DRAFT ENVIRONMENTAL ASSESSMENT

FOR THE

W-BAR CONSERVATION EASEMENT

MAY 2020

MONTANA FISH, WILDLIFE & PARKS

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Attachments:
A. Draft Deed of Conservation Easement
B. Draft Management Plan

Chapter 1.0: Purpose of and Need for Action

1.1 Proposed Action

The Montana Department of Fish, Wildlife and Parks (hereafter, "FWP" or "the Department") proposes to purchase a perpetual conservation easement totaling 6,751 acres in Wibaux County, Montana. The W-Bar Conservation Easement would be administered by FWP and funded by Habitat Montana and Pittman-Robertson dollars. See Chapter 2, section 2.1 below for further details on anticipated funding sources. The easement can be viewed in its entirety, including maps and legal descriptions of easement land, in Attachment A. The proposed easement will be referred to as the "W-Bar Conservation Easement", "Conservation Easement", or "Ranch" herein (Figures 1 and 2).

Figure 1. *The proposed Conservation Easement is located in Eastern Montana approximately 10 miles northeast of Wibaux, MT.*

Conservation easements are voluntary binding agreements, between a landowner, and in this case, FWP. Through the conservation easement, FWP pays that landowner and, in exchange, the landowner agrees to limit certain uses of the property in order to protect high-priority wildlife habitat and conservation values. The conservation easement deed is recorded and stays with the land in perpetuity. Developing and implementing conservation easements requires an ongoing partnership between FWP and willing private landowners with the primary intent of conserving important native wildlife habitats and providing public access, while keeping the land in private ownership. The proposed W-Bar Conservation Easement would encompass a diversity of Eastern Montana habitat types, protecting conservation values in perpetuity.

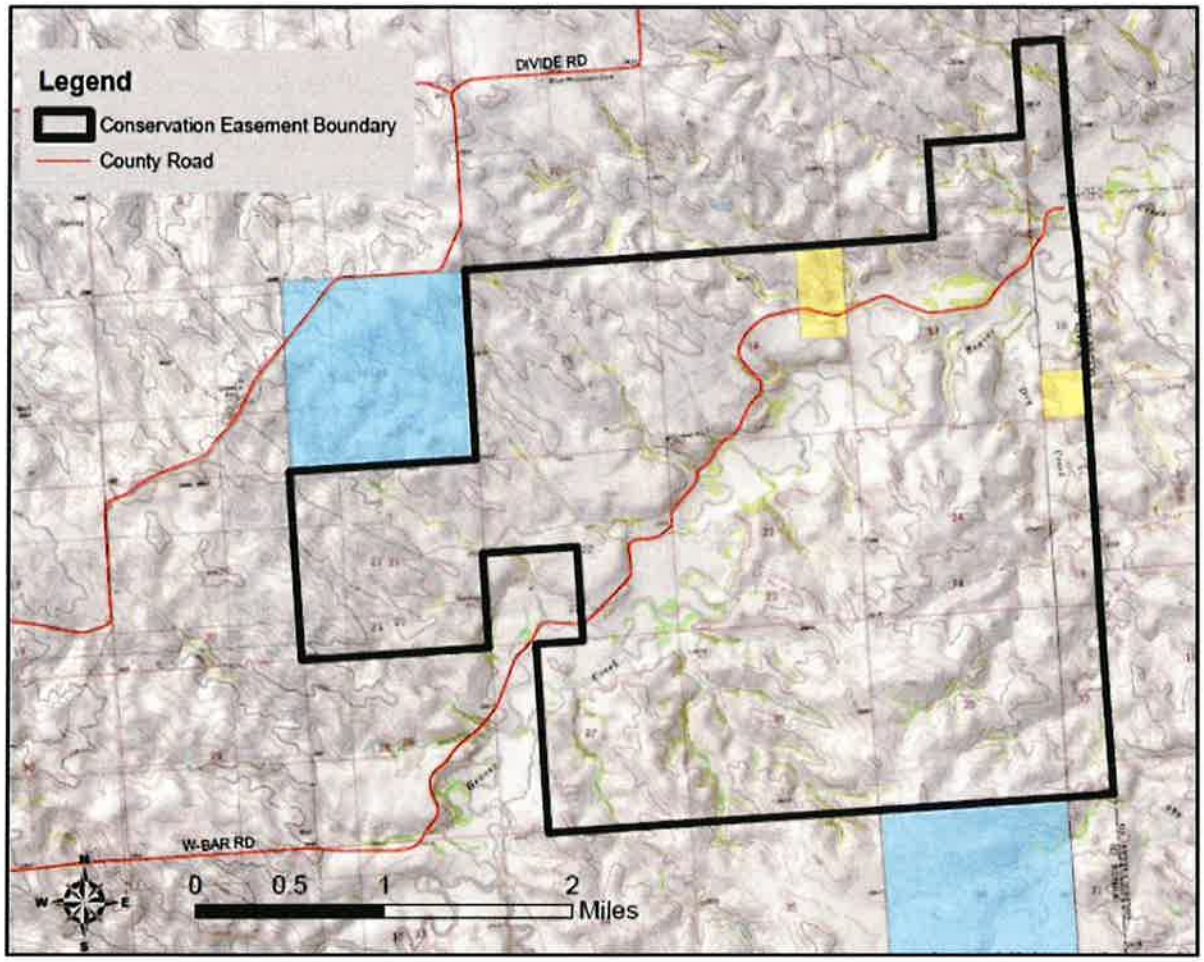

Figure 2. *Boundary of the W-Bar Conservation Easement and associated public land leases (black outline). While the easement would only encumber deeded land (white/gray), BLM land (yellow) leased by the Landowner is shown to demonstrate the footprint of the project.*

1.2 Need for the Action

The proposed W-Bar Conservation Easement provides excellent habitat for a diversity of wildlife. The entire proposed easement is considered white-tailed deer winter range and 75% is considered mule deer winter range. It serves as year-round habitat for sharp-tailed grouse. Wild turkeys can be found in abundance along the Beaver Creek and Dry Creek drainages. Both drainages also provide valuable native prairie fish rearing and production habitat for the Little Missouri River basin. Pronghorn utilize the proposed Conservation Easement seasonally, as do occasional elk. Numerous non-game species are supported and include 24 Species of Greatest Conservation Need (SGCN) identified in the 2015 FWP State Wildlife Action Plan (Table 1).

Table 1. Species of Greatest Conservation Need (SGCN) potentially located on the W-Bar Ranch as identified within range maps in the MT State Wildlife Action Plan (2015) and the MT Natural Heritage Program.

Amphibians	
Common Name	**Scientific Name**
Great Plains Toad	*Anaxyrus cognatus*
Plains Spadefoot	*Spea bombifrons*
Northern Leopard Frog	*Lithobates pipiens*
Birds	
Baird's Sparrow	*Centronyx bairdii*
Black-billed Cuckoo	*Coccyzus erythropthalmus*
Bobolink	*Dolichonyx oryzivorus*
Brewer's Sparrow	*Spizella breweri*
Chestnut-collared Longspur	*Calcarius ornatus*
Ferruginous Hawk	*Buteo regalis*
Golden Eagle	*Aquila chrysaetos*
Great Blue Heron	*Ardea herodias*
Loggerhead Shrike	*Lanius ludovicianus*
Long-billed Curlew	*Numenius americanus*
Sprague's Pipit	*Anthus spragueii*
Yellow-billed Cuckoo	*Coccyzus americanus*

Mammals	
Common Name	**Scientific Name**
Hoary Bat	*Lasiurus cinereus*
Little Brown Myotis	*Myotis lucifugus*
Meadow Jumping Mouse	*Zapus hudsonius*
Porcupine	*Erethizon dorsatum*
Reptiles	
Greater Short-horned Lizard	*Phrynosoma hernandesi*
Snapping Turtle	*Chelydra serpentina*
Spiny Softshell	*Apalone spinifera*
Fish	
Iowa Darter	*Etheostoma exile*
Sauger	*Sander canadensis*

One of the primary habitats on the proposed Conservation Easement is the large, intact parcels of native prairie. Grasslands in eastern Montana are vulnerable to conversion for tillage agriculture with an estimated 9,455 acres per year converted (FWP Working Grasslands Initiative). Many of the SGCN (Table 1) and other priority wildlife depend on native grassland for habitat. Additionally, grasslands are vital for ranching operations, making conservation of this habitat important for wildlife and ranching.

Another notable habitat feature is Beaver Creek and associated riparian zones. This easement comprises the largest intact parcel of the Beaver Creek from its headwaters to the North Dakota line. Beaver Creek is unique to eastern Montana in that it is a perennial stream in xeric habitat, retaining water year-round and providing habitat for many SGCN and other wildlife. Beaver Creek supports populations of game fish including channel catfish, sauger, northern pike, and walleye, and non-game fish including Iowa Darter, several types of shiners, chubs and minnows. The riparian habitat supports a diversity of species including songbirds, raptors, white-tailed deer, wild turkeys, amphibians, and small mammals.

Native rangeland can be at risk of degradation through improper grazing or vegetation treatments that directly impact shrubs, riparian zones, and hardwood draws. The Ranch contains extensive hardwood draws and riparian areas, with some woody recruitment occurring. Implementation of

a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (see Attachment A, Draft Deed of Conservation Easement, Exhibit C) would improve recruitment and the long-term sustainability of hardwood draws on the proposed Conservation Easement. These draws provide critical browse, seed and berry production, and cover for a variety of wildlife species. See Attachment B, Management Plan, Chapter 2 for a description of land cover and ecological sites that occur on the proposed Conservation Easement.

Public access in Eastern Montana is at risk by commercial interests on private land or private landowners unwilling to deal with the public. The proposed Conservation Easement represents an opportunity to conserve a large area of high-quality, diverse habitat and provide public access in a landscape dominated by private land. When demand exists, the proposed Conservation Easement is expected to provide a minimum 400 hunter days annually for mule deer, white-tailed deer, turkeys, upland game birds, antelope, and occasionally elk, and 200 fishing days annually. The proposed Conservation Easement is easily accessed by a county road within the Ranch (Figure 2).

1.3 Objectives of the Action

The objectives of the proposed W-Bar Conservation Easement are twofold. First, to protect conservation values including open space, rangeland health, habitat quality, and value of the land for wildlife in perpetuity, while simultaneously preserving the agricultural character of the land and supporting the ranching operation. Second, to provide managed public access to the Ranch for hunting, trapping, fishing, and wildlife viewing. These objectives are reflected in the Recitals and Agreement of the Draft Deed of Conservation Easement (Attachment A) and the Management Plan (Attachment B).

1.4 Relevant Authorities

Montana Fish, Wildlife and Parks has the authority under state law (§ 87-1-201, Montana Code Annotated (MCA)) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. Section 76-6-103 MCA authorizes the acquisition of conservation easements to protect "significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest." Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance with local growth policies. The proposed Deed of Conservation Easement would be submitted to Wibaux County for their review in accordance with this requirement. In 1987, the Montana Legislature passed HB 526 which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee-title acquisition (§ 87-1-241 and 242, MCA). The Habitat Montana Program, developed as a result of this legislation, provides direction for all FWP's wildlife habitat acquisition programs.

1.5 Relevant Plans

2015 State Wildlife Action Plan (SWAP)

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

The proposed W-Bar Conservation Easement contains SWAP Tier I prairie grassland habitat throughout most of the property, supporting a diversity of wildlife. The proposed Conservation Easement also contains Tier I riparian habitat associated with Beaver Creek, Dry Creek, and associated tributaries. Deciduous dominated forest and woodlands (another Tier I habitat) are interspersed throughout the property and consist of green ash (*Fraxinus pennsylvanica*) and chokecherry (*Prunus virginiana*).

The proposed Conservation Easement is within the range of an array of SWAP Species of Greatest Conservation Need (SGCN), including: 3 amphibians, 12 birds, 4 mammals, 3 reptiles, and 2 fish species (Table 1).

2019-2027 Statewide Fisheries Management Program and Guide

http://fwp.mt.gov/fishAndWildlife/management/fisheries/statewidePlan/default.html

The proposed Conservation Easement contains a portion of Beaver Creek which is managed under the Statewide Fisheries Management Program and Guide as part of the Little Missouri River drainage. The proposed Conservation Easement supports a variety of fish species (see Chapter 3, section 3.4).

1.6 Decision to be Made

The decision to be made is if FWP should move forward with the proposed purchase of the 6,751-acre W-Bar Conservation Easement. Following completion of the draft Environmental Assessment (EA) and public comment period, the FWP Region 7 supervisor will issue a Decision Notice that makes a recommendation to the Fish and Wildlife (FW) Commission on a course of action. This course of action could be either of the Proposed Action or the No Action alternatives, or an action that is within the scope of the analyzed alternatives. As with other FWP conservation projects that involve land interests, the FW Commission would make the final decision. This draft EA and the comments FWP receives are part of the decision-making process.

Chapter 2.0: Alternatives Including the Proposed Action

2.1 Alternative A: Proposed Action: Purchase the proposed W-Bar Conservation Easement.

The Department would purchase a conservation easement totaling 6,751-acres using Habitat Montana and Pittman-Robertson funding for the protection of wildlife habitat. Pending review and approval of the appraisal by FWP, the value of the conservation easement determined by an independent appraisal is approximately $2,195,000. The total cost of the Conservation Easement would not exceed $2,195,000. Habitat Montana funds are earmarked state funds derived from the sale of Montana hunting licenses. Pittman-Robertson funds are generated by a federal excise tax placed on ammunition and firearms and apportioned to state wildlife agencies based on land area and hunting licenses sold. No Montana state tax dollars would be used to fund the Conservation Easement. In addition to the cost of the Conservation Easement, FWP and the landowner would share the costs (50/50) of grazing infrastructure improvements needed to establish a grazing system that adheres to FWP Minimum Standards for Grazing Livestock (Exhibit C within the draft Deed of Conservation Easement in Attachment A), involving a total estimated cost of $144,000 (FWP cost share not to exceed $72,000. For more detail see Chapter 3.6 in Attachment B). Anticipated monitoring costs of the Conservation Easement by FWP staff is estimated to be between $1,000-2,000 annually. Under the terms of the Deed of Conservation Easement, each party would retain or receive certain rights. The draft Deed of Conservation Easement is included as Attachment A, and the draft Management Plan is included as Attachment B.

2.2 Alternative B: No Action. The Department would not purchase the W-Bar Conservation Easement.

For the No Action Alternative, FWP would not purchase the W-Bar Conservation Easement. The landowner would not be required to protect the conservation values in perpetuity. In the future, the proposed Conservation Easement could be threatened with conversion to tillage agriculture or other risks to the conservation values such as improper grazing management, subdivision, or rangeland treatments intending to enhance forage production while reducing or eliminating native shrubs and forbs. Current and future owners of the Ranch may limit or preclude public access.

Chapter 3.0: Affected Environment & Predicted Environmental Consequences

3.1 Land Use

The Ranch is currently a working ranch, and it would remain a working ranch under the Proposed Action alternative. The Ranch includes approximately 647 acres of land with a tillage history, most of which have been converted back to grass cover and currently used for grazing or haying. Cultivated areas are presently enrolled in the Conservation Stewardship Program (CSP) with the United States Department of Agriculture Natural Resources and Conservation Service (NRCS) and are currently being reseeded to a mixture of native and introduced grasses over a 5-year period. Once reseeded they will be maintained as native and tame grasses. Three residential areas containing two occupied home sites currently exist on the Ranch. There is also a fourth Historic Residential/Agricultural Building Area surrounding the historic Pierre Wibaux barn on the Ranch. Additionally, various infrastructure developments exist including outbuildings, shops, and corrals. A more detailed analysis of land cover can be found in the Management Plan, Attachment B, Chapter 2: Habitat Overview.

Proposed Action:
The proposed Conservation Easement would protect and conserve wildlife habitat, while providing for the continuation of the traditional ranching operation and providing public access for hunting, trapping, fishing, and wildlife viewing in perpetuity. The proposed Conservation Easement would ensure that habitat and ranching resources are maintained. The Conservation Easement (Attachment A) would prohibit destruction of native habitats or other activities that would negatively impact conservation values. The Proposed Action ensures that the primary use of the proposed Conservation Easement in the future would be cattle ranching. The terms of the Conservation Easement would require some of the current land management practices to be modified, such as the implementation of a grazing system that adheres to "FWP Minimum Standards for Grazing Livestock" (See Attachment A, draft Deed of Conservation Easement, Exhibit C) as well as provisions for allowing public access. To implement and accommodate the grazing plan, the landowner and FWP would cost-share on water improvements necessary to implement the grazing system.

The land previously cultivated on the property would be maintained as a native and tame grass mixture. The Landowner would maintain the right to renovate these fields as needed to maintain the established native and introduced grass mixtures (see Attachment B, Management Plan, Chapter 4 for a complete description of management of cultivated areas). The Historic Residential/Agricultural Building Area would permit construction, rehabilitation, and maintenance on the historic Pierre Wibaux barn (see Attachment A, Section II.C.6.

Where the landowner owns the minerals, the Conservation Easement would prohibit mining or the extraction of mineral resources. The Conservation Easement could not prevent mineral owners other than the landowner from developing minerals on the Ranch (see Attachment A, Section II.C.16). The potential for oil and gas development or mineral extraction (i.e. coal, bentonite, etc.) on the proposed Conservation Easement is low. There is currently a gravel pit

permitted by the Montana Department of Environmental Quality (DEQ). Under the terms of this permit, the gravel pit shall be reclaimed and incorporated into the grazing plan at the conclusion of mining operations.

No Action:
If the proposed Conservation Easement were not approved, the primary land use on the Ranch would likely still be cattle ranching. However, the Ranch would be at risk of conversion (destruction of native vegetation), subdivision, and degradation of habitat due to improper grazing and other threats. Public access to the Ranch may be limited or precluded.

3.2 Habitat and Vegetation

The Ranch comprises a variety of habitats providing a diversity of resources for wildlife. Most of the Ranch is comprised of native prairie grasslands including mixed-grass prairie and sand prairie. These grasslands provide habitat for mule deer, sharp-tailed grouse, pheasant, antelope, songbirds, raptors, reptiles, and small mammals. The Ranch is also interspersed with woody draws made up of green ash, choke cherry and buffalo berry, providing excellent habitat for mule deer, white-tailed deer, wild turkeys, bats, raptors, and small mammals. The Beaver Creek and Dry Creek drainages provide diverse riparian habitat for a variety of species including white-tailed deer, mule deer, wild turkeys, songbirds, raptors, bats, amphibians, reptiles and small mammals. Numerous non-game species are supported by the proposed Conservation Easement including 24 Species of Greatest Conservation Need identified in the 2015 FWP State Wildlife Action Plan (Table 1). For more details on the habitat of the proposed Conservation Easement, see Chapter 2 of the Management Plan in Attachment B.

Proposed Action:
The proposed Conservation Easement would positively impact vegetation and wildlife habitat. The terms of the proposed Conservation Easement would protect the quantity, quality, and character of the native plant communities. Many shrub species are important to wildlife for cover and forage values. The terms of the Conservation Easement would prevent the destruction, removal, control, or manipulation of native vegetation, except in very limited and necessary circumstances. The grazing system, as described in Chapter 3 of the Management Plan (Attachment B), would maintain and enhance the vigor and productivity of vegetation through time. Riparian areas and woody draws are expected to be maintained or improved as the rest treatments in the grazing system allow shrubs and trees to rebound and reestablish. Maintaining productive vegetation will benefit both wildlife and the ranching operation. The Department would require a Baseline Inventory Report that documents the existing condition of the Ranch at the time the Conservation Easement is acquired. The report would document wildlife habitat, plant communities, roads, fences, water developments, and other features. Additional vegetation photo points and other monitoring plots would be established and maintained by FWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness. The proposed action would have a positive impact on habitat and vegetation.

No Action:
Without protections offered by the terms of the proposed Conservation Easement, the quantity, quality, and character of the native plant communities could decline. Woody draws, in particular, are at risk because grazing regimes that do not include periods of growing season rest can prevent recruitment of woody species. This could negatively impact a variety of wildlife that rely on woody species for browse, seed and berry production, and cover. The remainder of the Ranch would be vulnerable to sodbusting or other development or disturbance. Future impacts to native vegetation and overall productivity of plant communities could be considerable and reduced habitat quality would have detrimental impacts to wildlife.

3.3 Terrestrial Species

The Ranch supports the following game species: mule deer, white-tailed deer, pronghorn, elk (occasional), wild turkey, sharp-tailed grouse, ring-necked pheasants, and hungarian partridge (occasional). It also supports a variety of raptors and songbirds, reptiles and amphibians, small mammals, bats, and common species including bobcat, coyote, red fox, badger, racoon, and skunks. The Ranch is within the range of many SWAP Species of Greatest Conservation Need (Table 1).

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

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

The proposed action would ensure public hunting access to the Conservation Easement in perpetuity. Hunting on the proposed Conservation Easement would not negatively impact the overall distribution and population of game species in the area. The seasonal harvest of game species is evaluated on an annual basis by FWP biologists. Hunting seasons and quota recommendations are submitted to the Fish and Wildlife Commission during the annual hunting season setting process.

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

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

3.4 Fisheries Species and Water Resources

The Ranch includes portions of Beaver Creek and Dry Creek, along with a number of unnamed minor tributaries. Species documented in these creeks include: Black Bullhead, Bluegill, Brassy Minnow, Brook Stickleback, Channel Catfish, Common Carp, Creek Chub, Emerald Shiner, Fathead Minnow, Flathead Chub, Golden Shiner, Goldeye, Green Sunfish, Iowa Darter (SGCN), Lake Chub, Longnose Sucker, Northern Pike, River Carpsucker, Sand Shiner, Sauger (SGCN), Shorthead Redhorse, Smallmouth Buffalo, Stonecat, Walleye, Western Silvery Minnow, White Sucker, Yellow Bullhead, and Yellow Perch.

Proposed Action:
Current agricultural uses on the Ranch have been compatible with maintenance of water quality. However, if the proposed Conservation Easement is implemented, positive impacts should be realized in surface and ground water as a result of improvements in soil condition by implementing the grazing system. The grazing system would result in more residual vegetation and organic residue, which would improve water infiltration and reduce runoff and soil erosion. The proposed grazing system should improve livestock distribution, range conditions, and riparian vigor throughout the Ranch.

The proposed action would ensure public fishing access to the Conservation Easement in perpetuity. Given the low fishing pressure for Beaver Creek, negative impacts on the overall population of native fish and stocked walleye in the creek is not expected.

No Action:
Without terms to conserve the Ranch, there would be no provisions to protect fisheries species and water resources. If the Ranch were developed, converted to tillage agriculture, or sold without protections provided by the Conservation Easement, there would be no assurances that riparian areas, fish species, and water resources would be conserved. Additionally, selection of the No Action Alternative would allow the landowner to close the Ranch to public fishing, resulting in a lack of public access to a unique drainage with limited public access opportunities elsewhere.

3.5 Aesthetics and Recreation

The Ranch currently limits hunting and fishing opportunities to family and friends. The vast tracts of open space, rangeland, wooded draws, and riparian areas contribute to the aesthetic value of the landscape.

Proposed Action:
Implementing the proposed Conservation Easement would ensure managed public hunting, trapping, fishing, and wildlife viewing opportunities are provided on the Ranch in perpetuity. The proposed Conservation Easement would increase the level of public recreation on the Ranch, as the landowner would be required to provide a minimum 400 hunter days annually. The proposed Conservation Easement is located within FWP Region 7, Deer/Elk/Antelope Hunting District 703. Hunting would be allowed on the Conservation Easement consistent with all Fish and Wildlife Commission-established regulations and dates/seasons. The landowner would retain the ability to manage the distribution and numbers of the hunters on the proposed Conservation Easement. The public may be required to sign in or otherwise obtain permission before hunting. Public access would be walk-in only and via the county road or designated parking areas. The proposed Conservation Easement would also provide a minimum of 200 fishing days annually. The terms of the Conservation Easement would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, fishing, or wildlife viewing on the Ranch. See the draft Deed of Conservation Easement (Attachment A) and Chapter 8 of the Management Plan (Attachment B) for additional details on how public access would be managed.

The terms of the Conservation Easement would protect open space and scenic values in perpetuity by retaining current land use and prohibiting developments that would impact such values.

No Action:
The Ranch has provided limited public recreational opportunities. In the absence of the Conservation Easement, public access for hunting and other forms of recreation on the Ranch would likely continue to be limited, including the possibility of leasing for outfitting or other forms of recreation leasing. There would be no guarantee of public access to or across the Ranch.

In the near future, the aesthetic values would likely remain unchanged under the No Action Alternative. While the Ranch does provide open-space aesthetics, without public access the ability of the public to enjoy this aesthetic value has been limited and would continue to be limited. If rural subdivision, expanded tillage, or other changes in land use or developments were to occur, the aesthetic value of the area could be diminished.

3.6 Cultural and Historic Resources

The Ranch contains the historic Pierre Wibaux W-Bar Ranch Headquarters. Pierre Wibaux was a prominent cattleman and the namesake for both the town of Wibaux and the county. Remnants of an elaborate stone barn remain on the property.

Proposed Action:
Implementing the proposed Conservation Easement would allow for the rehabilitation and maintenance of the historic barn, providing either no impact (left alone) or a positive impact (allowing for rehabilitation) on the historic resource. Public access to view this historic site would be ensured, providing a benefit to the public.

No Action:
Without the proposed Conservation Easement, the historic barn could still be rehabilitated or maintained. However, without the proposed Conservation Easement the Ranch could refuse public access, eliminating the opportunity to view a unique historical resource.

3.7 Public Services, Taxes, and Community

The Ranch is currently used for agricultural purposes and taxed as agricultural in Wibaux County. Landowners are responsible for managing noxious weeds in compliance with MCA 7-22-21 and for maintenance of boundary fences per MCA 70-16-205.

Proposed Action:
Under the proposed Conservation Easement, social and economic impacts on the local government and state are as follows:

a. Tax revenue: There would be no impact on local or state tax bases or revenues. No alterations of existing utility systems nor increased use of energy sources are expected. The Ranch would continue to be used for agricultural purposes and would continue to be taxed as agricultural.
b. Services provided by local government: Service required from local governments would remain the same.
c. Employment opportunities within the county: No impact on local employment opportunities is expected.
d. Local schools: No impact to local schools is expected.
e. Private businesses supplying goods and services to the community: The addition of public access to the Ranch could result in increased demand for goods and services from private businesses that support the area, which could result in a modest increase in revenues for local businesses. Infrastructure improvements needed for establishing a grazing system may also result in minor temporary need for goods and services. However, the terms of the Conservation Easement would restrict future residential and commercial development on the Ranch.

Neighboring landowners may observe more recreational activities by the public on the Ranch. Recreationists would be responsible for knowing their whereabouts and avoiding trespassing. Those guilty of trespassing could be prosecuted. No other impacts to neighboring landowners are expected.

No change is expected to management of noxious weeds or maintenance of fences. Landowners of the Ranch would be responsible for managing noxious weeds in compliance with MCA 7-22-

21 and best management practices (See Attachment B, Chapter 5: Weed Management). Landowners would also be responsible for maintenance of boundary fences per MCA 70-16-205.

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

3.8 Cumulative Effects

Proceeding with the proposed Conservation Easement would contribute to the preservation of important grassland, riparian woody draw, and other habitats for the benefit of numerous wildlife species. The implementation of the proposed grazing system would benefit native vegetation, improve or maintain rangeland health, and contribute to clean water, clean air, and functioning ecosystem processes, thus contributing to healthy wildlife populations. With regard to habitat protection, the difference between the proposed action and the no action alternative is one of degree. The Conservation Easement would protect the habitat in perpetuity. The no action alternative entails a possibility of habitat degradation such as tillage agriculture and possible overgrazing. The likelihood and extent of this degradation is difficult to quantify. The Ranch would continue to be a livestock operation; this use would be the same between the proposed and no-action alternatives.

Purchase of the W-Bar Conservation Easement would add to the conservation footprint and increase public access in eastern Montana where approximately 75% of the landscape comprises private lands. There are 7 existing Conservation Easements in FWP Region 7. They are as follows: the Buxbaum Ranch Conservation Easement south of Sidney, MT; the Horse Creek Complex Conservation Easement near Hodges, MT; the Fluss Conservation Easement south of Terry, the North Sunday Creek Conservation Easement north of Miles City, MT; the Brewer Conservation Easement near Powderville, MT; and finally the Bice Conservation Easement and Hirsch Conservation Easement are located on the Tongue River south of Miles City, MT. Lack of access to places to hunt is a primary barrier preventing recruitment and retention of hunters. The Region 7 conservation easements provide guaranteed public access in a landscape dominated by private lands. Public access associated with the proposed W-Bar Conservation Easement could have a positive impact on local businesses, bringing income into the local community. Finally, the Conservation Easement would help retain a traditional ranching operation with the associated economic and community values. Other than impacts listed in this Environmental Assessment, no additive or interacting ties to other circumstances or events in the local area are known at this time. Based on the similar, existing conservation easements mentioned above, some of which have been in place since the mid 1990's, the anticipated cumulative effects of the proposed Conservation Easement are largely positive in nature and small in magnitude.

Chapter 4.0: Resources Considered but Eliminated from Detailed Analysis

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

4.1 Air Quality

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

4.2 Noise and Utilities

The Department anticipates there would be no changes to the current noise levels or utilities for either the Proposed Action or No Action Alternatives. Under the terms of the proposed Conservation Easement, the Landowner would retain the right to maintain, repair, or replace existing utilities. Additionally, the proposed Conservation Easement would allow for new utilities and right of ways as long as they are consistent with the terms of the Conservation Easement.

4.3 Risk and Health Hazards

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

Chapter 5.0: Need for an Environmental Impact Statement

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

No. The proposed Conservation Easement would affect 6,751 acres in that it would conserve important wildlife habitat and provide public access in perpetuity with minimal effects to the current land uses (agricultural—livestock operations) and to the existing natural resources on the land.

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

Some limited, minor impacts from the Proposed Action were identified in this EA, such as anticipated positive changes to vegetation and habitat from the proposed grazing system, and an increase in members of the public accessing the Ranch.

Chapter 6.0: Public Participation and Collaborators

6.1 Public Involvement

Prior to the preparation of this draft EA, formal public participation specific to the proposed purchase of this Conservation Easement began with a public scoping process. This scoping process represented the first step in the environmental review process, wherein FWP invited the public to identify any issues and concerns related to purchasing a Conservation Easement. Copies of the scoping notice were mailed to neighboring landowners, interested parties, the Wibaux County Commissioners, and DNRC and BLM staff. Notice of the public scoping period was placed in multiple newspapers (*the Miles City Star, Terry Tribune, Glendive Ranger-Review, Sidney Herald, Fallon County Times, Wibaux Pioneer-Gazette,* and *the Helena Independent Record*), and on the FWP website.

Montana Fish, Wildlife, and Parks received 14 comments during the scoping process, these comments and FWP responses are listed below. Ten of the comments (Comments #1-10) were in support of an easement. One comment (Comment #11) was opposed and three identified concerns but were neither in support nor opposition (Comments #12-14). Pursuant to this, FWP will continue the environmental review process to purchase the Conservation Easement.

Comment #1:

Name: Montana Wildlife Federation

MONTANA WILDLIFE FEDERATION

Protecting Montana's wildlife, land, waters and hunting & fishing heritage for future generations.

Jan. 2, 2020

Brad Schmitz, Region 7 Supervisor
Montana Fish, Wildlife and Parks
354 I-90 Business Loop
Miles City, MT 59301

Submitted via email to bskone@mt.gov

RE: W-Bar Easement CE Comment

Dear Brad Schmitz,

The Montana Wildlife Federation (MWF) is Montana's oldest wildlife conservation and hunting organization. We work to protect Montana's public lands, clean waters, and abundant fish and wildlife for the benefit of the hundreds of thousands of Montanans and people all over the nation who hunt, fish, and value Montana's outdoor heritage. MWF submits the following comments in support of the W-Bar conservation easement.

The proposed W-Bar easement is 6,721 acres located in Wibaux County. The W-Bar easement is of particularly high value for both recreation and wildlife habitat. Most importantly, the W-Bar easement will conserve the undisturbed riparian habitat known as the Beaver Creek Riparian Zone. This area is the largest intact portion of Beaver Creek, starting at its headwaters and ending along the North Dakota border.

The project area is also essential for the protection of native grassland habitats. Native and intact grasslands are quickly disappearing throughout the North American prairie and any acts to protect them are essential for many wildlife species and for combating climate change. Development is a continuing threat to habitat connectivity in eastern Montana, and this easement would help protect this high-quality grassland and riparian habitat.

These types of easement projects that use Habitat Montana program funds benefit the landowners, hunters and other recreationists, and wildlife managers. Habitat Montana uses a small portion of hunting license fees to pay for conservation easements as well as targeted land purchases to protect important wildlife habitat and grow public access. The W-Bar easement exemplifies the important role of the Habitat Montana program in maintaining our Montana outdoor heritage, rural agricultural economy and ultimately our way of life. We strongly recommend approval of this project.

Sincerely,

Dave Chadwick
Executive Director

Comment #2:
Name: Pat Mischel
City: Glendive

Having read the MFW's Public Scoping Notice concerning the proposed W-Bar Conservation Easement, I fully support the proposal and appreciate the departments efforts to expend our Habitat Montana dollars (which is derived from hunting licenses) on a very worthwhile project. As a lifelong resident of eastern Montana I see the need for this conservation district, and as a supporter of our public lands, it can only be said everyone who supports our Montana outdoor heritage will benefit. Please add my name to the support of this project and keep me current on any public hearings and further discussions.

Sincerely yours,
Pat Mischel

Comment #3:
Name: Kip and Adele Stenson
City: Wibaux

Kip & Adele Stenson - Springhill Ranch – 608 Ranch Access S – Wibaux, MT 59353

January 5, 2020

Dear Montana Fish and Wildlife Commission:

We are writing in support of the W-Bar Easement proposed North of Wibaux, Montana. This property is prime wildlife habitat with important riparian areas for wildlife of all types. The hunting opportunities are excellent, ensuring that the sportsmen and women who support Habitat Montana with their license fees will benefit from this easement purchase.

We have been under a Habitat Montana easement and subsequent block management for two years, and we believe it has been beneficial to our local economy. This year we had hunters from 10 different states and all over Montana utilizing over 300 hunter days per year. This is a lot of activity for the small communities of Wibaux and Glendive. Even the local hunters who choose to stay here, rather than purchasing their hunting necessities somewhere else, are making a positive impact. And it is well documented that the out-of-area hunters contribute substantially to the communities where they hunt.

Tiny Eastern Montana communities like Wibaux don't have the tourist draw that the communities located along the mountains do, and the annual fall boost from hunting will be guaranteed with additional hunting opportunities provided by easements like the W-Bar.

As fellow ranchers, we also support this easement because it provides opportunity to ensure that the owners can enhance the financially viability of the ranch for future generations. Whether the future supports their family or a new family, it will stay in production agriculture and continue to support wildlife forever.

We urge you to approve the W-Bar Easement. It is truly a win-win opportunity for everyone.

Sincerely,
Richard Kip Stenson
Mary Adele Stenson
Richard Kip and Mary Adele Stenson

Comment #4:
Name: Back Country Hunters & Anglers

BACKCOUNTRY
HUNTERS & ANGLERS
MONTANA

January 10, 2020

The Montana Chapter of BHA
PO Box 9257
Missoula, MT 59806

Montana FWP
Attn: Brandi Skone
P.O. Box 1630
Miles City, MT 59301
bskone@mt.gov

Re: W-Bar CE Comment

To the Dedicated Staff of Montana Fish, Wildlife & Parks:

On behalf of the Montana Chapter of Backcountry Hunters & Anglers (MT BHA), I'd like to voice full-throated support for the proposed 6,751-acre W-Bar Conservation Easement. The area is a veritable wildlife heaven replete with the full complement of eastern Montana game species, including whitetail and mule deer, turkey, pheasant and sharp-tailed grouse. And as if that isn't enough to warrant protection and guarantee perpetual public access, the area supports a variety of native songbirds and houses the threatened greater sage grouse.

The W-Bar goes beyond offering excellent hunting and wildlife viewing opportunities. It features numerous green ash draws with fruit-bearing understory shrubs like chokecherry, wild plum and serviceberry. Due to cattle grazing and other factors, green ash draws are in decline,

WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA_BHA
MONTANA@BACKCOUNTRYHUNTERS.ORG

(Continued on next page.)

which is particularly concerning because these habitats provide critical food and cover for wildlife. In addition to protecting green ash draws, the W-Bar Easement will provide welcome opportunities for the public to enjoy these emblematic habitats, most of which are privately owned.

For Montana BHA, the enthusiasm meter is maxed even before considering Beaver Creek; this Little Missouri River tributary coursing the property for ten miles breaks our gusto meter. Like green ash draws, riparian habitats are mostly private in Montana, and Beaver Creek is no exception: nearly all the river corridor is private, much like nearly all uplands surrounding the W-Bar for many miles. This easement will provide anglers with much-needed public access to Beaver Creek's walleye, pike and catfish fisheries.

The W-Bar Easement represents everything at the core of Montana BHA's mission. Our 3,250 dues-paying members applaud your efforts to protect these lands for all to enjoy, and we fully support the purchase of this conservation easement using Habitat Montana dollars.

Sincerely,

Matt Rinella
Miles City, MT
Region 7 Leader - Montana Chapter of Backcountry Hunters & Anglers

WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA_BHA
MONTANA@BACKCOUNTRYHUNTERS.ORG

Comment #5:
Name: Robert Kompel
City: Glasgow

To whom it may concern,

Please note my support of the referenced easement north of Wibaux.

Easements such as this one provide invaluable access to areas that me and my family members recreate on. Even more importantly, they provide hunting opportunity that we use to help feed our families.

Thank you for your consideration in this matter.

Sincerely,
Robert H. Kompel

Comment #6:
Name: Patrick Sievert
City: Belgrade

Hello,
I would like to voice my support for the proposed W-Bar conservation easement. I've driven by this property many times and know the valuable habitat it holds. This is an excellent opportunity to preserve this area and provide public access.

Thank you,
Patrick Sievert

Comment #7:
Name: Bret Lian
City: Jefferson City

I am writing this letter in support of the W bar conservation easement. This is an important chunk of country, and this conservation easement would benefit present and future generations of Montanans.

Comment #8:
Name: Glendon Mullins
City: Out-of-state

I would like to support the W-Bar Conservation Easement. As a non resident who comes to Montana to hunt I greatly enjoy having uncrowded public lands to hunt and camp on. The experience of hunting Montana is great, I thoroughly enjoy it, and easements such as this that opens up land to sportsmen are one of the biggest reasons it is a quality experience coming to your fine state to hunt..

Comment #9:
Name: Grant Petersen
City: Dillon

Hello FWP,
I support the W-Bar Conservation Easement. The property has great upland bird habitat and more land available for hunter access is great for Montana resident and non-residents alike

Thank You,
Grant Petersen

Comment #10:
Name: Justin Schaaf
City: Eastern MT

To whom it may concern,
I am writing to express my support as a lifelong Eastern Montanan in encouraging FWP to move forward with the W-Bar Conservation Easement. This parcel of land provides an amazingly diverse habitat to all of eastern Montana's animals including both whitetail and mule deer, upland birds, turkeys, and all the non game species found in the area.
Another aspect of this easement that might be overlooked is the stream access that will be provided to Beaver Creek with this easement. Montana certainly can't pass up this opportunity.

Thank you,
Justin Schaaf

Comment #11:
Name: Timothy Staggs
City: Wibaux

Jan 6th 2020

To Whom it may Concern

I am opposed to FWP purchasing Conservation Easements for the following Reasons

FWP can afford to pay $6.1 Million for a 15,000 acre Conservation Easement Known as the Horse Creek Conservation Easement But FWP Cant afford to pay for the Damages that their Wildlife are Causing to Peoples Property.

Deer and Turkies are Damaging Ranchers Hay.

Deer are Damaging Property owners trees and Gardens.

Deer Have Becomes a nuisance.

If FWP Cant afford to pay for the Damages their Wildlife are doing to peoples property they don't need to Buying Hunting Easements.

According to FWP office in Helena there are 30 Million acres of Public Land in Mont. 10% of these Lands are Landlocked

by private land leaving 27
million acres of Public land
available for Hunting.
Furthermore I lease
Stateland Section 16.11.60 and
have Had Problems with Hunters
Driving around on it.
Hunting Rules on State land.
State that Hunters are Suppose
to Walk in only I have
talked to FWP Game Wardens
twice Concerning Hunters
Driving on State land. the
last time the Game Warden
told me that they could put
up game Cameras and Decoys.
None of this Has Happened

Sincerely
Timothy Staggs

FWP Response: *Comments regarding wildlife damage are not germane to this public scoping process. FWP has a robust wildlife damage assistance program, which is governed by Montana Code Annotated (MCA 87-1-225) and the Administrative Rules of Montana (ARM 12-9-802). Further, Habitat Montana funds are earmarked for conservation projects and therefore cannot be used for wildlife damage assistance.*

The primary purpose of conservation easements is to protect and enhance critical wildlife habitat. Public access is a secondary, but important, benefit. While it is true that some parts of Montana have abundant public land, eastern Montana is comprised of roughly 75% private land. Lack of access is also often cited as a primary barrier to recruiting new and young hunters, and a lack of access opportunities was identified as a primary barrier to hunting in a survey conducted of Montana resident hunters in 2011 (Lewis M.S., et.al. 2011. Summary of Research. Selected Results from a 2011 Hunter Preference Survey. FWP HD Unit Research Summary No. 32: http://fwp.mt.gov/doingBusiness/reference/surveys/socialEconomic/hunting.html.) *Improving public access through conservation easements will help to reduce this barrier.*

Management of DNRC lands and driving violations are not germane to this scoping process. However, we communicated the concern to local enforcement staff who have reached out directly to Mr. Staggs.

Comment #12:
Name: Bert Otis
City: Emigrant

Dear Fish Wildlife & Parks Commission,
The W-Bar Conservation Easement looks pretty good, I'd like to see what the cost are, before I support it.
Thanks
Bert Otis

FWP Response: The cost of the easement is determined by an independent appraisal and is unique to the property. It takes into account the specific characteristics of that property, and how easement terms would impact the value of the property. The appraisal for this easement was determined to be $2,195,000.

Comment #13:
Name: Craig Wagner
City: Glendive

Proposed conservation easement: I do not have a problem using Habitat Montana dollars for conservation easements, However, I have a big problem with the Fish and Game enrolling these acres in block management after public money has already been spent on public access. This has been going on in the past way back when the Fluss Ranch easement was purchased. This is "double dipping" and should not be done as responsible use of public dollars. Also the price that has been paid recently has been as much or more than the whole ranch is worth like the Horse Creek deal by Hodges.

FWP Response: Block Management payments are compensation to offset the impacts of allowing hunting access on the property on a year-to-year basis. Through the conservation easement FWP purchases the right of public access (and much more), but the landowner is not necessarily compensated for annual impacts. Putting conservation easements in Block Management provides a seamless experience for the public and reduces complexity, that is, hunters only need to learn about one program.

The cost of each easement is unique to the property and determined by an independent appraisal. See FWP's response to comment #12 for more information.

Comment #14:
Name: Evan Copsey
City: Rich Hill, MO

Brandi, I am the owner of section 10, bordering the N W corner of the proposed W-Bar easement. I do not have any problems with the conservation easement on Corey Schieffer's property, but do have a couple of questions.

1-The fence dividing my property and the conservation easement is in 'poor' condition. Are the fences still the responsibility of the landowners? Or is any cost sharing available for fencing?

2-Who will be responsible for marking the boundary (trespassing) between the conservation easement and privately owned land outside the easement?

Thank you for your time,

Evan R Copsey

FWP Response: Boundary fences would remain the responsibility of the landowners as dictated by state statute. FWP will typically cost-share on fences needed to implement a grazing system required by the Conservation Easement, but those are usually interior fences. Exterior fences are not typically cost-shared since the boundary fence would be required with or without the easement. Occasionally there are opportunities for the department to cost-share on wildlife friendly fence, but the requirements are not always conducive to all livestock operations. Requirements can include things like height of the top (no more than 42 inches) and lowest wires (no less than 18 inches), number of barbed strands (no more than 4), and type of wire used. These modifications are meant to reduce wildlife injuries and barriers while also maintaining fencing needs for livestock or defining property boundaries. We've seen wildlife from big game animals to birds collide or become entangled in fences as well as be hindered in daily movements, seasonal migrations, or access to forage and water. These modifications are meant to reduce those hazards. This would also require both parties' consent (yourself and the Schieffers). The department would be happy to discuss what opportunities might exist to cost share on that portion of boundary fence.

FWP in conjunction with the landowner will mark the boundaries of the Conservation Easement. Typically, a sign is placed every 1/4 - 1/2 mile along the border. Any place that's likely to be an issue (i.e. gates, along draws, prominent hills, landmarks, etc.) will also be marked. If trespassing occurs, the department will do everything to minimize honest mistakes and if necessary, prosecute willful trespassers.

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

- Two public notices in each of the following papers: *Miles City Star, Wibaux Pioneer-Gazette, Sidney Herald, Glendive Ranger Review, and Helena Independent Record*;
- Direct mailing or email to adjacent landowners, interested parties, Custer and Prairie County Commissioners, DNRC staff, and BLM staff;
- Public notice on the FWP web page: *http://fwp.mt.gov*;
- A public meeting will be held at the Wibaux County Courthouse, 203 Wibaux St., on **Thursday June 18, 2020 at 6:30 p.m.**

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

6.2 Comment Period

The public comment period will extend for 30 days beginning May 29, 2020. Written comments will be accepted until 5:00 p.m., June 27, 2020 and can be mailed or emailed to the addresses below:

Montana Fish, Wildlife & Parks
Attn: Brandi Skone, W-Bar Conservation Easement EA
PO Box 1630, Miles City, MT 59301
Or email comments to: *bskone@mt.gov*

6.3 Approximate Timeline of Events

(Contingent on Decision Notice and subsequent approvals)

Public Comment Period: May 28, 2020 to June 27, 2020
Decision Notice Published: July 2020
Project Submitted to Fish & Wildlife Commission: August 2020

6.4 Offices & Programs Contributing to the Document

Montana Fish, Wildlife & Parks
John Ensign, Region 7 Wildlife Manager, Miles City, MT
Kelvin Johnson, Habitat Biologist, Glasgow, MT
Melissa Foster, Region 7 Wildlife Biologist, Baker, MT
Mat Rugg, Fisheries Biologist, Glendive, MT
Martin Balukas, Land Agent, Helena, MT

Chapter 7.0: EA Preparer

Brandi Skone, FWP Wildlife Biologist, Miles City, MT.

Attachments:

A. Draft W-Bar Deed of Conservation Easement

B. Draft W-Bar Conservation Easement Management Plan

After Recording, please return to:
Department of Fish, Wildlife and Parks
Land Unit
P.O. Box 200701
Helena, MT 59620-0701

W-BAR RANCH DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this _____ day of _____, 201__, by Corey and Heidi Jo Schieffer, 882 W-Bar Rd., Wibaux, Montana 59353-9221 ("Landowners") to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department").

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

Exhibit A - Legal Description of the W-Bar Ranch Conservation Easement
Exhibit B - Map of the Land
Exhibit C – FWP Minimum Standards for Grazing Livestock
Exhibit D - Map of Existing Residential/Agricultural Building Areas, Cultivated Areas, and Gravel Pit
Exhibit E – Water Rights

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 Wibaux County, Montana (the "Land"), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Conservation Easement Boundary is depicted in Exhibit B which is attached and incorporated herein by reference.

D. The Land possesses significant agricultural values and communities of native plants, fish and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed "Conservation Values" and are valuable to the people of Montana and worthy of perpetual conservation.

E. The Conservation Values of the Land can be protected in perpetuity by the Landowner and the Department through the grant of a conservation easement to the Department with the Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.

F. Landowner and Department agree that the Conservation Values of the Land will be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.

G. The Land provides important opportunities for public recreational hunting, wildlife viewing, fishing, and trapping, and the Landowner and the Department specifically intend that this Easement afford public hunting access for recreational purposes and wildlife management purposes.

H. The Landowner intends, by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

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 on 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 wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the Conservation Values and the purposes of the Easement.

2. An additional specific purpose of this Easement is to provide to the Department

pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.

3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.

4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

B. RIGHTS CONVEYED TO THE DEPARTMENT

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

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.

2. **Access.** Upon 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 damage growing crops or unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.

3. **Injunction and Restoration.** Subject to C.II.16, to enjoin any activity on the Land or use of the Land which is inconsistent with the terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that may be damaged by such activities.

4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.

5. **Public Recreational Access.** The right, on behalf of the general public, of access for the purpose of recreational hunting, trapping, fishing, and wildlife viewing on the Land and across the Land to adjacent public land as provided for in the Management Plan and in accordance with the following terms and conditions:

   a. The Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and property, including livestock. The landowner may require the public to obtain permission prior to entering the Land.

   b. The public may fish in Beaver Creek in accordance with fishing regulations adopted by the State of Montana.

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

d. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 400 hunter days Land per year on a first-come, first-served basis.

   1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from midnight to midnight.

   2. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days". The term "immediate family" is defined to include spouses, children, in-laws, and parents.

e. When requested by members of the public during all fishing seasons set by the state of Montana, Landowner must permit a minimum of 200 fishing days Land per year on a first-come, first-served basis.

   1. A "fishing day" is defined as one person fishing 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 "fishing days".

The term "immediate family" is defined to include spouses, children, in-laws, and parents.

f. Public access for fishing and hunting must be managed on a non-preferential and nondiscriminatory basis.

d. The hunting and fishing seasons during which the public is allowed access to the Land for hunting and fishing under this paragraph must be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.

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

f. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall have motor vehicle access only over and across the W-Bar County Road (W-Bar Rd.) The W-Bar Rd. shall be the only legal means for the public to access the Land. Parking shall be permitted in designated parking areas. The public may not drive off W-Bar Rd. for any purpose, except with the express permission of the Landowner or the Landowner's agent or to enter a designated parking area. The public may travel on foot from the parking areas to fish, hunt, trap, and/or view wildlife throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Furthermore, the public may travel by foot from the W-Bar Rd. to access adjacent publicly accessible lands which allow public recreational use. Upon agreement with the Landowner, the Department may open additional roads and parking areas as shown and described in the Management Plan. All roads and Parking Areas used for access by the public will be shown in the up-to-date Management Plan.

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

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

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

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

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

C. LANDOWNER'S RIGHTS

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

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "FWP Minimum Standards for Grazing Livestock" more particularly described in Exhibit C attached hereto and incorporated herein by this reference; and is consistent with other specific terms in this Easement governing livestock grazing. The Management Plan provides the details of livestock grazing on the Land, including schematic diagrams of the pasture systems to be used. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to conform to the "FWP Minimum Standards for Grazing Livestock" as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with **Prior Approval**.

2. **Agricultural Activities**. The right to use the Land and to use equipment on the Land for agricultural purposes and to manage habitat for wildlife, all in a manner consistent with the following provisions:

   a. The areas cultivated at the time the Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan. If the cultivated land is used for grazing, livestock grazing will comply with the terms of the Easement and the Management Plan.

   c. Areas not designated in the Baseline Report as "Residential/Agricultural Building Areas ", shall be considered "rangeland" and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.

3. **Leasing the Land.** With **Prior Notice**, the Land may be leased to another agricultural operator for agricultural purposes, provided that:

   a. A written lease must be entered into by the Landowner and the lessee(s);

   b. The lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and,

   c. A copy of the executed lease must be provided to the Department.

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

4. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.

5. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, riparian vegetation, or wildlife habitat, wildlife movement, or migration on or through the Land is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the

Land at or near the location of the removal activity in a manner customary to such operations and consistent with the Conservation Values.

6. **Residential/Agricultural Building Areas** The purpose of the Residential/Agricultural Building Areas is to allow Landowner flexibility in the use of the residences and outbuildings and to cluster residential uses and other non-agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Residential/Agricultural Building Areas.

    a. There are presently three existing Residential/Agricultural Building Areas on the Land as shown in Exhibit D.
    b. A fourth Historic Residential/Agricultural Building Area surrounding the Historic Pierre Wibaux barn is hereby designated as delineated in Exhibit D. This Historic Residential/Agricultural Building Area is intended to permit construction, rehabilitation, and maintenance on the historic Pierre Wibaux barn adjacent to Beaver Creek. The parties acknowledge that preservation of this structure may entail excavation, and significant disturbance and construction within the Historic Residential/Agricultural Building Area. The Landowner must have **Prior Approval** of any exercise of the rights of construction, rehabilitation, and maintenance associated with Historic Residential/Agricultural Building Area and all such construction or renovation shall not materially alter its character or function.

c. The Landowner and the Department expressly acknowledge that the Residential/Agricultural Building Area identified as the "Hunting Cabin" on Exhibit "D" has traditionally been used as a short-term rental by the Landowner. The Landowner may continue this practice in a manner that is consistent with the long-term conservation values of the land. This practice may include short-term rental to hunters, anglers, and recreationists who are exercising their public access rights under this Easement, provided that no preference or discriminatory right to hunting, fishing, or public access shall attach to any such renters. Landowner may permit any member of the public to drive the access road to the "hunting cabin" Residential/Agricultural Building Area as marked on "Exhibit "D" at Landowners' discretion.

d. No more than the four Residential/Agricultural Building Areas identified on Exhibit D are permitted on the Land.

7. **Residential Structures and Outbuildings**. Landowner reserves the right to reside in, and to construct, maintain, repair, remodel, remove and replace up to a maximum of three single-family residences, including the two existing residences. The "hunting cabin" Residential/Agricultural Building Area and associated structures as identified in the Baseline Report shall count as a residence for the purpose of this section, and may be used for the purposes described in Paragraph II.C.6(c) or as a single-family residence. Residences must be located in Residential/Agricultural Building Areas

described in Paragraph II.C.6. above. **Prior Notice** is required to build or move residences or outbuildings.

a. Landowner reserves the right to construct, maintain, repair, remove, and replace outbuildings and commercial buildings within the Residential/Agricultural Building Areas.

b. Outbuildings. For the purposes of this Easement, the term "Outbuildings" means those structures that are built within the Residential/Agricultural Building Areas pursuant to this Paragraph II.C.7. and are not used for human habitation but which are appurtenant to the permitted residences, including, but not limited to, offices, recreational structures, greenhouses, root and wine cellars, gazebos, pools, hot tubs, sheds, workshops, residential fences, commercial structures and garages.

c. Temporary recreational residential shelters. Landowner may place and make use of tents, tarps, yurts, tepees, campers, or other shelters without permanent foundations upon the Land on a temporary basis from time to time for personal use of Landowner and invited guests.

8. **Agricultural Structures**. Landowner retains the right to, maintain, repair, remodel, remove, and make additions to, and replace the following agricultural structures on the Land:

a. Agricultural structures that are not used for human habitation, including, but not limited to barns, chicken houses, shelters, sheds, machine sheds, corrals, livestock loading docks, culverts, bridges, ditches, and irrigation structures. Barns for uses other than agriculture uses must be located in the Residential/Agricultural Building Areas.

b. With **Prior Approval**, the right to construct new agricultural structures on the Land.

9. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.5.:

a. The right to remove, maintain, or repair existing fences, corrals and other livestock containment structures.

b. With **Prior Notice** the right to construct, renovate, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be "**wildlife friendly**" as provided in the Management Plan. This does not apply to corrals, fences, windbreaks, and other structures necessary to contain livestock or protect stored feed.

10. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings as herein permitted. Any road, bridge, or waterway crossings constructed shall be sited and maintained so as to minimize adverse impacts on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department's approval shall be contingent on confirmation that (a) the road's intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowner's written request for approval shall

include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, discussion of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks is required on any new road construction.

11. **Noncommercial Recreational Use.** Landowner reserve 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.

12. **Utilities.**

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

b. New Utilities on the Land. Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.12.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.12.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 determines to be relevant. 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 affected counties, signed by the Landowner, the Department, and the utility service provider prior to construction.

13. **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 use on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner's utility service. Design and location of

facilities and fixtures associated with renewable energy generation is subject to Paragraph II.C.12.

Department expressly recognizes the Lease granted by Landowner to Wibaux Wind Energy, LLC. If Wibaux Wind Energy, LLC or its successors and assigns do not enter the "construction period" as described in the lease, Landowner is hereby prohibited from renewing this lease or entering into any other lease for commercial renewable energy generation for use off the land.

14. **Pesticide Application and Weed Management.**

a. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102) on previously cultivated areas as described in Paragraph II.C.2. and shown on Exhibit D, and Residential/Agricultural Building Areas described in Paragraph II.C.6. Except as provided in Paragraph II.C.14.b., d., and e. below, **Prior Approval** is required to use pesticides on the Land on other than cultivated areas and Residential/Agricultural Building Areas. Any pesticide use should be only in the amount and frequency constituting the minimum necessary based on pesticide label use instructions and all applicable state and federal regulations concerning use to accomplish reasonable control of the targeted pest species.

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

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

d. Landowner shall have the right to use legally authorized pesticides that are directly applied to livestock for health purposes.

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

16. **Oil, Gas, or Mineral Exploration and Extraction.**

a. Third Party Mineral Rights. The Landowner and Department acknowledge that, at the time this Easement is executed, third parties own or lease all, or a portion of, the oil, natural gas, or any other mineral substances under the Land "Third Party Mineral Rights". Nothing contained in this Easement shall limit, modify or otherwise affect the Third-Party Mineral Rights, or the rights of the third parties, their agents or assigns, from selling (all or a portion), accessing or utilizing the Mineral Rights. Nothing contained in

this Easement shall be deemed to be a conveyance of any Third-Party Mineral Rights or any rights to access or utilize the Third-Party Mineral Rights. Landowner and Department recognize that the owners of the Third-Party Mineral Rights have the right to enter upon the Land as allowed by law.

The Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity of a Third Party Mineral Rights owner. Landowner and the Department shall work together to develop a plan to discuss with the owner of Third Party Mineral Right about how to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

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

1. The existing extraction sites will be identified in the Baseline Report.
2. The Department expressly recognizes Montana DEQ Opencut Mining Permit #2643, and Landowner's right to mine in accordance with the terms and conditions of this permit. In addition to the mining permitted under Montana DEQ Opencut Mining Permit #2643, the Landowner shall have the right to remove gravel from no more than two areas of no more than two acres each at any time. Extraction locations constructed by Landowner must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.

c. In the event this Easement is amended, the Department agrees to make a reasonable effort to notify the owners of major Third-Party Mineral Rights and provide those owners the opportunity to comment on the amendment.

17. Subdivision and Conveyance of Land Ownership. For the purposes of this Easement:

a. The Land shall be considered to comprise one unit, as described in Exhibit A and shown on Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Further, for the purposes of this

Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.

b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its 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.17.

18. Industrial or Commercial Uses. The right to:

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

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

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

c. Conduct short-term rental business on the Residential/Agricultural Building Area identified as the "Hunting Cabin" on Exhibit "D"

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. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, the Landowner does not require Prior Approval to remove trees and other woody vegetation that pose a threat to human safety, travel ways, or structures.

2. **Wetland and Riparian Areas.** For the purpose of this conservation easement:

a. Riparian areas are defined as vegetation zones adjacent to rivers, streams, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Wild hay fields, cultivated fields, active river channels, or eroded river banks devoid of effective wildlife cover, are not considered riparian areas.

b. The draining, filling, dredging, leveling, burning, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.

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

3. **Subdivision.** The legal or de facto division or subdivision of the Land is prohibited, which shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowner's 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, including any water rights existing at the time of execution of this Easement as shown on Exhibit E, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by the Landowner after execution of this Easement. If Landowner receives notice or becomes aware of a

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

6. **Agricultural Chemicals.** The use of pesticides, including but not limited to herbicides, rodenticides, insecticides, and biological control agents in a manner other than as provided for in Paragraph II.C.13 is prohibited.

7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.10. is prohibited.

8. **Land Cultivation.** The cultivation or farming of any portion of the Land is prohibited, except as allowed for in Paragraph 2.C.2, or for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.

9. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, trapping, or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting, fishing, trapping, or wildlife viewing operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, trapping, or wildlife viewing on the Land or for access across the Land to reach public land or other private land, is prohibited.
   This prohibition on commercial recreation includes the prohibition of commercial dog-training activities.

10. **Mineral Exploration and Extraction.** Landowner may not engage in, authorize, or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.16. Any other mineral exploration, development, or extraction is prohibited.

11. **Residential Use.** Residential use of the Land or any portion thereof is prohibited, subject to Paragraph II.C. 6 and 7.

12. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.

13. **Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not

indigenous to Montana, is prohibited; however, Landowner have the right to have ranch dogs and household pets on the Land. This prohibition does not apply to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land. Domestic livestock, with the exception of sheep and goats, is allowed. Sheep and goats are allowed with **Prior Approval**.

14. **Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses or activities on the Land, including, but not limited to, guest ranching, outfitting, restaurant, campground, trailer park, motel, commercial swimming pool, gas station, retail outlet, or facility for the large-scale manufacture of any products Except as permitted in Paragraph II.C.18.c is prohibited.

15. **Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited, except within two landfills for disposing of and containing personal household and agricultural rubbish and other non-toxic materials in accordance with state law and in a manner and location as provided for in the Management Plan. Abandoned homesteads and preexisting dump sites described in the Baseline Report are exempt from this provision, and with **Prior Notice** may be buried on-site or otherwise disposed of. No new material may be added to these preexisting sites. The deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.5., are not considered waste disposal.

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

E. MANAGEMENT PLAN

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

In the event that the Land is to be conveyed or has been conveyed to a new owner ("Successor in Interest"), the Department agrees to enter into discussions with the Successor in

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

F. EASEMENT BASELINE REPORT

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

G. PRIOR NOTICE AND PRIOR APPROVAL

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 the Department as much notice as is possible under the circumstances. The purpose of requiring the Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

3. 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, 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. In the event the Department denies the Landowner's proposed activity, the Department shall provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

4. 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.

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

6. Except as otherwise stated in this Easement, 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, addressed as follows:

To Landowner:
Corey and Heidi Jo Schieffer
882 W-Bar Rd.
Wibaux, Montana 59353-9221

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

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

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone

numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that the Landowner 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 and 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 injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, without limitation, damages for the loss of scenic, aesthetic, or natural resource values. Without limiting Landowner'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. In the event of such litigation to enforce the terms of this Conservation Easement, each side shall bear its own costs and attorneys' fees.

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

I. HOLD HARMLESS AND INDEMNITY

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

create any indemnity obligation by the Landowner to the Department for any hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or their agents, employees or contractors.

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

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.
If the Department or Landowner seeks to extinguish this Easement by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

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

K. SUBORDINATION

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

L. ASSIGNMENT

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

M. AMENDMENT

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

N. RECORDING

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

O. REPRESENTATIONS AND WARRANTIES

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

1. Landowner has clear title to the surface Land. The Landowner represents that Landowner has the right to convey this Conservation Easement; and that the surface Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department. The Landowner represents that, at the time this Easement is executed, third parties own or lease a portion of, the oil, natural gas, or any other mineral substances under the Land.

2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway, harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.

3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.

4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.

5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.

6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

P. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement will be governed by the laws of the State of Montana.

2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes

of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M above.

4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.

5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.

6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement remain in effect.

8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.

9. Subsequent Deeds and Instruments. The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).

10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.

11. Joint Obligation. The obligations imposed by this Easement upon Landowner shall be joint and several.

12. Section Headings. Section headings are for convenience only and will not be given effect in interpretation of this Easement.

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

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

GRANTED BY: W-Bar RANCH

_____

STATE OF MONTANA)
: **ss.**
COUNTY OF _____)

This instrument was signed before me on _____, 201__,

by_____.

_____
Notary Public

(SEAL)

ACCEPTED BY: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

_____
Martha Williams, Director

STATE OF MONTANA)
: ss
COUNTY OF LEWIS AND CLARK)

This instrument was acknowledged before me on _____, 201__, by Martha Williams, as Director of the Montana Department of Fish, Wildlife and Parks.

This instrument was acknowledged before me on _____, 201__, by_____.

(SEAL)

_____
Notary Public

EXHIBIT A

Legal Description of the W-Bar Ranch Conservation Easement

END OF EXHIBIT A

EXHIBIT B
MAP OF THE LAND

END OF EXHIBIT B
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 provided 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 FWPs 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 FWPs 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 FWPs 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.

END OF EXHIBIT C

EXHIBIT D

Map of Existing Residential/Agricultural Building Area and Cultivated Areas

END OF EXHIBIT D

MONTANA FISH,
WILDLIFE & PARKS

DRAFT MANAGEMENT PLAN

FOR THE

W-BAR
CONSERVATION EASEMENT

MAY 2020

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1. INTRODUCTION

A Deed of Conservation Easement ("Easement") has been granted by Corey and Heidi Jo Schieffer, 882 W-Bar Rd., Wibaux, Montana 59353-9221 ("Landowners") to the Montana Department of Fish, Wildlife and Parks ("FWP"), an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701. The Easement encumbers all of the W-Bar Ranch deeded property in Montana depicted in Figure 2.1 as follows: The W-Bar Deed of Conservation Easement granted by the Landowners to FWP on _____and recorded in Document No._____ of the records of Wibaux County, Montana. This Management Plan incorporates the provisions of the Easement into one document that is relevant to the entire W-Bar Conservation Easement (hereafter referred to as the "Land").

This Management Plan, dated as of _____ 2020, is entered into as an agreement between the Landowners and FWP. As required by the Easement, this and future management plans will be consistent with "FWP Minimum Grazing Standards for Grazing Livestock vers. 1.2".

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

2. HABITAT OVERVIEW

The W-Bar is located approximately 10 miles northeast of Wibaux. In addition to the 6,751 acres of deeded land under conservation easement, the Landowners currently hold leases on 120 acres of BLM, for a total management footprint of 6,871 acres (Figure 2.1).

The Land is comprised of a variety of ecological systems and associated landcover types (Table 2.1, Figure 2.2) and soil types (Table 2.2, Figure 2.3). The majority of the Land is comprised of grasslands including Great Plains Mixedgrass Prairie (74%) and Great Plains Sand Prairie (<1%). Common grass species include western wheatgrass (*Pascopyrum smithii*), thickspike wheatgrass (*Elymus lanceolatus*), green needlegrass (*Nassella viridula*), blue grama (*Bouteloua gracilis*), and needle and thread (*Hesperostipa comata*). Within these systems, western wheatgrass tends to be the dominant grass species, especially on finer-textured soils, with dominance decreasing under prolonged periods of heavy grazing. Sites with a strong component

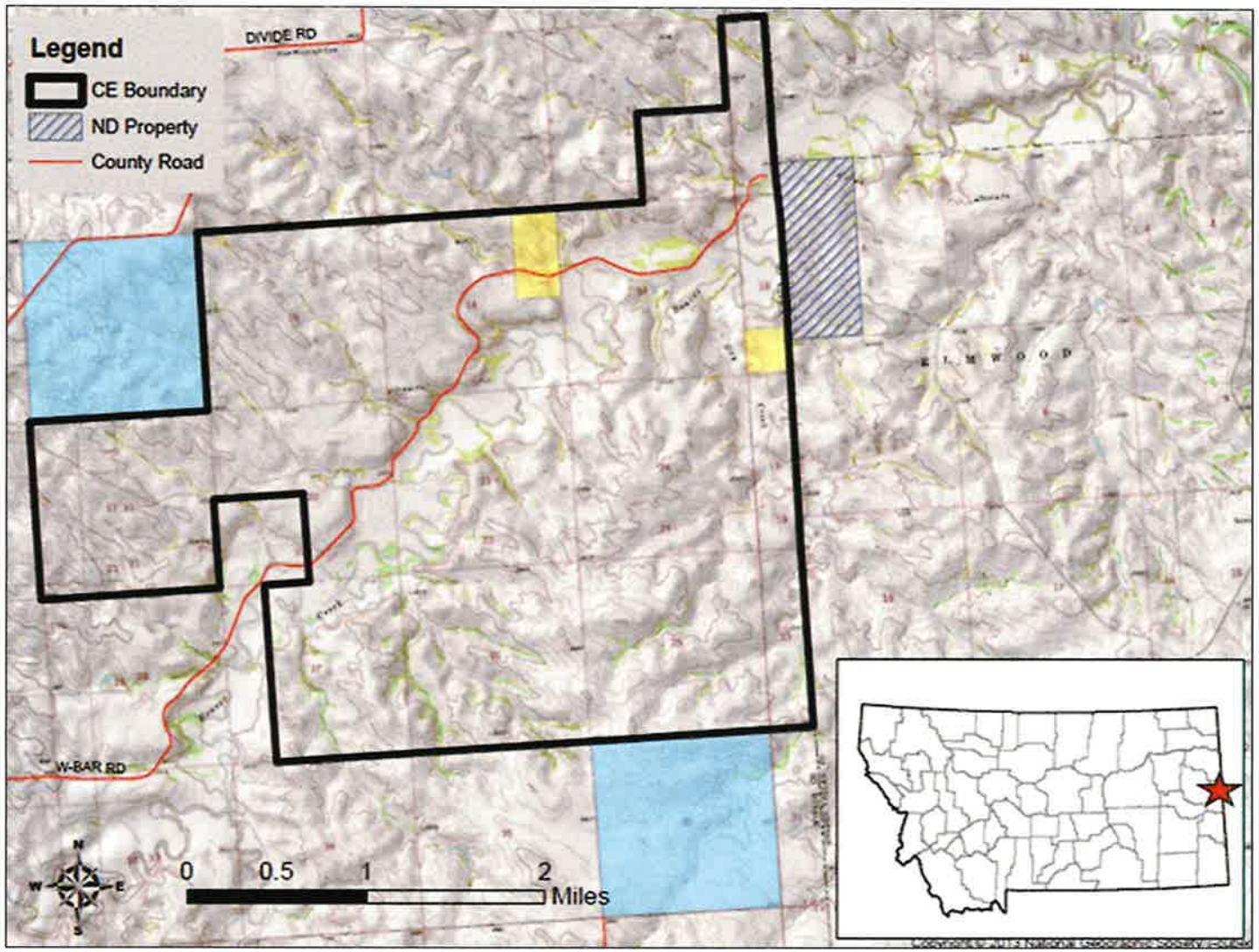

Figure 2.1. Boundary of the W-Bar Conservation Easement (CE) and associated public land leases (black outline). The Easement only encumbers deeded lands (white). BLM land (yellow) leased by the Landowners and North Dakota land (hatched) owned by the Landowners is shown to demonstrate the footprint of the grazing system. Inset map: the general location of the project (red star).

of green needlegrass indicate a more favorable moisture regime and moderate grazing pressure, whereas needle and thread increases with coarser soil textures, or under heavy grazing pressure. Cool season exotics such as Kentucky bluegrass (*Poa pratensis*), smooth brome (*Bromus inermis*), Japanese brome (*Bromus japonicus*), and crested wheatgrass (*Agropyron cristatum*) are common in eastern Montana mixedgrass prairies, and tend to increase in dominance with heavy grazing. These non-native cool-season grasses are ubiquitous throughout eastern Montana grassland systems. In many places, these species have been promoted by overgrazing or intentionally introduced by ranchers hoping to improve forage production. The W-Bar is no exception, but in general these nonnative species occur at low density within native systems on the Land. Forb diversity tends to be high within these systems, with common species including yarrow (*Achillea millefolium*), scarlet globemallow (*Sphaeralcea coccinea*), western sagewort, (*Artemisia ludoviciana*), fringed sagewort (*Artemisia frigida*), silver lupine (*Lupinus argenteus*), fuzzy beardtongue (*Penstemon eriantherus*), shining penstemon (*Penstemon nitidus*), Missouri goldenrod (*Solidago missouriensis*) and dalea (*Dalea* species). Common shrub species include western snowberry (*Symphoricarpos occidentalis),* serviceberry (*Amelanchier alnifolia*), creeping juniper (*Juniperus horizontalis*), silver sage (*Artemisia cana*) and Wyoming big sagebrush.

Great Plains Wooded Draws can also be found on W-Bar and are interspersed throughout the Land making up 18% of the habitat. These narrow, linear bands of woody vegetation provide critical wildlife cover, browse, and mast production. Snow entrapment and seasonal, short-duration flooding provide critical moisture that promotes woody species and contributes to deep loamy soils. Green ash (*Fraxinus pennsylvanicus*) is the dominant overstory species, with occasional Boxelder (*Ulmus rubra*). Common understory species include chokecherry (*Prunus virginiana*), as well as hawthorne (*Crataegus* species), currant (*Ribes* species), Woods' rose (*Rosa woodsii*), silver buffaloberry (*Shepherdia argentea*), and western snowberry. The herbaceous layer is often dominated by sedges (*Carex* species) and grasses such as northern reedgrass (*Calamagrostis stricta),* western wheatgrass, bluebunch wheatgrass, and thickspike wheatgrass. Common forbs include American licorice (*Glycyrrhiza lepidota*), yarrow, meadow rue (*Thalictrum dasycarpum*), and bedstraw (*Galium* species). Exotics such as Russian olive (*Elaeagnus angustifolia*), yellow sweetclover (*Meliotus officinalis*) and Kentucky bluegrass occur in these systems. Shade and moisture draw livestock into woody draws and ravines, concentrating use, and causing mechanical damage to woody species. Browsing and trampling by livestock can limit the growth and recruitment of woody species. The grazing system described in Chapter 3 of this Management Plan will provide periods of growing-season rest, allow woody species to recruit out of the browse zone, and is designed to improve the long-term viability of woody draws on the Land.

Great Plains Riparian habitat accounts for 4% of the habitat on W-Bar and is associated with Beaver Creek, Dry Creek, and their tributaries. Although the amount of riparian habitat is small, the importance of this habitat to wildlife and maintaining a livestock operation make it a significant contribution to the importance of this easement. The primary inputs of water to these systems include overland flow from local precipitation and groundwater discharge (Decker, 2007)[1]. Flooding is the key ecosystem process, creating suitable sites for seed dispersal and

[1] Decker, Karin. 2007. *Western Great Plains riparian woodland and shrubland ecological system ecological integrity assessment*. Ft. Collins, Colo: Colorado State University, Colorado Natural Heritage Program.

seedling establishment, and controlling vegetation succession. Great Plains Riparian systems that occur on the W-Bar include riparian forests or woodlands, as well as shrublands, tallgrass or mixedgrass wet meadows, herbaceous wetlands, and gravel/sand flats. Plains cottonwood (*Populus deltoides*), willows (*Salix spp.*), redosier dogwood (*Cornus stolonifera*), western snowberry, chokecherry, and woods rose are all species common in this system. In areas where the channel is incised, the understory may be dominated by Wyoming big sagebrush or silver sagebrush. Riparian areas can have a high herbaceous species richness but are also prone to invasion by exotic grasses and forbs. Primary threats to floodplain systems include overgrazing and conversion to agriculture. The health of these systems may be heavily influenced by the condition of the surrounding landscape, because the quality and quantity of ground and surface water inputs into riparian areas depends on the quantity and health of vegetation in the uplands. The grazing system prescribed in Chapter 3 of this Management Plan will address these threats by preventing additional conversion, providing periods of rest from grazing to benefit riparian systems, and providing residual cover on a landscape scale which will slow erosion, improve moisture retention, and reduce sediment loads in overland flow.

Table 2.1. Ecological systems and associated landcover types within the W-Bar Conservation Easement and associated BLM land leases. Landcover corresponds with the Level 3 Montana Landcover data from the Montana Natural Heritage Program.

Ecological System/Landcover	Acres	% of Total Acres
Great Plains Mixedgrass Prairie	5112.4	74.21%
Great Plains Wooded Draw and Ravine	1254.5	18.21%
Great Plains Riparian	281.6	4.09%
Cultivated Crops	137.0	1.99%
Pasture/Hay	55.4	0.80%
Great Plains Badlands	14.5	0.21%
Great Plains Closed Depressional Wetland	12.9	0.19%
Great Plains Floodplain	10.0	0.15%
Introduced Upland Vegetation - Perennial Grassland and Forbland	5.6	0.08%
Great Plains Shrubland	4.9	0.07%
Great Plains Sand Prairie	0.9	0.01%

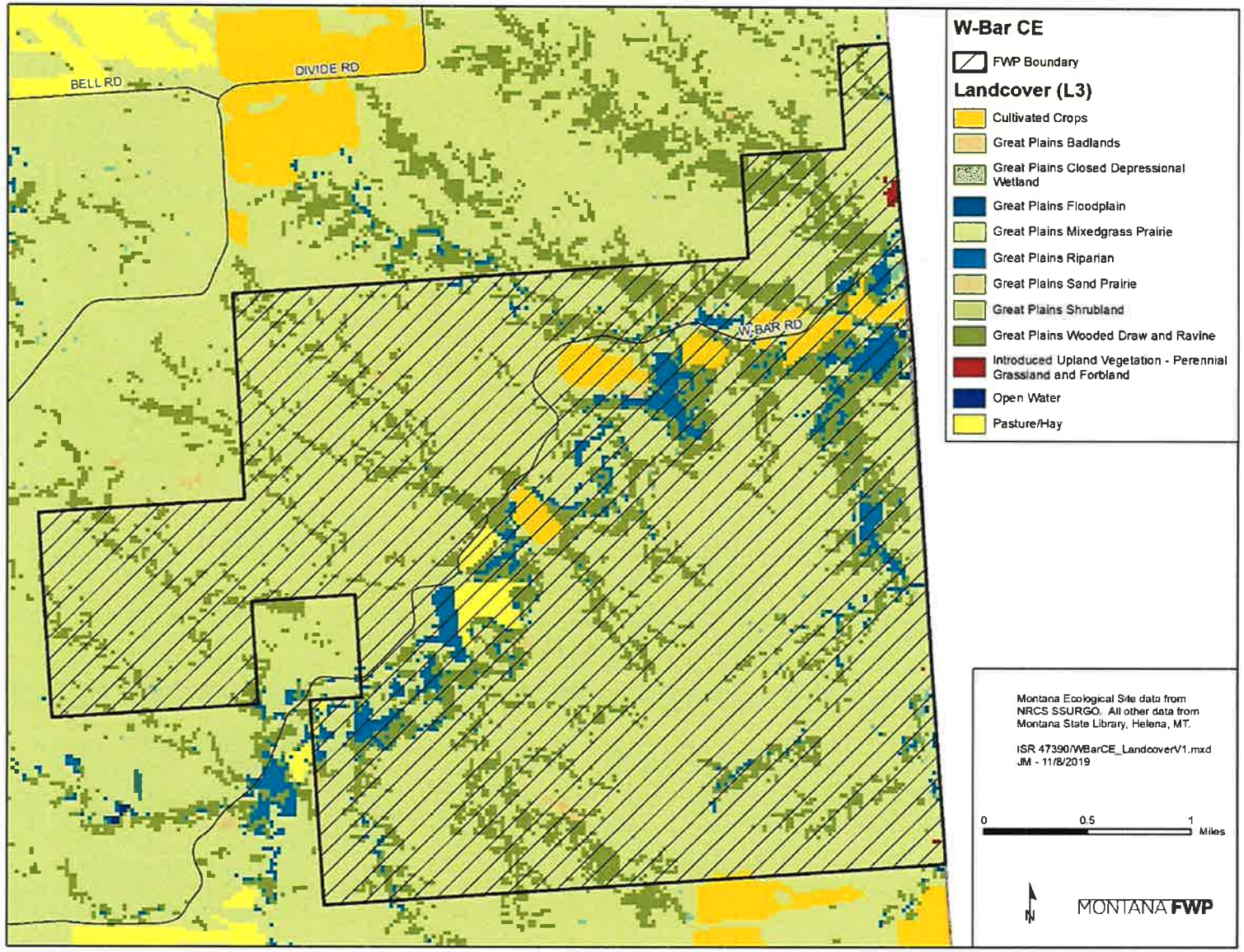

Figure 2.2. Landcover of ecological systems within the W-Bar Conservation Easement.

Table 2.2. Soil types, corresponding ecological systems and ecological sites within the W-Bar Conservation Easement. Data from NRCS SSURGO.

Soil Type	Ecological Site	Acres	Ecological Systems
Bainville silt loam, 6 to 9 percent slopes	Shallow Loamy	6.0	Great Plains Mixedgrass Prairie, Great Plains Wooded Draw and Ravine
Bainville silt loam, 10 to 14 percent slopes		25.2	Great Plains Mixedgrass Prairie, Great Plains Wooded Draw and Ravine
Bainville silt loam, 15 to 40 percent slopes		12.3	Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine
Chama silt loam, 4 to 7 percent slopes	Limy Residual	152.6	Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine
Chama-Bainville silt loams, 10 to 14 percent slopes		322.6	Great Plains Mixedgrass Prairie
Cherry silt loam, saline, 0 to 3 percent slopes	Saline Lowland (SL) RRU 58A-E 10-14"" p.z.	47.2	Great Plains Mixedgrass Prairie
Cherry silt loam, 4 to 9 percent slopes	Limy Residual	133.1	Great Plains Mixedgrass Prairie, Great Plains Wooded Draw and Ravine, Pasture/Hay
Cheyenne loam, 0 to 5 percent slopes	Loamy	325.0	Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine
Farland silt loam, 0 to 3 percent slopes	Loamy Terrace	336.5	Cultivated Crops, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine
Farland-Harlem complex, 0 to 3 percent slopes		671.7	Great Plains Closed Depressional Wetland, Great Plains Floodplain, Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine
Gravelly terrace remnants, 5 to 40 percent slopes	Shallow Loamy	259.9	Great Plains Mixedgrass Prairie, Great Plains Wooded Draw and Ravine
Lonna-Kirby-Cabbart complex, 2 to 50 percent slopes	Limy Residual	53.4	Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Wooded Draw and Ravine
Lonna-Cabbart silt loams, 6 to 35 percent slopes		2797.3	Great Plains Mixedgrass Prairie, Great Plains Shrubland, Great Plains Wooded Draw and Ravine
Rockland-Bainville complex, 15 to 50 percent slopes	Non-site	1760.5	Great Plains Mixedgrass Prairie, Great Plains Riparian, Great Plains Sand Prairie, Great Plains Shrubland, Great Plains Wooded Draw and Ravine

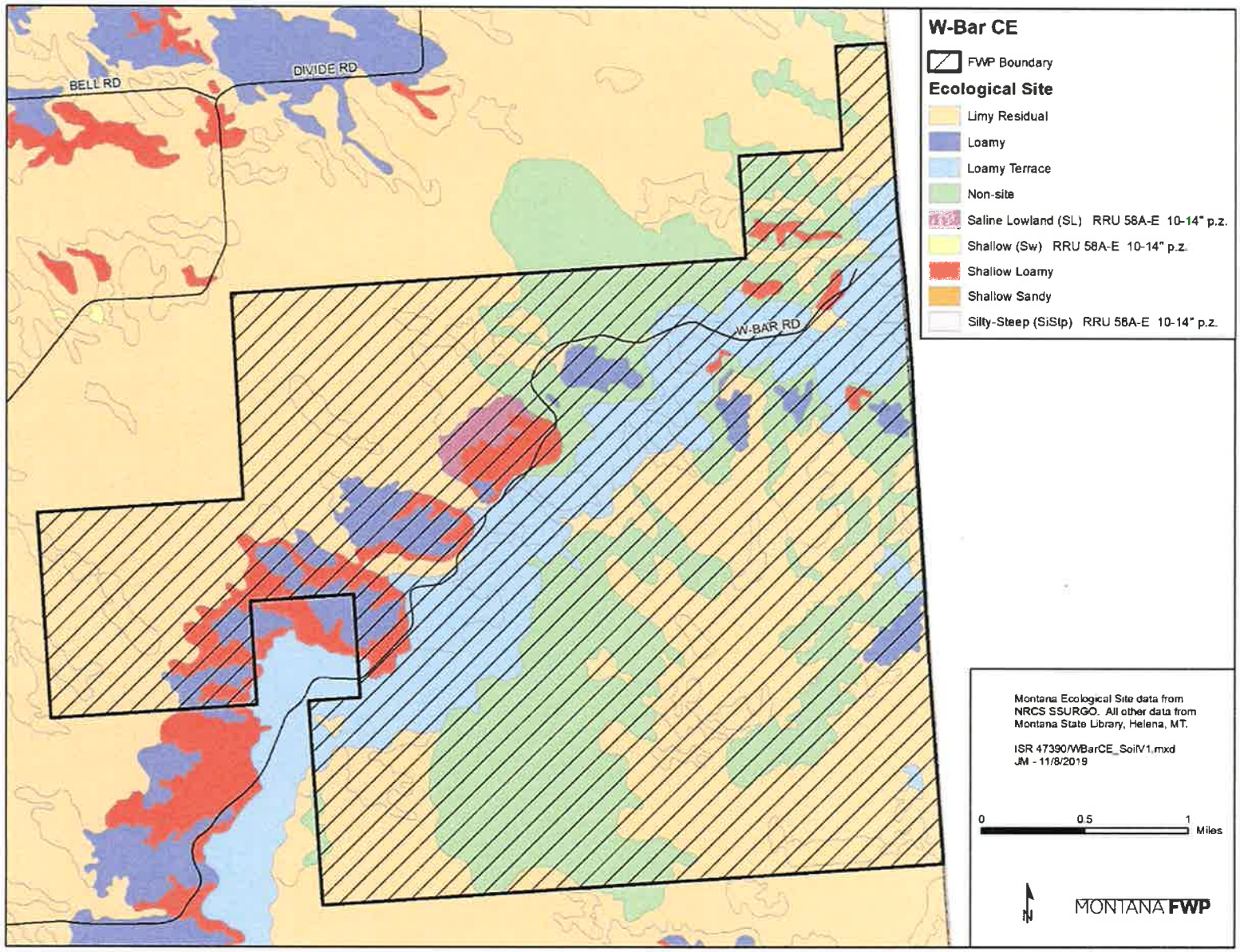

Figure 2.3. Ecological sites within the W-Bar Conservation Easement.

These cover types in eastern Montana are key in maintaining stable native species populations, including several Species of Greatest Conservation Need (SGCN) identified in the Montana State Wildlife Action Plan (Table 2.2). The native range and riparian areas are excellent wildlife habitat and include important breeding, rearing and wintering habitats for a variety of wildlife (game and non-game). Big-game species supported by the W-Bar include mule and white-tailed deer, antelope, and the occasional elk. It also provides quality upland game bird habitat for sharp-tailed grouse, wild turkey, and Hungarian partridge. Furthermore, 11 miles of the Beaver Creek drainage winds through the Land, providing valuable aquatic habitat for game fish species including catfish, sauger, northern pike, and walleye, and numerous native non-game fish species including the Iowa Darter (SGCN), several types of shiners, chubs, and minnows. These habitats are beneficial in maintaining huntable, fishable, and viewable populations of wildlife, both migratory and resident.

Table 2.2. Species of Greatest Conservation Need potentially located on the W-Bar Ranch as identified within range maps in the MT State Wildlife Action Plan (2015) and the MT Natural Heritage Program.

Amphibians	
Common Name	**Scientific Name**
Great Plains Toad	*Anaxyrus cognatus*
Plains Spadefoot	*Spea bombifrons*
Northern Leopard Frog	*Lithobates pipiens*
Birds	
Baird's Sparrow	*Centronyx bairdii*
Black-billed Cuckoo	*Coccyzus erythropthalmus*
Bobolink	*Dolichonyx oryzivorus*
Brewer's Sparrow	*Spizella breweri*
Chestnut-collared Longspur	*Calcarius ornatus*
Ferruginous Hawk	*Buteo regalis*
Golden Eagle	*Aquila chrysaetos*
Great Blue Heron	*Ardea herodias*
Loggerhead Shrike	*Lanius ludovicianus*
Long-billed Curlew	*Numenius americanus*
Sprague's Pipit	*Anthus spragueii*
Yellow-billed Cuckoo	*Coccyzus americanus*

Mammals	
Common Name	**Scientific Name**
Hoary Bat	*Lasiurus cinereus*
Little Brown Myotis	*Myotis lucifugus*
Meadow Jumping Mouse	*Zapus hudsonius*
Porcupine	*Erethizon dorsatum*
Reptiles	
Greater Short-horned Lizard	*Phrynosoma hernandesi*
Snapping Turtle	*Chelydra serpentina*
Spiny Softshell	*Apalone spinifera*
Fish	
Iowa Darter	*Etheostoma exile*
Sauger	*Sander canadensis*

3. GRAZING MANAGEMENT

3.1 Land Unit Description

The grazing system for the W-Bar Ranch Conservation Easement encompasses a total of 6,871 acres (6,751 deeded acres and 120 BLM acres; Figure 2.1). The deeded acres include 647 acres of Cultivated Area. These areas may be used for agricultural purposes as described in Section II.C.2 of the Conservation Easement and Chapter 4 of this Management Plan. The primary historic land use of the Land has been cattle grazing. A total of 6,104 deeded acres are native rangeland and will continue to be managed as a working cattle ranch. The grazing system described below follows cattle through winter, spring, summer, and fall and adheres to the Minimum Standards for Grazing (Exhibit C in the Easement).

3.2 Current Management Narrative

This section describes what has occurred with grazing management on the W-Bar Ranch prior to adoption of this grazing plan. The main herd, consisting of productive mother cows over 3-years old would generally winter in the northeastern pastures (Shibley, Dry Creek, and Stull) around the ranch headquarters (Figure 3.1). The herd would move to pastures 15 and 21 for calving, through Post-15 and Post-21 to the corrals for branding, and back to Post-15 and Post-21 after branding. The herd would then move through Center pasture (occasionally remaining in this pasture to minimize burdock in the spring) and then to South and Summer pastures for the summer. Typically, the herd would move back to Center pasture before weaning and then back to the northeastern pastures (Shibley, Dry Creek, and Stull) for the fall and winter.

Yearlings and 2-year olds wintered in the Stull pasture. In the spring, they joined the cow-calf pairs after branding. When not out with cows, the bulls were kept in a dry lot at the ranch headquarters. Occasionally the bulls were kept in pasture 21 during the fall before moving them back to the dry lot at the ranch headquarters.

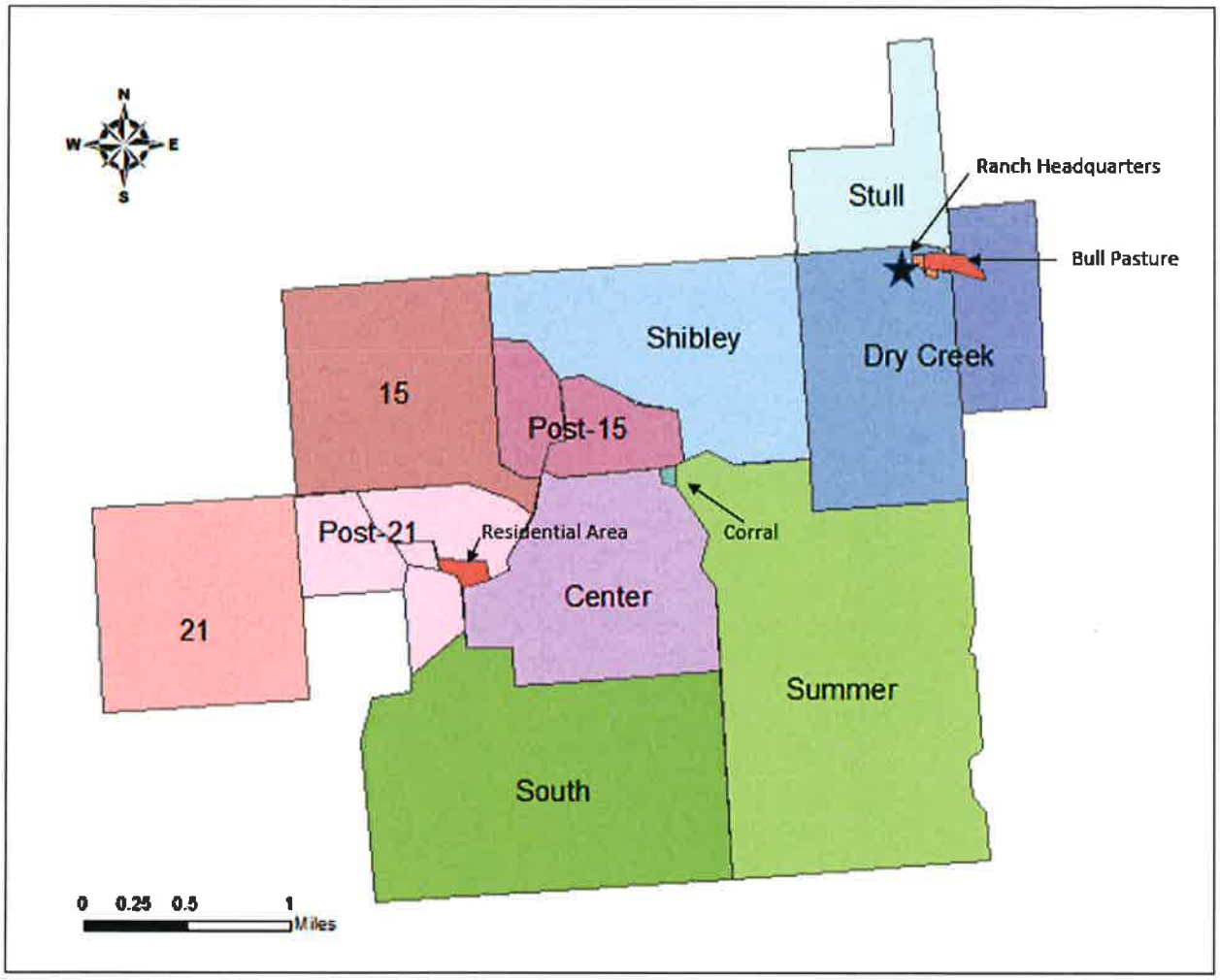

Figure 3.1: Current pasture names and configuration on the W-Bar Ranch.

3.3 Planned Management Narrative with Tables and Maps

Overview

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

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

To comply with FWP grazing standards for winter grazing, as many pastures as possible that are

used during the late fall, winter, and early spring will receive alternating use, where some pastures are used during even years and rested during odd years, and other pastures are used during odd years and rested during even years.

It is acknowledged that some areas are needed to conduct annual ranch activities, such as calving, weaning, shipping and other animal husbandry practices.

Grazing Rotation and Schedules

Fall/Winter

During the fall and winter, Dry Creek pasture will be open annually and used by heifers from the time the calves are weaned (around October 15) until they are moved for calving in the spring (around March 15). Yearlings and two-year olds will be kept separate in the Stull pasture for the fall and winter and integrated into the grazing rotation with the cow/calf pairs in the spring before or during branding. Bulls will be kept in the bull pastures next to the ranch headquarters (see Figure 2.1) for the fall and winter and integrated into the grazing rotation with cow/calf pairs in the summer.

Spring

During the spring, cows move from the winter pastures into pastures 15 and 21 for calving. These pastures will be alternated between even and odd years. In even years (2024, 2026, 2028, etc.), pasture 15 will be used. In odd years (2023, 2025, 2027, etc.), pasture 21 will be used. These pastures are available from March 15 until May 5.

Once calving is completed, the cow/calf pairs move into the post-15 and post-21 pastures from May 1 until June 1, or until branding is completed. These pastures will also be alternated in use between even and odd years. In even years (2024, 2026, 2028, etc.), pasture post-15 will be used. In odd years, (2023, 2025, 2027, etc.), pasture post-21 will be used. Pasture post-15 will also be open to use in odd years for 1.5 weeks in the month of May to allow cow/calf pairs to be moved to the corrals for branding.

Summer

Once branding is completed, cow/calf pairs move to the summer grazing system (Figures 3.2 – 3.5). Throughout the summer, cow/calf pairs will be managed using a 3-treatment rest-rotation grazing system between May 30 (typically after branding has occurred) through approximately October 31, when the calves are weaned and shipped. Summer pastures include Shibley, Center, South, and Summer. Each of these pastures will receive one grazing treatment per year, with the treatments rotated annually. In addition to the typical 3-treatment system, there will be another option to move cow/calf pairs very late in the season (September 15 to October 31) to a 4th pasture provided additional forage is needed (see Very Late Treatment below for more details).

- *Early Treatment:* Each year, one pasture is grazed during the growing season. The growing season is defined as beginning with the period of rapid plant growth (generally

early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). The approximate dates for the Early Treatment are May 30th to August 15th. The Early Treatment is color coded green in the yearly grazing schematics.

- *Late Treatment*: Each year, one pasture is grazed after seed-ripe (generally early August). The approximate dates for the Late Treatment are August 1st to October 31st or when the cow/calf pairs are brought home for weaning. The Late Treatment is color coded yellow in the yearly grazing schematic.

- *Rest Treatment*: Each year, two pastures are rested yearlong, with one of those pastures receiving two years of rest. However, the Landowners have the option in years when forage is limited to utilize the Very Late Treatment on one of those pastures (see *Very Late Treatment* below for more details). The Rest Treatment is color coded red in the yearly grazing schematics.

- *Very Late Treatment*: This treatment is optional and should only be employed during years when forage availability is limited on the Late Treatment pasture. When opting to use this treatment, the Landowners should notify the FWP Region 7 Wildlife Manager or Biologist. The intent of this treatment option is to accommodate additional forage during extreme drought years when livestock would not have enough forage in the Late Treatment pastures to graze until weaning and shipping. If forage is limited, one pasture can be grazed later after seed-ripe; otherwise the pasture will be rested year long. The approximate dates for the Very Late Treatment are September 15th to October 31st. The Very Late Treatment is color coded orange.

When the cow/calf pairs leave this system for weaning, the calves will be shipped and the cows returned to the fall/winter pastures. This system has an intentional overlap between the end date of the Early Treatment (August 15) and the beginning date of the Late Treatment (August 1).

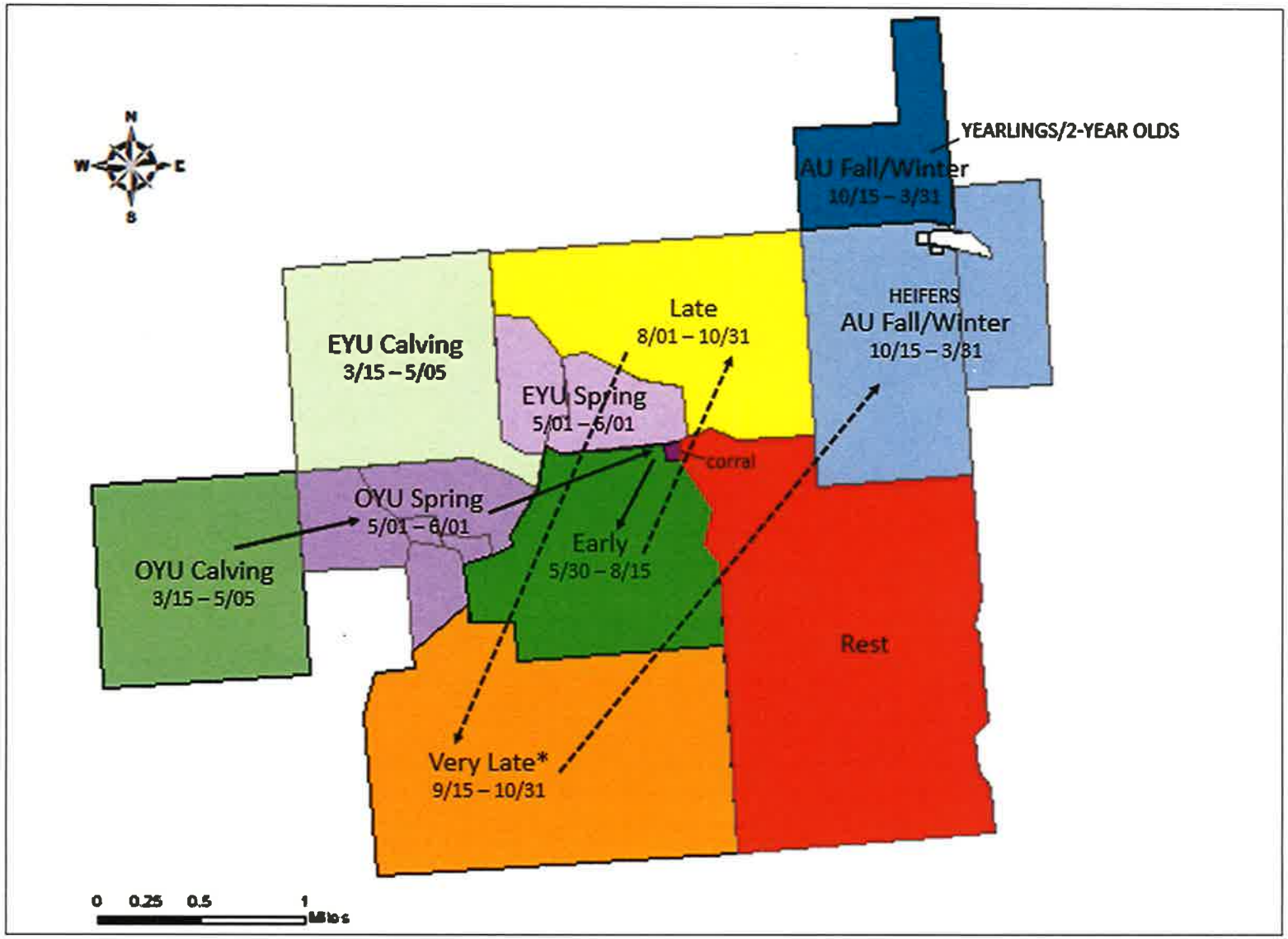

Figure 3.2: Cow/calf summer grazing schedule for Year One (2023, 2027, 2031, etc.). OYU = Odd-Year Use. EYU = Even-Year Use. AU = Annual Use. Very Late Treatment* is optional (see text).

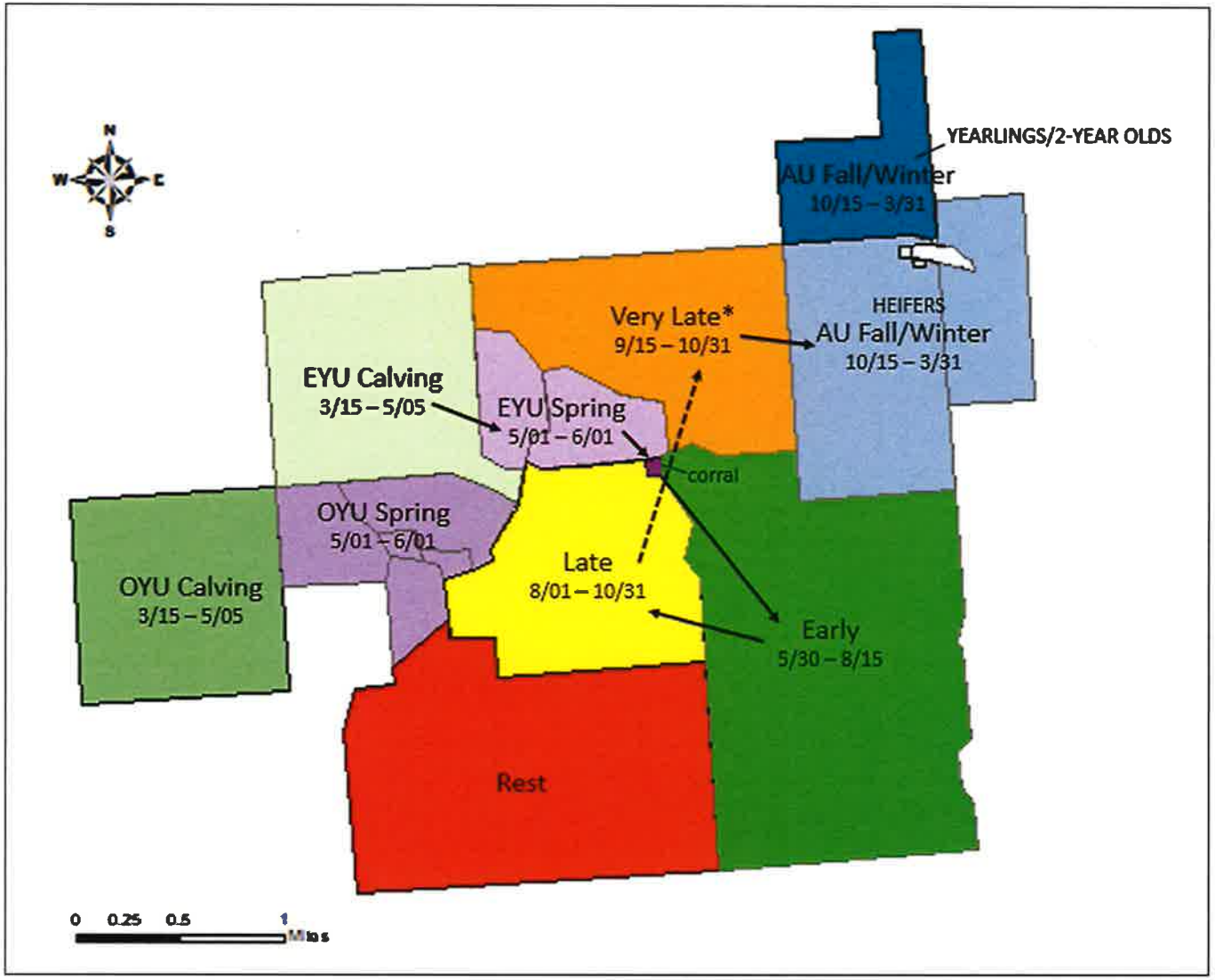

Figure 3.3: Cow/calf summer grazing schedule for Year Two (2024, 2028, 2032, etc.). OYU = Odd-Year Use. EYU = Even-Year Use. AU = Annual Use. Very Late Treatment* is optional (see text).

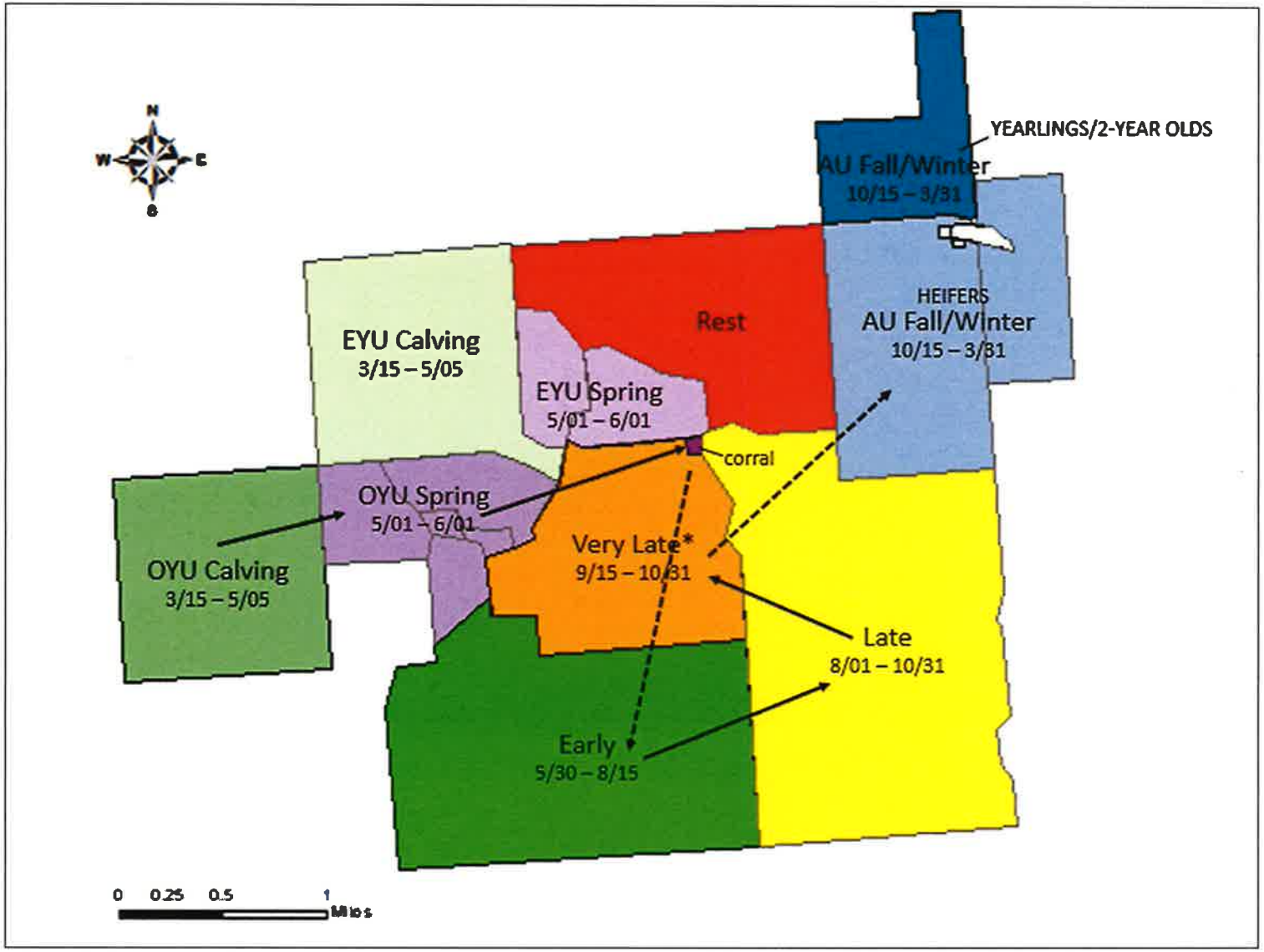

Figure 3.4: Cow/calf summer grazing schedule for Year Three (2025, 2029, 2033, etc.). OYU = Odd-Year Use. EYU = Even-Year Use. AU = Annual Use. Very Late Treatment* is optional (see text).

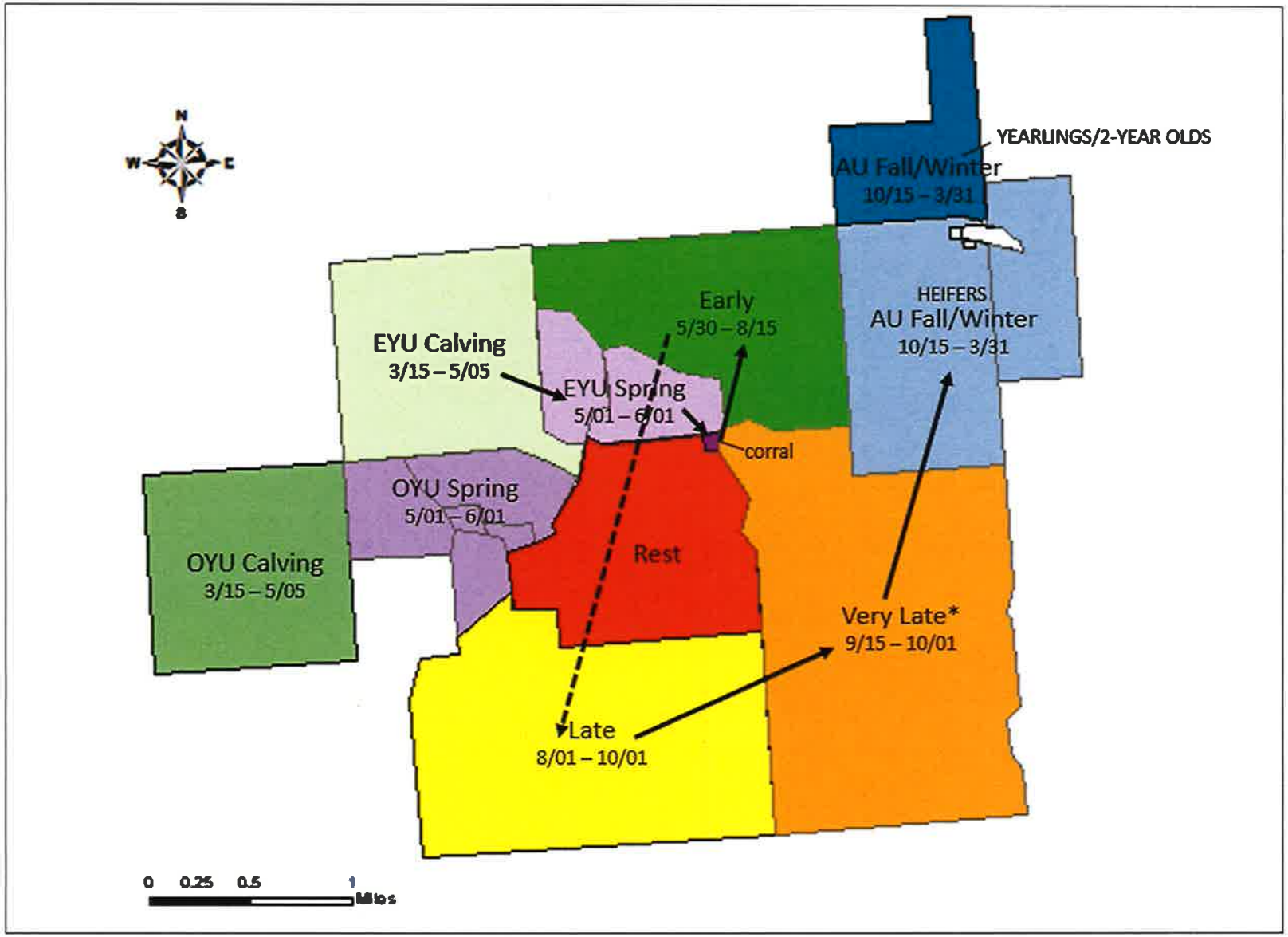

Figure 3.5: Cow/calf summer grazing schedule for Year Four (2026, 2030, 2034, etc.). OYU = Odd-Year Use. EYU = Even-Year Use. AU = Annual Use. Very Late Treatment* is optional (see text).

Table 3.1: Summer grazing schedule for cows on W-Bar Conservation Easement.

W-Bar Cow/Calf Pair Summer Grazing System								
Year	**Pasture**							
	15	**Post-15**	**21**	**Post-21**	**Shibley**	**South**	**Summer**	**Center**
2023	Rest	Rest	Calving	Spring	Late	Very Late*	Rest	Early
2024	Calving	Spring	Rest	Rest	Very Late*	Rest	Early	Late
2025	Rest	Rest	Calving	Spring	Rest	Early	Late	Very Late*
2026	Calving	Spring	Rest	Rest	Early	Late	Very Late*	Rest
2027	Rest	Rest	Calving	Spring	Late	Very Late*	Rest	Early
2028	Calving	Spring	Rest	Rest	Very Late*	Rest	Early	Late
2029	Rest	Rest	Calving	Spring	Rest	Early	Late	Very Late*
2030	Calving	Spring	Rest	Rest	Early	Late	Very Late*	Rest
2031	Rest	Rest	Calving	Spring	Late	Very Late*	Rest	Early
2032	Calving	Spring	Rest	Rest	Very Late*	Rest	Early	Late
2033	Rest	Rest	Calving	Spring	Rest	Early	Late	Very Late*
2034	Calving	Spring	Rest	Rest	Early	Late	Very Late*	Rest
2035	Rest	Rest	Calving	Spring	Late	Very Late*	Rest	Early

Early = Graze 5/30 – 8/15

Late = Graze 8/01 – 10/31

***Very Late** = Graze 9/15 – 10/31 (Optional – if not needed, the Rest Treatment will be applied)

Rest = No Grazing

3.4 Stocking Rate

This grazing plan does not set a specific stocking rate. On deeded lands covered by the CE, the maximum stocking rate will be based on compliance with the grazing system. As long as the Landowner can graze livestock and remain in compliance with the grazing system, FWP will not be concerned about the stocking rate. If pasture forage consistently runs out before the scheduled timing is complete, there would likely be too many livestock. Conversely, if excess pasture forage remains after use, there would likely be room to pasture additional livestock.

3.5 Salt and Mineral Management

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

3.6 Range Improvements

The range improvements described in Table 2.2 and mapped in Figure 2.6 will increase stock water availability and dependability, decreasing the amount of time the cattle spend in the riparian creek bottoms, benefitting the conservation value of the Land.

The Landowners and FWP cost share will involve two options: Option 1, FWP pays for materials through reimbursement to the Landowners and the Landowners complete the installation as in-kind cost share. Option 2, the Landowners hire contracted services and all costs are split 50/50 through reimbursement to the Landowners. The total cost of the range improvements is estimated to be $144,000, with FWP's portion to be 50%, or up to $72,000.

Table 3.2: Range improvements needed to operate the rest-rotation grazing system on the W-Bar Conservation Easement.

Improvement	Estimated Rate	Quantity	Cost
Solar Pump - Photovoltaic-powered Pump, < 250ft total head	$6,155.00 each	1 unit	$6,155.00
12' Fiberglass Stock Tank - 1,500 gallons	$2.66/gal	1 unit	$3,990.00
Small Storage Tank - 3,000 gallons	$1.20/gal	1 unit	$3,600.00
Large Stock Tank - 10,000 gallons	$1.20/gal	1 unit	$12,000.00
Small Stock Tanks - Rubber Tires - 1,500 gallons	$2.66/gal	7 units	$27,930.00
Small Winter Stock Tanks - Covered Rubber Tires - 1,000 gallons	$4.65/gal	3 units	$13,950.00
Pipeline - Below Frost HDPE	$2.50/ft	30,550 ft	$76,375.00
		Estimated Total	$144,000.00
		50% Cost-Share	$72,000.00

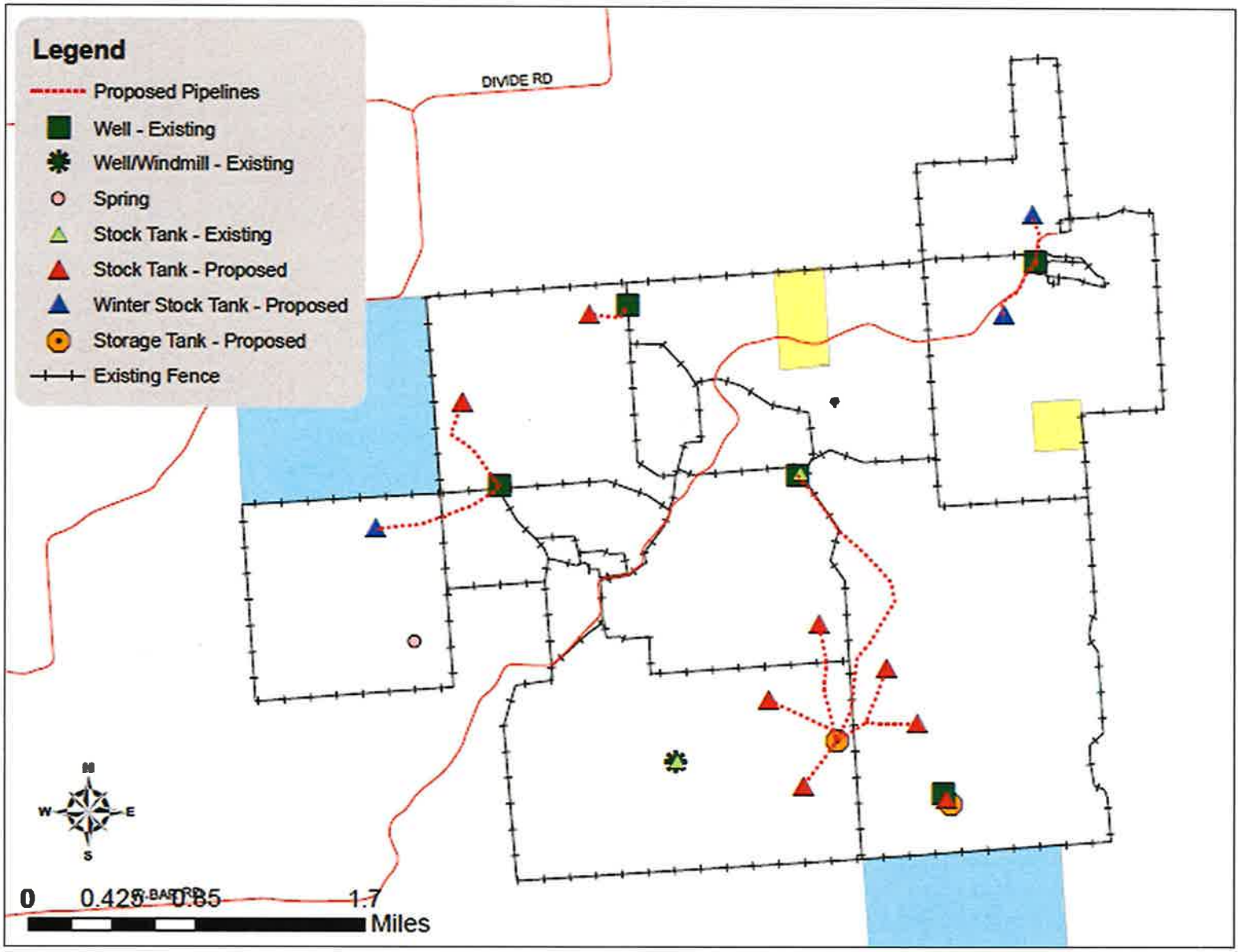

Figure 3.6: Map of range improvements needed for rest-rotation grazing system development on the W-Bar Conservation Easement.

3.7 How the grazing plan addresses Fish and Wildlife Objectives

The overall objective of this grazing system is to maintain and enhance the quality and vigor of native vegetation on lands incorporated into the Easements. Periods of grazing and rest offered by the grazing system are intended to improve species diversity, forage quality and palatability. Pastures incorporated into summer grazing systems follow a three-pasture rest-rotation grazing system which provides season-long and year-long rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively. These periods of rest allow plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the "late summer" pasture following seed-ripe, hoof action tramples mature seeds into the soil, and can provide microsites that capture moisture and facilitate seedling establishment. The following year's rest treatment allows these seedlings to develop strong root systems and grow before growing-season livestock grazing commences again the following spring. This rest-rotation approach improves the health of perennial species by allowing them to recover following grazing, but also promotes species diversity by allowing annuals an opportunity to reproduce during periods of growing season rest. The abundance and health of highly palatable "ice cream" plants are improved relative to grazing regimes that do not incorporate regular growing season rest, because the more palatable plants are the first to be grazed by livestock, thereby reducing their vigor and survival, and giving less palatable species a competitive advantage. Pastures incorporated into winter grazing systems will be afforded year-long rest on alternate years, and complete growing season rest, providing similar advantages for plant vigor and species diversity as those pastures in the summer system.

The grazing system will help ensure an adequate quantity and quality of forage is available for wildlife using upland and riparian habitats. For example, high quality, early spring forage will be available for wild ungulates the spring following the post seed-ripe treatment. These rested pastures can be critical for antelope and deer coming out of a negative energy balance from winter, as they get ready to fawn. Residual vegetation provides valuable cover for ground nesting and ground brooding birds, including Sage and Sharp-tailed Grouse, as well as cover for small mammals, fawning cover for ungulates, and hiding cover for a variety of wildlife. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures. Grazing systems can contribute to songbird diversity because different species of songbird prefer different vegetation structures and heights offered by the various grazing treatments. Woody draws throughout eastern Montana are in decline, oftentimes due to grazing regimes that do not offer sufficient rest and allow woody species to reproduce or grow above the browse line. Rest provided by the grazing system will support recruitment and growth of woody species that provide critical nutrition in the form of browse and mast production, as well as nesting, hiding, and thermal cover for a variety of wildlife.

In addition to benefitting native vegetation and wildlife, the grazing system can contribute to overall ecosystem health and water quality. Residual cover can reduce runoff and erosion, thereby contributing to moisture retention, water quality, and soil health. Improved plant species diversity leads to improved health and diversity of pollinator and native insect populations. Finally, the grazing system will contribute to high-quality hunting, trapping, fishing, and wildlife watching experiences for the public. The grazing system contributes to productive rangelands, healthy ecosystems, and robust wildlife populations, all of which have both intrinsic and aesthetic value. Finally, the grazing system will serve as an example of how livestock production and conservation

are highly compatible, because the quality and quantity of vegetation for livestock production should be maintained or improved long-term under the grazing system.

4. MANAGEMENT OF CULTIVATED AREAS

Objective: *Allow the Landowner to manage Cultivated Areas (described in section II.C.2 and Exhibit D of the Easement) to benefit the livestock operation, without degrading habitat in adjacent portions of the Land.*

Strategy: The Cultivated Area is currently enrolled in the Conservation Stewardship Program (CSP) with the United States Department of Agriculture Natural Resources Conservation Service (NRCS) and will be reseeded to a mixture of native and introduced grasses over a 5-year period. These fields will be rotated with no-till crops, sprayed, and eventually reseeded to grass. Once they are reseeded, they will be maintained as native and tame grasses. Cultivated Area may be hayed, grazed, used for grassland restoration or conservation, or any combination of these activities. In the Beaver Creek flood plain, where the Cultivated Area is located, invasive smooth brome is a chronic issue. To address this issue, the Landowner can renovate these fields as needed to maintain the established native and introduced grass mixtures. The planting of invasive non-native plants that would have the potential to degrade habitat in surrounding lands is prohibited.

5. WEED MANAGEMENT

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

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

6. WILDLIFE FRIENDLY FENCES

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

Strategy: Designs for wildlife friendly fences are constantly evolving with new research and testing of new designs. Paige 2012[2] provides a good overview of current wildlife friendly designs. With prior notice to FWP, when a fence is proposed to be constructed or replaced, the Landowners and FWP wildlife biologist will jointly design a fence that takes into account the wildlife species present, habitat, and landscape features. The FWP wildlife biologist can provide input on the proposed fence route and may be able to suggest modifications that would benefit wildlife (for example, re-routing a fence that would pass near or through a grouse lek) with little impact to the overall length of fence, difficulty of fencing, or resulting pasture sizes. The design may specify wire spacing (to allow passage over and under fences and minimize entanglement), or markers to improve visibility. Oftentimes it is not necessary for the entire fence to allow ideal passage. Fence modifications at specific crossing spots likely to be heavily traveled by wildlife may provide excellent wildlife passage (Paige 2012[1]). The default design will be a fence of not more than 4 strands of barbed wire with the height of the top wire set at 42 inches or lower and the height of the lowest wire set 18 inches from the ground or higher. Due to the nature of fencing on uneven ground, there may be places where the top wire is higher or bottom wire is lower than specifications, this is expected so long as the majority of the fence conforms to height requirements.

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

Internal gates, except those along public roadways, will be left open whenever they are not needed to contain livestock. For internal gates along public roadways, FWP may provide seasonal gates (to be used when livestock are not present in the pasture) that would prevent vehicular trespass but allow excellent wildlife passage (e.g., cable/padlock gates). External gates will be left open whenever possible and agreeable to adjacent landowners.

7. NON-CATTLE DOMESTIC LIVESTOCK

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

[2] Paige, C. 2012. A Landowner's Guide to Wildlife Friendly Fences. Second Edition. Private Land Technical Assistance Program, Montana Fish, Wildlife & Parks, Helena, MT. 56 pp

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

At the time of this management plan, there is a known risk of disease transfer from domestic sheep and goats to wild bighorn sheep. Bighorn sheep, on rare occasions, may pass through the Land. If in the future the Landowners would like to keep domestic sheep and/or goats, they must obtain prior approval from FWP. FWP and the Landowners will jointly develop a plan that seeks to minimize the risk of commingling and disease transmission, taking into account both domestic sheep and goats and bighorn sheep numbers and their distribution on the greater landscape at that time. If in the future there are robust bighorn sheep populations in the area and very few domestic sheep and goats, FWP may require significant measures to minimize disease risk. However, only minimal precautions are warranted if bighorn sheep continue to be rare such that the risk of commingling is low or if domestic sheep or goats become common on neighboring properties such that providing separation on the Land would be insufficient to prevent commingling on the larger landscape.

8. PUBLIC ACCESS

Objective: *Utilize public hunting for the dual purpose of providing public hunting opportunity and managing game populations on the Land.*

Strategy: At the time this management plan was put into effect, the Land provided year-round habitat and season-long hunting opportunity for mule deer, white-tailed deer, pronghorn, and sharp-tailed grouse. Pheasants, wild turkeys, and Hungarian partridge occur on portions of the property, and the Land supports occasional elk. The game species present and the abundance of those species may change through time due to changing distributions of wildlife in the region, variable weather conditions, and changing habitat conditions on the Land and the broader landscape. The Landowners will provide hunter access for all legal species and sex of game animals for the duration of all Fish and Wildlife Commission-approved seasons. If both the Landowners and FWP determine that hunting limitations are warranted for a certain species and/or sex of game animal, and FWP provides the Landowners with written documentation, then the Landowners may limit the species and/or sex of game taken on the Land. The Landowners will never be required to limit hunting for any species/sex of game animal because general season hunting is the primary tool to prevent game damage problems. Wild game populations fluctuate over time and may exceed FWP or Landowners' management objectives. If public hunting during normal commission-approved hunting seasons is insufficient to prevent game damage issues, additional game damage assistance and prescribed hunts may be provided on an "as needed" basis, upon agreement of both FWP and the Landowners.

Objective: *Minimize the potential for conflict between public access and ranching operations, and between public access and wildlife management goals.*

Strategy: Per Section II.B.5 of the Easement, the Landowners will be required to provide public recreational access for hunting, fishing, and wildlife watching. The Easement requires that the Landowners provide a minimum of 400 hunter days, 200 fishing days, and 75 wildlife watching days annually if demand exists. The Landowners are not required to allow other recreational activities in conjunction with or separate from hunting, fishing, or wildlife watching. Examples of such activities include but are not limited to the following: rock climbing, bicycling, camping, drone flying, video filming, frisbee throwing, horse riding or packing, collection of fossils and artifacts. The Landowners or FWP may prohibit wildlife watching activities that interfere with ranching operations or wildlife management goals. This includes any activities that have the potential to decrease habitat or forage quality or quantity and those that have the potential to disturb livestock or wildlife. If a conflict arises between wildlife watching opportunity and public hunting opportunity, the public hunting opportunity will take precedence. Dogs used for legal hunting will be allowed on the Land and must be under control at all times. The use of dogs on the Land for any purpose other than legal hunting is at the discretion of the Landowners. In times when the U.S. Drought Monitor (http://droughtmonitor.unl.edu/) indicates D3-D4 drought on a scale from D0 (Abnormally Dry) to D4 (Exceptional Drought), the Landowners may close the Land to public access due to fire danger. In times where drought is less severe, but fire danger is great, or for other legitimate reasons, the Landowners may temporarily close all or a portion of the Land to public access with prior written approval from FWP.

Objective: *Provide the public a reasonable, efficient, and effective method to gain access to the Land for hunting, fishing, and wildlife watching, while simultaneously allowing the Landowners to put reasonable limits in place to minimize the burden of allowing public access, provide for public safety, and minimize crowding.*

Strategy: The Landowners can manage permission for the public to access the Land using one of four options: 1) unlimited walk-in access with no permission required, 2) sign-in boxes, 3) permission administered from the Landowners (in person, via telephone, text, social media, or email), or 4) permission administered by FWP personnel. If permission is administered by FWP the Landowners may, at their discretion, allow family, friends, and other members of the public to access the Land for hunting, wildlife watching, or any other reason. Such access may be in addition to, but may not exclude those members of the public that were granted reservations or permission by FWP.

The Landowners may, but are <u>not required</u> to:

- Manage the number of individuals and/or parties on the Land at any given time to provide for public safety and minimize crowding. The Landowners must allow a minimum of three parties or 12 individuals on the Land at any given time until the minimum number of hunter days are met. Immediate family members and employees do not count toward these minimums.
- Divide the ranch into two or three subunits and assign individuals or parties a subunit to prevent crowding.
- Require hunters and wildlife watchers to sign in and collect pertinent information to identify them such as: name, telephone, address, vehicle license plate number.
- Require hunters, fishermen, and wildlife watchers to check in and check out.

- Limit the hours that the wildlife watchers can access the Land. Hunters must be allowed on the Land two hours before and two hours after legal shooting hours to accommodate prime hunting hours. Hunters in the act of tracking or retrieving harvested big game will not be subject to these limitations.
- Specify certain days or times of day which they will be available to provide permission and/or communicate with the public, provided that such limitations are reasonable.
- Limit public access to walk-in only from the designated parking areas shown in Figure 8.1.
- Prohibit the use of wheeled motorized and non-motorized vehicles on the Land. However, the use of game carts by hunters to retrieve downed game must be allowed.
- Additional rules may include the following:
    - Park only at designated parking areas. Do not park vehicles in such a manner as to obstruct traffic or block any gate.
    - Watch for livestock and leave all gates as you find them.
    - No smoking. No fires. Be careful about fire hazards.
    - No littering. Pack everything out that you bring in with you.
    - Maintain ¼ mile distance from livestock at all times.
    - No access is allowed in pastures where cows, heifers, or calves are present during calving or wintering (after 12/1 annually).
    - No removal of fossils, artifacts, or shed antlers.
- Provide more leniency than the ranch rules on a case-by-case basis. For example, they may allow elderly or handicapped hunters to hunt out of a UTV or may allow motorized game retrieval from a trail.

To ensure that the spirit of the public access requirements provided for in the Easement is being upheld, FWP may:

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

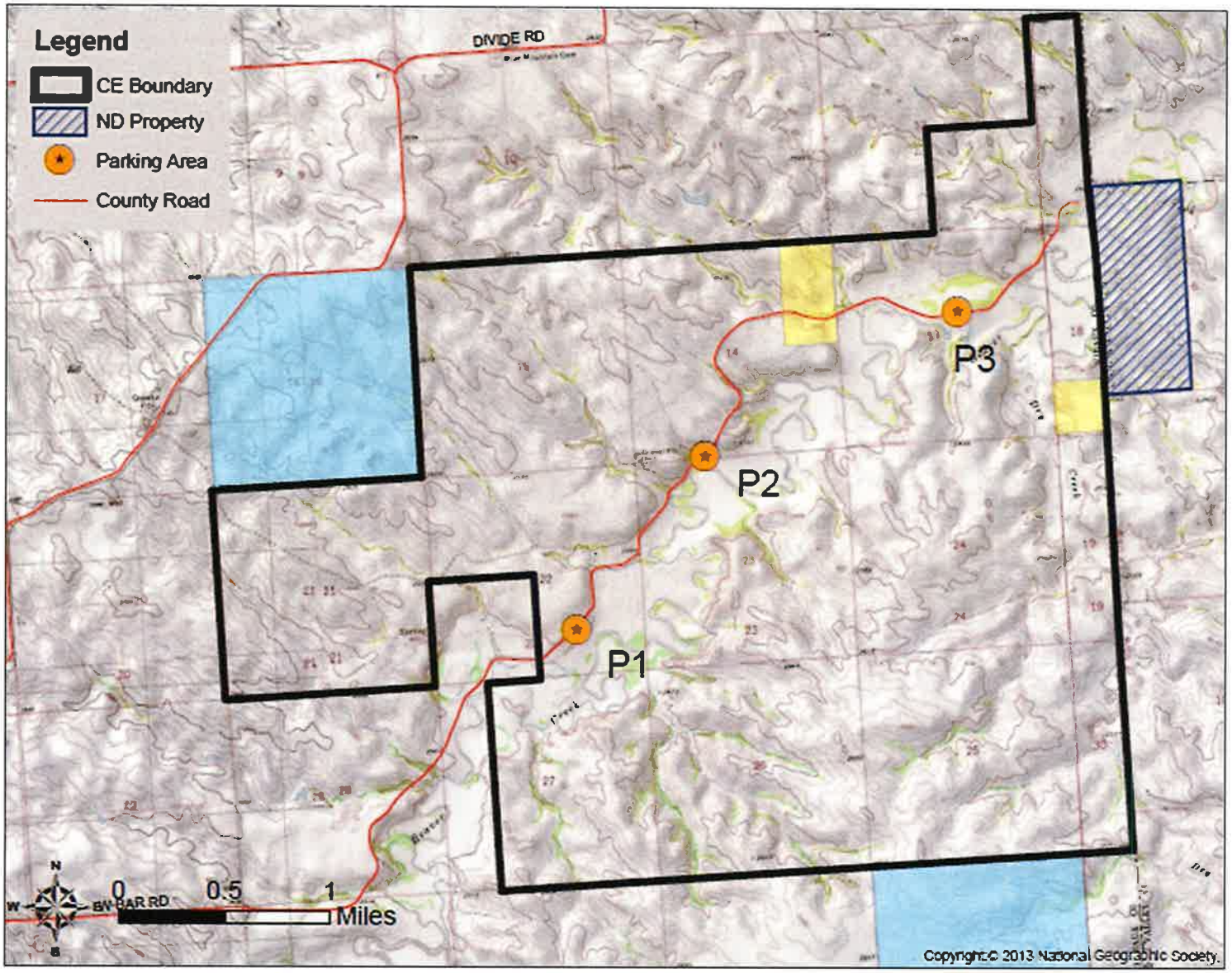

Figure 8.1. Designated parking areas on the W-Bar Conservation Easement for walk-in only hunting access.

9. NUISANCE WILDLIFE AND TRAPPING

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

Strategy: The Landowners will not be required to limit the take of unregulated wildlife species, provided that control measures used comply with all applicable laws. At the present time unregulated species include coyotes, badgers, skunks, raccoons, foxes, and rodents (including prairie dogs), among others. The Landowners may limit hunting of these species to one or a few members of the public.

When demand exists, the Landowners must allow a minimum of one member of the public to trap on the Land during established trapping seasons. They may select the individual that is allowed to trap on the Land and may retain that individual for as long as they wish. They may require a minimum setback up to 100 yards from roads and trails, and 1 mile from homes, buildings and corrals. They may prohibit trapping in pastures with livestock. They may require notification when the individual(s) will be on the Land, of trap locations, and animals caught. The trapper(s) may be required to follow the same access rules as other members of the public described in Chapter 7 of this Management Plan.

10. WASTE DISPOSAL

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

Strategy: The Easement allows for two landfills for personal use by the Landowners. These landfills are currently located at approximately 47.1483°N, 104.0480°W and 47.1371°N, 104.0810°W and are shown in the Baseline Report. Each landfill should be entirely contained within 150 m of the listed GPS coordinates. The total footprint of each landfill shall not exceed 10,000 square feet at any given time. When establishing a landfill, the Landowners shall segregate and store the top 18 inches of topsoil, or all available topsoil, whichever is applicable to the site, for reclamation purposes. The landfill pit may remain open for an unlimited amount of time. The Landowners may move the location of either landfill to a different site with prior written approval from FWP. If the Landowners choose to move the location of the landfill, or to retire a portion of the landfill to allow for expansion, the Landowners shall be responsible for reclamation of the retired landfill site, including fill dirt, replacement of topsoil, control of noxious weeds and replanting the site. Any seed mix planted must be approved by FWP. The Landowners will take appropriate measures to discourage wildlife from entering and minimize the risk of wildlife entanglement (e.g., surrounding the landfill pit with standard livestock panels, including a wildlife ramp, etc.).

11. MONITORING

Annual monitoring will be completed on all Conservation Easement lands. This assessment shall be conducted by FWP or a designated third party and will involve meeting with the Landowners and completing field reviews to assess Management Plan effectiveness and to review Landowner compliance with the terms of each Conservation Easement. The Landowners are encouraged to thoroughly familiarize themselves with the Management Plan including the grazing system schedule, the terms in the Deeds of Conservation Easement, and to contact FWP with any questions or concerns in order to avoid non-compliance.

In addition to compliance monitoring, FWP may establish vegetation monitoring plots to determine condition and long-term trends in vegetation and soil cover. FWP will contact the Landowners prior to establishing plots and prior to making subsequent vegetation monitoring visits.

Final Management Plan Approved By:

_____ _____

Corey Schieffer, W-Bar Ranch Date

_____ _____

Heidi Jo Schieffer, W-Bar Ranch Date

Final Management Plan Approved By:

John Ensign, FWP Region 7 Wildlife Manager	Date
Brad Schmitz, FWP Region 7 Supervisor	Date

Final Management Plan Approved By:

_____ _____

Ken McDonald, FWP Wildlife Division Administrator Date