and fed.

Agricultural Area: The approximately 160-acre agricultural area largely consists of non-native grasses and is mainly intended for cultivation. When/if this pasture becomes cropland, opportunities for grazing will be limited to post-harvest and will be at the owner's discretion. If this area is not used for tilled cropland or cultivation, grazing can be allowed as discussed in the non-native pasture section of Appendix A.

Riparian Area and Hunting Zone: These areas together (approximately 240 acres) will comprise one grazing pasture, which may be grazed in numbers, distribution, and at times of year as part of a rest-rotation grazing plan meeting or exceeding FWP minimum grazing standards (Appendix A). If the Landowner wishes to graze within these areas, grazing will be conducted in a manner that will minimize impact to woody riparian vegetation.

If grazing is desired by mutual agreement of the landowner and department, grazing will require adherence to a grazing management plan with a rest-rotation grazing system that meets or exceeds the FWP minimum grazing standards (Appendix A). A detailed grazing plan will be created at that time.

Upon mutual agreement between both parties, the hunting zone and riparian area may be grazed as one pasture. In a given year, these areas could receive one treatment: growing season grazing, post seed-ripe grazing, or full rest from grazing. If the intent is to use grazing in consecutive years, the scheduled rotation would be: 1) grazing allowed during growing season, 2) grazing allowed after seed-ripe, and then 3) a full year of rest from grazing. Grazing in the riparian area will be given additional considerations regarding frequency and duration of livestock grazing to minimize impacts to woody vegetation.

Maximum stocking rate is discussed in Appendix A and will not be further defined here.

Grazing plan adherence will be monitored annually by FWP to assess effectiveness and Landowner compliance. FWP retains the option for conducting vegetation monitoring to further assess vegetation trends and impacts from grazing. FWP, in conjunction with the Landowners, may recommend fence and water improvements, if deemed necessary.

Farming:

To perpetually define and ensure sound agricultural practices across time and Landowners, this easement requires sound farming practices to be implemented on existing cultivated ground and allows for future implementation of wildlife habitat enhancement projects.

Farming activity will be permitted on existing or historic farm/cultivated ground only (agricultural area, Figure 2). Sod busting or tilling of previously undisturbed ground, including uplands, riparian and wetland vegetation, is not permitted under the easement. When possible, landowners will maintain dry land harvested grain field stubble height at 10 inches or more for upland game bird habitat. Should grain fields be converted to hay production, haying will be prohibited until after July 15 to protect upland game bird nesting.

Infrastructure:

As per the conservation easement terms, the Landowner has the right to “construct, remove, maintain, repair, or replace fences, corrals, and other livestock handling structures” provided the structures do not significantly impact wildlife habitat or wildlife migration on and through the land. Land maintenance, including but not limited to fence and water development construction and repair, noxious weed control shall be the responsibility of the landowner. FWP agrees to make modest improvements to the access road and establish the parking area to a level the Department determines is sufficient to provide the planned level of public use. FWP will not provide maintenance of these improvements after their initial establishment.

All new fence construction must comply with FWP’s Wildlife-Friendly Fencing guidelines, following MFWP 2012 or more recent edition if applicable.

Objective 3: Maintain wildlife use of the property.

The property provides year-round habitat for game and non-game species. The main goal of the easement centers on preserving intact winter range for mule deer by preventing subdivision and further fragmentation of the land. Mule deer winter range is mainly represented within the hunting zone but includes the property in its entirety. The local mule deer herd numbers 200-400. The area is also in range of 3 mammal species of concern: wolverine, hoary bat, and little brown myotis (Montana Natural Heritage Program, accessed 2/12/2018). Other wildlife values include 100-150 elk, white-tailed deer, black bear, mountain lion, bobcat, coyote, red fox, Merriam’s turkey, ring-necked pheasant, blue grouse, ruffed grouse, golden eagle, red-tailed hawk, northern goshawk, and prairie falcon.

If game damage issues occur, they will be managed through hunting whenever possible during the general hunting season frameworks. Game damage hunts may be options should wildlife damage occur outside general hunting season dates. Game damage materials and/or assistance are provided on an as-needed basis by FWP to landowners who allow reasonable free public hunting.

GOAL 2: PROVIDE GUARANTEED PUBLIC HUNTING ACCESS OPPORTUNITY

Objective 1: Maintain managed public access for hunting use on deeded land and to adjoining public lands.

The easement guarantees reasonable public hunting access only to the hunting zone (and neighboring US Forest Service lands) during general hunting seasons. Hunting may occur elsewhere on the property at the landowner's discretion. As per FWP Conservation and Public Access Easement terms, the Landowner must allow reasonable nonmotorized public access for hunting big game and birds during all general fall hunting seasons (i.e., game bird, archery big game, and rifle big game hunting seasons). The Landowner may not charge fees, lease, or commercially outfit fishing, hunting, trapping, or charge trespass fees on deeded land or to adjoining public lands.

Public access will originate from Springhill/Rocky Mountain Road to the private access road north of the Landowner's building envelope (Figure 3). Hunters will be required to park at the designated parking area, and then will be able to access the hunting zone by foot. Hunting may occur according to regulations established by the Montana Fish and Wildlife Commission.

Landowner(s) may deny access to, or expel from the Land, any person for cause, including: intoxication or use of illegal substances, reckless behavior that jeopardizes human life, wildlife habitat, or Landowner's property, or is in violation of law or regulation applicable to public use of the Land; or misconduct under or violation of the terms of public access provided in this easement, including any plan of access adopted and implemented under this easement.

See Exhibit A for additional details

III. FWP / WHITE DEER MEADOWS PROPERTY BASELINE

To document existing wildlife habitat, infrastructure, and vegetative communities, these characteristics will be described, photographed, and mapped in an “Easement Baseline Inventory Report.” The baseline report serves as a tool for monitoring, allowing identification of any significant changes to the property over time. Annual monitoring of the entire property will be conducted by FWP, preferably alongside the Landowner(s), to determine compliance with the easement terms and to assess Management Plan effectiveness. Monitoring results will be shared with the landowner.

The Landowner is encouraged to thoroughly familiarize themselves with easement terms, Management Plan and grazing system, and refer to the Deed of Conservation Easement and Management Plan documents or contact FWP with any questions or concerns to avoid non-compliance. Conservation easements are a partnership and regular communication between Landowner and FWP can be very beneficial for both parties.

IV. REFERENCES CITED

Pac, D. F., R. J. Mackie, and H. E. Jorgensen. 1991. Mule deer population organization, behavior, and dynamics in a northern Rocky Mountain environment. Montana Fish, Wildlife and Parks Final Report project # W-120-R-7-18. 316 pp.

MFWP, 1994. Maher Ranch Conservation Easement. Environmental Assessment, Management Plan, and Socio-Economic Assessment.

MFWP, 2012. A Landowner’s Guide to Wildlife Friendly Fences. Second Edition. 56pp. Helena, MT.

EXHIBIT A: WHITE DEER MEADOWS CONSERVATION EASEMENT ACCESS RULES

- 1) The approximately 160-acre hunting zone and adjacent U.S. Forest Service lands are open to public hunting each day of fall upland game bird and big game archery and rifle hunting seasons (dates set as by the Fish and Wildlife Commission – see hunting regulations). This property is located within FWP Deer/Elk Hunting District 312.
- 2) Any hunting access to the remainder of the property is at the landowners' discretion. Hunters should not expect to be allowed access to other areas of the property besides the designated hunting zone.
- 3) Hunting access is allowed via park-and-walk (non-motorized only) from the designated parking area along the ranch access road (see attached map).
- 4) Hunting access will be permitted by reservation only. Reservations may be obtained by calling [describe who/when, phone number]
- 5) When demand exists, up to 3 hunting parties per day will be allowed.
- 6) No camping or open fires are permitted on the property.
- 7) No hunting in the immediate vicinity of livestock (if present).
- 8) Come prepared to retrieve harvested game (i.e., backpacks, drag ropes, game cart, etc.)
Horses will not be allowed.

Report violations to 1-800-TIP-MONT

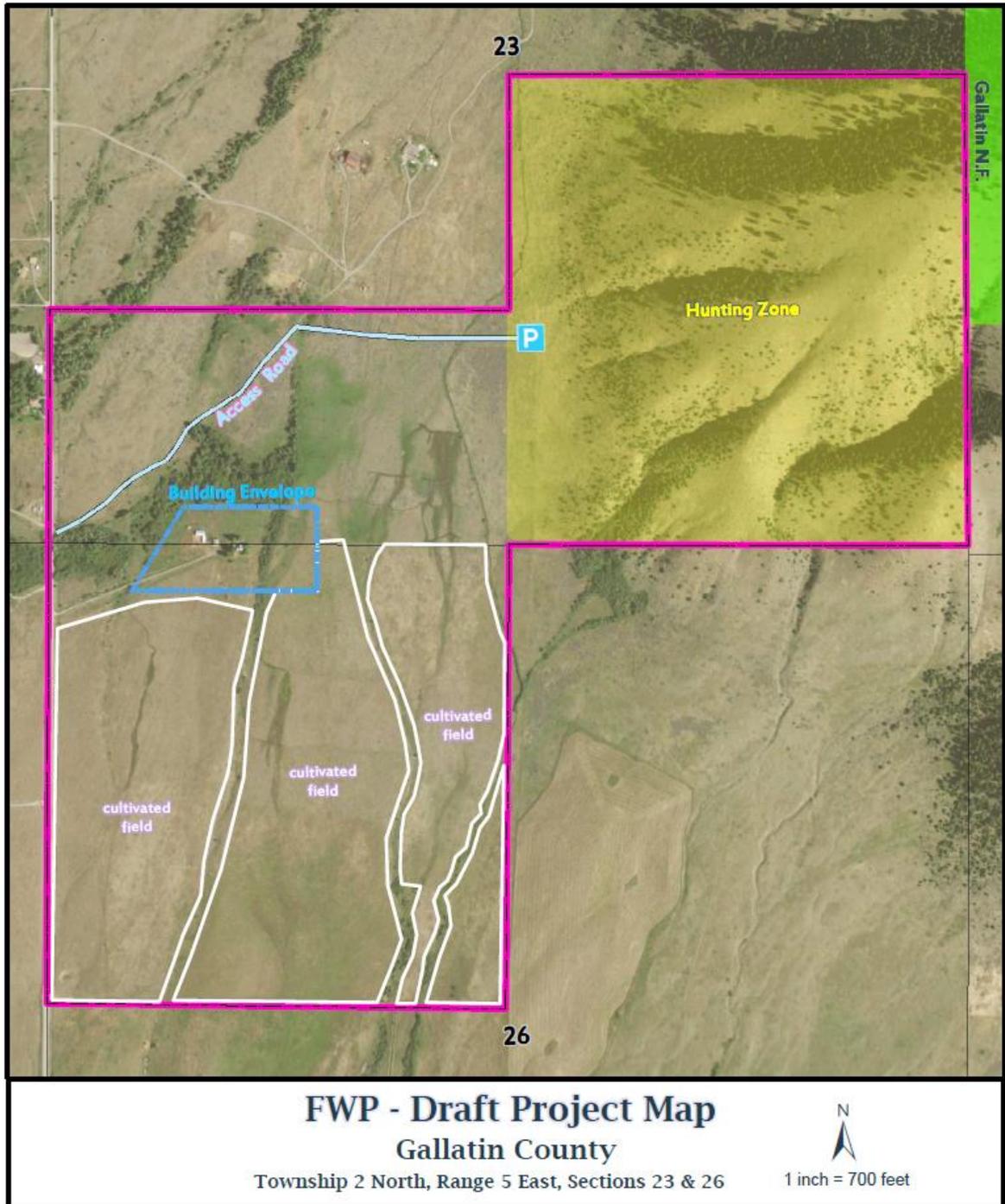


Figure 3: Exhibit A map of hunting zone, parking areas, and access road.

APPENDIX A: FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Version 1.2 (received 08/20/2018)

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.

| Grazing Seasons | Pasture 1 | Pasture 2 | Pasture 3 |
|---|------------------|------------------|------------------|
| Year One | A | B | C |
| Year Two | B | C | A |
| Year Three | 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 unique needs of a livestock operation. For instance, 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, holding corrals, or pastures used for weaning and shipping. Also, one or more pastures may be necessary for rounding up or transitioning livestock between summer/fall and winter seasons, which may require annual fall grazing. As long as the majority of the native rangelands involved are within a grazing system that meets the minimum standards for yearlong rest and season long deferment, 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 minimum standards for season long deferment and yearlong rest applied to native rangelands do not necessarily apply to non-native 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.

Management Plan Approved By:

LANDOWNER

Six Bears Holdings, L.P., an Arizona Limited Partnership

By: Cub Management, Inc.

Its General Partner

By:

Michael D. Strasser, Its President

Date

Howard Burt, FWP Region 3 Wildlife Manager

Date

Mark Deleray, FWP Region 3 Supervisor

Date

Ken McDonald, FWP Wildlife Division Administrator

Date

WHITE DEER MEADOWS DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this _____ day of _____, 2018, by **Six Bears Holdings, L.P. a limited partnership** (“Landowner”), whose mailing address is 15750 Rocky Mountain Road, Belgrade, MT 59714, to the **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 Land

Exhibit B - Map Identifying the Conservation Easement Boundary

Exhibit C - FWP Minimum Standards for Grazing Livestock

Exhibit D - Map Identifying Parking Area, Access Road, Cultivated Fields, Hunting Zone, and the Building Area

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 resources of value.
- B.** The Landowner is the owner of certain real property in Gallatin County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Land is depicted in Exhibit B.
- C.** The Land possesses significant agricultural values and communities of native plants 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 watching and the Landowner and the Department specifically intend that this Easement afford public hunting for recreational purposes and for wildlife management purposes.
- G. This Easement was purchased using funds provided by the Habitat Montana Program.
- 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 plant 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 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 the 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 Landowners 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 reasonable 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 the 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 Notice** 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 on the Land in the “Hunting Zone” as shown in the attached Exhibit D (“Hunting Zone”). Members of the public who have hunting access to the Land pursuant to paragraph II.B.5 may further cross the Hunting Zone to adjacent publicly accessible lands. The parties may mutually agree in writing to allow additional public recreational access provided that in no event shall the Hunting Zone be closed except pursuant to the provisions for closure provided herein. This right shall be exercised in accordance with the following terms and conditions:

a. The public may hunt game animals and game birds of all sex and age classes within the Hunting Zone in accordance with hunting regulations adopted by the State of Montana.

b. When demand exists and upon request by members of the public during the general hunting seasons set by the State of Montana, Landowner must permit a minimum of **170** hunters on the Land per year (“Hunter Days”) on a first-come, first-served basis. For purposes of this Easement, the parties agree the general hunting season is the fall hunting season for big game and bird which commonly takes place from approximately September 1 to January 1 of the following year, as may be adjusted from time to time by the State of Montana, but in any event begins no earlier than August 15. The parties further agree that the general season may be extended, or seasons may be added by mutual agreement through the Management Plan.

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.
4. The Landowner has the right to manage the distribution of hunters on the Land to address reasonable concerns for the safety of persons and property, including livestock.

c. 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.

d. 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

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.

e. Those members of the public who have recreational access to the Land pursuant to this Paragraph II B.5. shall also have motor vehicle access over and across the Access Road and shall park in the designated area referred to as Parking Area identified in Exhibit D attached to this Easement and incorporated herein by this reference. The public may not drive off these designated areas for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public may travel on foot from the parking area or from other publicly accessible areas to hunt in the Hunting Zone 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 area across the Hunting Zone to access adjacent publicly accessible lands which allow 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.

f. 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.

g. 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.

h. 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 or the use of fires.

i. The Landowner may participate in programs offered by the Department or other entities intended to manage hunting activities or 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**, 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 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 "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 through the years. 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 a rest-rotation system 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 substitute for cattle with **Prior Approval**. Landowner may have up to 10 horses on any portion of the Land in accordance with the terms in this Easement governing livestock grazing and as provided in the Management Plan. Domestic sheep and goats are prohibited on the Land.
2. **Agricultural Activities and Habitat Management.** The right to use the Land and to use equipment on the Land to raise agricultural crops and to manage habitat for wildlife, all in a manner consistent with the following provision:
 - a. Areas labeled as "Cultivated Field" in Exhibit D, the Landowners may cultivate, farm, harvest, and conduct associated activities for the purpose of producing any type of perennial or non-perennial agricultural crop. Grain harvest will be conducted to retain a minimum stubble height of 12 inches, as compatible with planted crop variety. Cultivated Field areas that produce a crop in a given year may only be cultivated for planting or fallowing after winter with the intent of retaining winter food and cover for wildlife.
 - b. Areas not labeled as "Cultivated Field" in Exhibit D shall be considered to be "Rangeland" and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.
 - c. Small scale beekeeping activities may occur in areas labeled as "Cultivated Field" or "Building Envelope".
 - d. The right to raise poultry for domestic use.
3. **Leasing the Land.** The Land may be leased to another agricultural operator for agricultural purposes, provided that: (i) a written lease must be entered into by the Landowner and the lessee(s); (ii) the lease must require the lessee to follow the terms of

the Easement, as well as any applicable provisions of the Management Plan; and (iii) a copy of the executed lease must be provided to the Department. The Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s). Lease of the Land, or of a portion of the Land, are subject to **Prior Notice**, so the Department can evaluate and provide input for the Landowner and lessee(s) to assist in compliance with the Conservation Easement, Management Plan and grazing system.

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, domestic use, irrigation, 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, or riparian vegetation 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 and consistent with the Conservation Values.

Landowner further retains the right to develop and use a fish pond consistent with the above provisions and in a location mutually agreed upon by the Parties.

6. **Agricultural Structures.** The Landowner has the following rights pertaining to agricultural structures:
 - a. The right to construct, remove, maintain, renovate, repair or replace fences necessary for generally accepted agricultural activities. However, any fence that inhibits the movement of fish or wildlife, or that would have significant impacts on fish or wildlife habitat or fish or wildlife migration on and through the Land is prohibited. This prohibition does not apply to fences and other structures necessary to protect silage pits, haystacks, domestic gardens, and small orchards.
 - b. The right to construct, alter, improve, remove, replace, relocate and maintain corrals and agricultural outbuildings as long as these structures are located within the “Building Envelope” identified in the attached Exhibit D and are not used for human habitation.

7. **Residential Structures.** The Landowner has the right to place or construct, alter, move, improve, remove, replace, and maintain one single family residence and a guest home which may be rented as a single unit, along with associated residential outbuildings located within the “Building Envelope” identified in the attached Exhibit D. For the purposes of this Easement, the term “associated residential outbuildings” means those structures that are not used for human habitation, but which are appurtenant to the permitted single-family residence or guest home.

8. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings in connection with farming, ranching, timber management, and/or residential access as herein permitted. Any road, bridge, or waterway crossings constructed for one or more of such purposes shall be sited and maintained so as to minimize adverse impact on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to the **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.

Landowner reserves the right to install, maintain, repair and replace (a) a locked gate at the entrance of the driveway to the main residence; and (b) during times when the general hunting season is not in effect locked gates at the entrance of the Access Road and at the Parking Area.

9. **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.

10. **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”). With **Prior Notice** to the Department, Landowner may bury existing overhead utility lines, provided such utility lines are buried along the same route as the existing overhead lines.

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.10.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.10.d. below.

d. *Utility Plan.* Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. 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 Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Gallatin County, signed by the Landowner, the Department, and the utility service provider prior to construction.

11. Renewable Energy Generation for Use On the Land. With the **Prior Approval** of the Department, 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 of the Land or credited to Landowner’s utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval** of the Department. Any renewable energy production for use on the Land and associated distribution facilities, including transmission lines and pipelines, permitted by this Easement must be consistent with protection and preservation of the Conservation Values. In particular, proposed hydropower generation may not occur if riparian or wetland habitats are impaired.

12. Agricultural Chemicals. The right to use agricultural chemicals 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 noxious weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for noxious 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**. The aerial application of herbicide to control noxious weeds is subject to **Prior Approval**, unless otherwise specified in the management plan.

13. Regulation of Public Use. The right to regulate public use of the Land at all times; subject, however, to the right of public recreational access granted to the Department in Paragraph II.B.5.

The Landowner reserves the right to place and replace signs, fences and markers to identify boundaries, corners, and other reference points on the Land to prevent members of the public from traveling off the Access Road and outside the Hunting Zone.

14. Oil and Gas Exploration, Extraction, and Development. The right to explore for and extract oil and gas in, on, or under the Land, subject, however, to the following conditions:

- a. Landowner may explore for and extract oil and gas only if such activity will not result in significant impairment or interference with the Conservation Values.
- b. Development of oil and gas may only be conducted by subsurface methods (e.g., well drilling) and must be conducted in a manner consistent with site-specific stipulations as mutually agreed upon by the Department and the Landowner and as necessary to protect the Conservation Values. Under no circumstance may any oil or gas be removed by any surface mining method; it being understood, however, that wells may be drilled and hydrocarbon minerals may be removed at the ground surface, which shall not constitute surface mining as used herein.
- c. No oil and gas exploration, development or extraction activity may take place within or upon wetland and riparian areas, and no oil and gas operation may degrade the quality of any surface water, stream, or ground water. Any water degraded in quality resulting from permitted exploration or extraction activities must be piped off of the Land or, subject to **Prior Approval**, disposed of by other methods.
- d. Any incidental surface disturbance resulting from permitted exploration or subsurface extraction activities must be limited, localized, and temporary, and the surface shall be restored upon completion of such activities to a condition similar or equivalent to its state prior to the disturbance by reclaiming land contours, by restoring soils, by replanting and tending native vegetation until the vegetation is mature, established, and self-perpetuating.
- e. Access for exploration or extraction activities shall be by existing roads; provided, however that, subject to **Prior Approval**, a new road for this purpose may be constructed if such road is sited and maintained so as to avoid adverse impacts to the Conservation Values. Any new road shall be restored as nearly as practicable to its previous condition after exploration and extraction activities are concluded.
- f. No refinery or secondary production facility may be located on the Land. Any oil and gas developed or produced from the Land must be transported from the Land in a manner that does not impair the Conservation Values, and the method of and facilities for such transport are subject to **Prior Approval**. The number and kind of structures

used in the exploration for or extraction of oil and gas shall be limited to the minimum necessary to accomplish exploration, development or extraction. Upon the termination of any phase of exploration, development or extraction, all associated structures (that are not necessary for the subsequent phase) shall be removed and those portions of the Land no longer being used for the oil and gas operation shall be restored as nearly as practicable to their previous condition.

- g. For oil and gas and other mineral rights held by a third party, Landowner agrees to notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.
- h. The Landowner must provide **Prior Notice** to the Department before entering into any lease or other agreement for oil and gas exploration or development on the Land.

15. Subdivision and Conveyance of Land Ownership.

- a. For the purposes of this Easement, the Land shall be considered to be comprised of one parcel, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the parcel 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 parcel 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 entirety to another party.
- c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.15.

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, Landowner may sell 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, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to land uses specifically allowed by this Easement or as provided below:
 - a. *For protection and maintenance.* The Landowner is permitted to harvest timber and other woody vegetation for the protection of persons and property; and for maintenance of roads and trails. All timber harvested pursuant to this paragraph by the Landowner must be disposed of or used on the Land.
 - b. *For habitat enhancement or disease control.* Subject to **Prior Approval** by the Department, the Landowner may conduct other forest management activities only for the primary purpose of restoring or enhancing wildlife habitat or for controlling forest disease. Any request to perform forest management activities must be accompanied by a timber management plan prepared by a qualified forester or other qualified natural resource professional. The Landowner and the Department will mutually determine the completeness of the plan and its adherence to the general and specific intentions of this Easement prior to the approval of the plan and the initiation of any timber harvest.
3. **Wetland and Riparian Areas.**
 - a. For the purpose of this conservation easement, riparian areas are defined as vegetation zones adjacent to streams, springs, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or groundwater.
 - 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. Any such improvements performed shall be at the expense of the party making such improvements.
 - 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 roads, fences, utility lines, 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. For the purposes of this Easement the legal or de facto division or subdivision of Land 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 will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. 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.12. is prohibited.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.8. is prohibited.
8. **Land Cultivation.** The cultivation or farming of any portion of the Land is prohibited, except as provided in Paragraph II.C.2. and except 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 or fishing or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting or fishing on the Land or for access across the Land to reach public land or other private land, is prohibited.
10. **Mineral Exploration and Development.** 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, or similar materials, except as provided for Paragraphs II.C.14. Any other mineral exploration, development, or extraction is prohibited.

- 11. Buildings and Structures.** The construction or placement of any structure or building on the Land is prohibited, other than as expressly allowed in Paragraphs II.C.5., II.C.6., II.C.7., II.C.10., and II.C.14.
- 12. Residential Use.** Residential use of the Land or any portion thereof is prohibited other than as expressly allowed in Paragraphs II.C.5., II.C.7., and II.C.10.
- 13. 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, lambing, 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.
- 14. 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.
- 15. 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, guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, 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.
- 16. Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited; provided, however, that 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., are not considered waste disposal.
- 17. 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 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 an 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 attached as Exhibit E, to be an accurate representation of the physical and biological condition of the Land and its nonresidential 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

1. 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.
2. 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 must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.
3. 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 consistent with the terms of this Easement and therefore allowed.
4. 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 the 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.
5. 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: Six Bears Holdings, L.P. a limited partnership
15750 Rocky Mountain Road
Belgrade, MT 59714

With a copy to: Mike and Janie Strasser
6510 Westchester Dr.
Spokane, WA 99223-6218

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
1400 South 19th
Bozeman, MT 59718

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. Email notices shall be deemed effective upon delivery to recipient.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that the Landowner has violated the terms of this Easement, or if the Landowner undertakes 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 agrees 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 reasonable 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's 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's 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'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. Attorneys' fees and reasonable costs of suit that are incurred by a prevailing party in enforcing the terms of this Easement against the other party, including recovery of costs and damages if authorized under Montana law for temporary or preliminary injunctive relief that is improvidently granted, shall be borne by the non-prevailing party if so ordered by a court.

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.G.

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 its agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify the Landowner 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 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 its 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 60.5 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 39.5 percent of the unencumbered value of the real property and the Department shall be entitled to receive 60.5 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 purpose 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.

K. 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.

L. 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 Gallatin County.

M. RECORDING

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

N. 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 any way 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.

O. 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.L. 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.

ACKNOWLEDGEMENTS

STATE OF MONTANA)
 : ss.
COUNTY OF GALLATIN__)

This instrument was acknowledged before me on _____, 2018, by Mike Strasser, as _____ of Six Bears Holdings, L.P. a limited Partnership.

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My Commission Expires _____

STATE OF MONTANA)
 : ss.
COUNTY OF GALLATIN)

This instrument was acknowledged before me on _____, 2018, by _____ Janie Strasser as _____ of Six Bears Holdings, L.P. a limited Partnership.

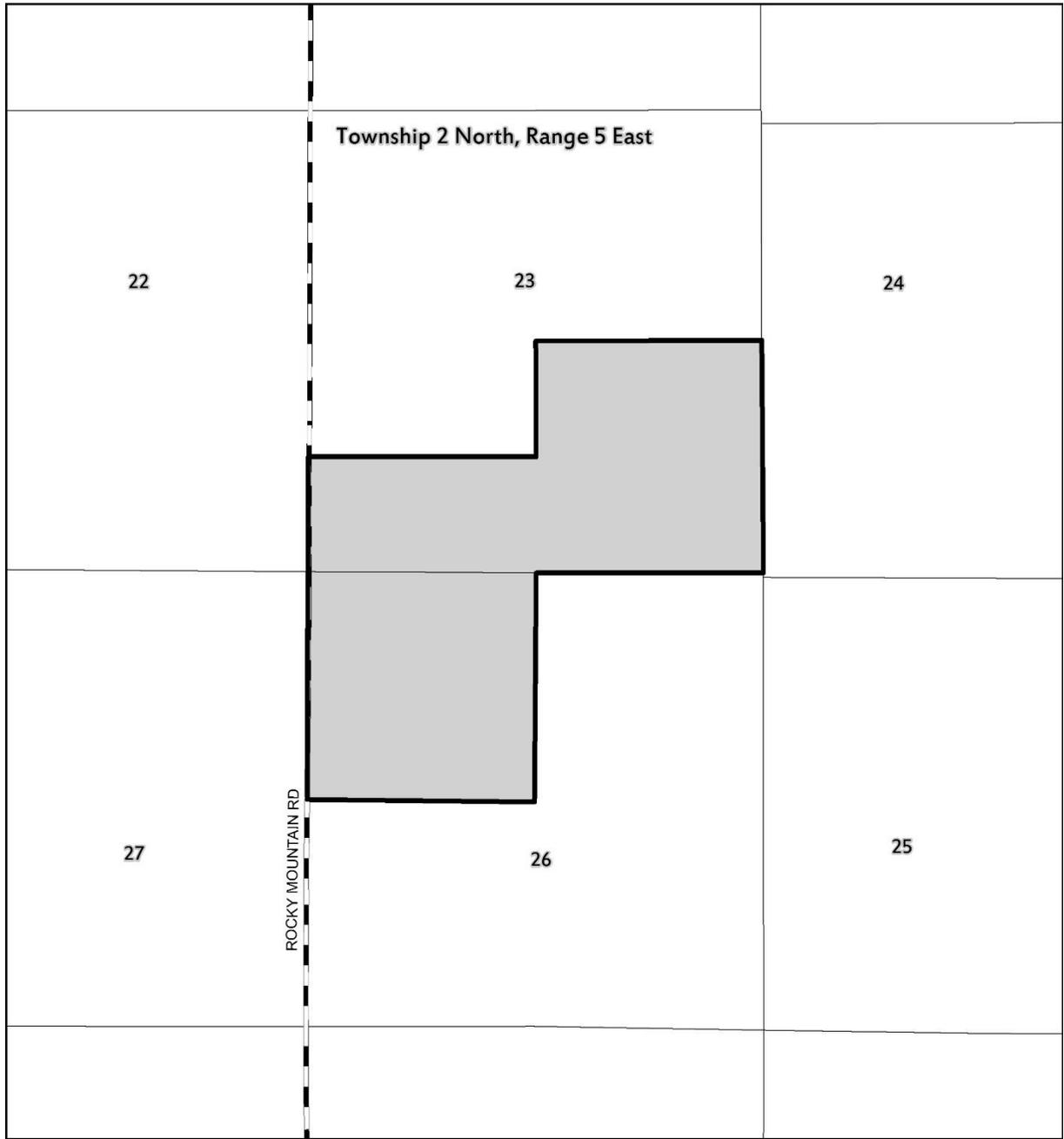
Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My Commission Expires _____

EXHIBIT A – LEGAL DESCRIPTION

Certificate of Survey No. 2679, situated in the SE¹/₄ and the S¹/₂ of the SW¹/₄ of Section 23 and the NW¹/₄ of Section 26, Township 2 North, Range 5 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

-- END OF LEGAL DESCRIPTION --

EXHIBIT B



0 500 1,000 Feet

White Deer Meadows Conservation Easement 
Public Road 

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 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 some areas where wildlife production is the primary objective, 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 the 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 to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches yet provide flexibility to conserve and protect habitat needs where they are 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 Standards 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 allowing 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 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.

| Grazing Seasons* | Pasture 1 | Pasture 2 | Pasture 3 |
|------------------|-----------|-----------|-----------|
| Year One | A | B | C |
| Year Two | B | C | A |
| Year Three | 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 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 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 designate 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 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 Two (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

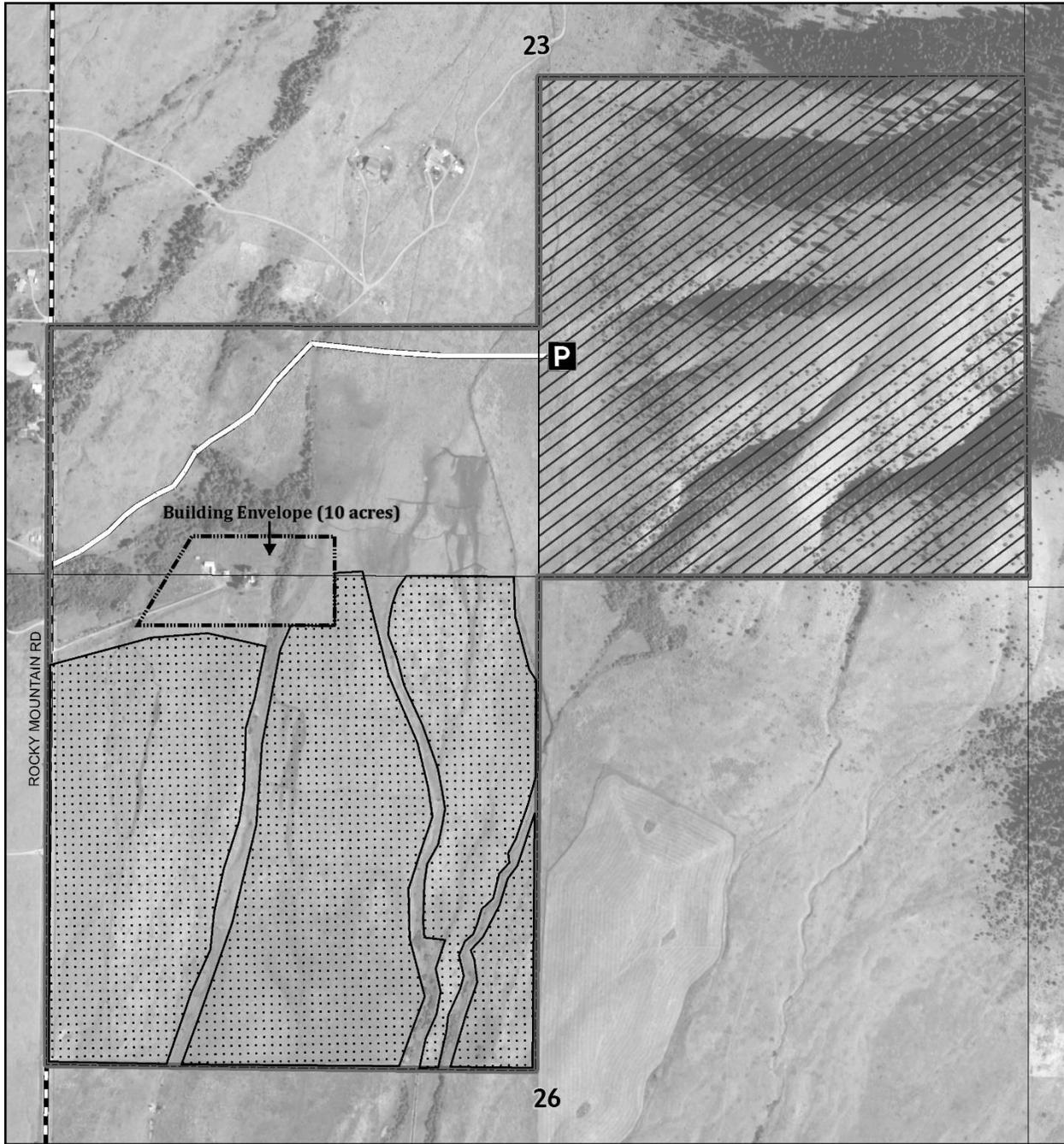
On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will 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.

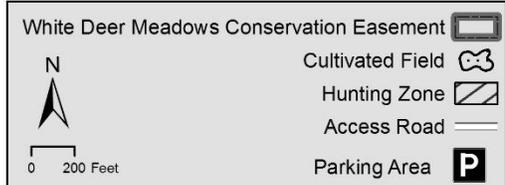
Flexibility

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



Township 2 North, Range 5 East, Sections 23 & 26
Gallatin County



Year 2015 Image, U.S. Department of Agriculture,
Farm Services Agency, Aerial Photography Field Office