4600 Giant Springs Rd.
Great Falls, MT 59405
August 20, 2020

Dear Interested Parties:

Montana Fish, Wildlife & Parks (MFWP) is proposing to purchase and manage a conservation easement (CE) on Pheasants Forever's Wolf Creek property outside of Denton. This proposed CE, called the "Wolf Creek Conservation Easement," will protect and conserve in perpetuity ~ 1,00 deeded acres mixed sagebrush-grassland habitat adjoining the Beckman Wildlife Management Area. This CE will also guarantee free public access for hunting and other recreational pursuits on these deeded CE lands, satisfying MFWP's objectives in providing access and recreational opportunities to the public.

MFWP is currently seeking review and public comment on the Draft Environmental Assessment (EA) for this proposed CE. The EA and associated documents, including the Draft Deed of Conservation Easement and Draft Management Plan may be obtained by viewing MFWP's internet website http://fwp.mt.gov/news/publicNotices/environmentalAssessments/. A 30-day public review and comment period will be available August 21 – September 20, 2020. A public informational meeting is scheduled for September 9, 2020 in Denton, MT. Written comment should be delivered to the following address:

Comments may be made online on the EA webpage or may be directed by mail or e-mail to the addresses below. Comments must be received by MFWP no later than 5:00pm on September 20, 2020.

Wolf Creek CE c/o Sonja Andersen
Montana Fish, Wildlife & Parks
Lewistown Area Office
333 Airport Rd
Lewistown, MT 59457
or email comments to: sandersen@mt.gov

As part of the decision-making process under the Montana Environmental Policy Act (MEPA), I expect to issue the Decision Notice for this EA soon following the end of the comment period. The Draft EA will be considered as final if no substantive comments are received by the deadline listed above. The Montana Fish and Wildlife Commission has the final decision-making authority over MFWP CE proposals.

Thank you for your interest and involvement,

Sincerely,

Gary Bertellotti
Montana Fish, Wildlife & Parks
Region 4 Supervisor
Great Falls, MT 59405
gbertellotti@mt.gov
(406) 454-5840

FWP.MT.GOV

THE **OUTSIDE** IS IN US ALL.

DRAFT ENVIRONMENTAL ASSESSMENT

WOLF CREEK CONSERVATION EASEMENT

August 2020

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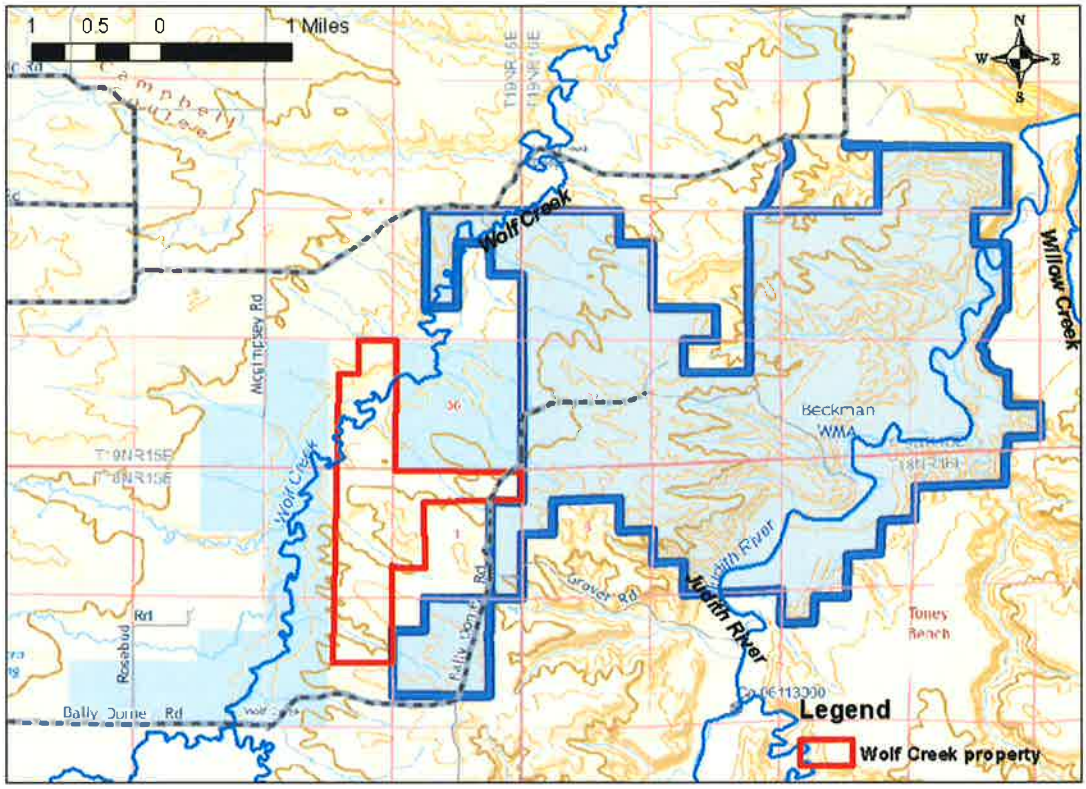
1.0 Purpose of and Need for Action

1.1 Proposed Action

Montana Fish, Wildlife, and Parks (hereafter, "MFWP" or "the Department") proposes to purchase a perpetual Conservation Easement (CE) to protect wildlife habitat and ensure continued public access on the Wolf Creek property owned by Pheasants Forever Inc. (PF; hereafter, "the Land"). The CE, called the Wolf Creek CE, would protect approximately 1,000 acres of primarily sagebrush steppe, mixedgrass prairie, and farmed upland game bird habitat in east-central Fergus County (Figure 1).

Figure 1. The proposed Wolf Creek CE.



Conservation easements are voluntary, binding agreements between a landowner and another entity, in this case, MFWP, wherein MFWP pays a landowner to limit certain uses of the land in order to protect its conservation values. The Deed of CE is then recorded at the County Courthouse and stays with the property in perpetuity. Developing and implementing CEs require maintaining ongoing partnerships between MFWP and willing private landowners with the primary intent of conserving important native wildlife habitats and providing free public access, while keeping the land in private ownership and agricultural production. The proposed Wolf Creek CE will prohibit further subdivision/development, expanded tillage or other destruction of native vegetation (currently farmed lands are permitted to remain under production), and allow

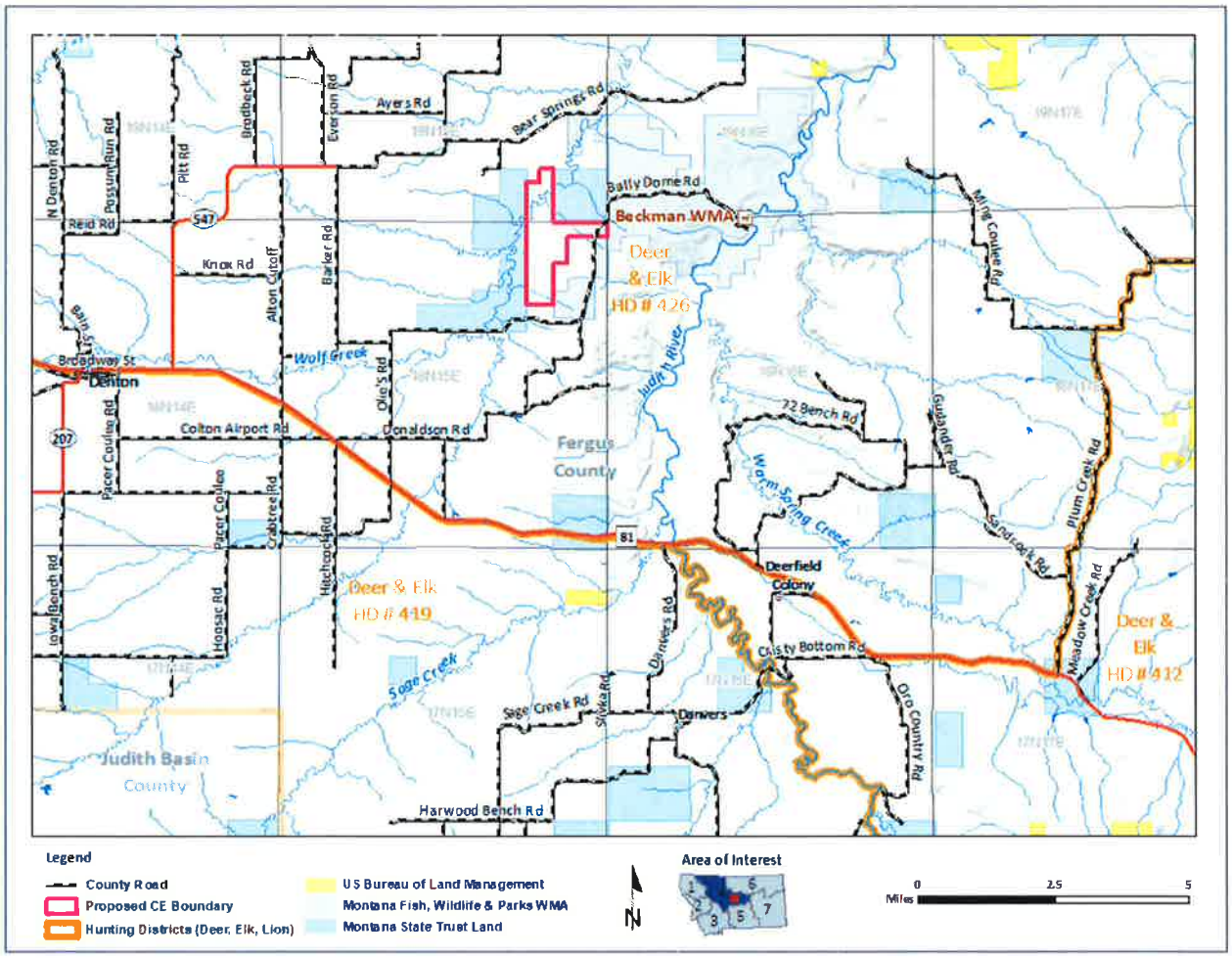
free recreational and public hunting access, thereby protecting the Land's conservation values in perpetuity.

1.2 Need for Action

In 2008, the Central Montana Chapter of Pheasants Forever (CMPF) initiated acquisition of the Wolf Creek property adjacent to the Beckman Wildlife Management Area (WMA; Figure 1). Since its purchase, the Land has been managed under a partnership between CMPF and MFWP. This management has resulted in several habitat improvement projects on both the Land and adjoining Beckman WMA. Pheasants Forever approached MFWP to sell a CE on the Wolf Creek property which would ensure that the conservation values and public access on the land would be maintained in perpetuity.

1.3 Location

Figure 2. Location of the Wolf Creek property.



1.4 Relevant Authorities

The following laws and rules are applicable to the proposed action:

- Montana Fish, Wildlife & Parks is authorized by Montana Code Annotated (MCA) § 87-1-201 to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future.

- FWP has the authority to acquire land or interests in land (MCA § 87-1-209) that are suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; for public hunting, fishing, or trapping areas; and for state parks and outdoor recreation.

- State statute § 76-6-201 through 204 authorizes the use of CEs, to protect "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," and describes the duration and permissible types of easements.

- State statute § 76-6-206 provides for the review of proposed CEs by local planning authorities to determine compliance with local growth policies. The proposed Deeds of Conservation Easement would be submitted to Fergus County for its review in accordance with this requirement.

- The Habitat Montana program authorized by MCA § 87-1-241 (accompanying regulations found at Administrative Rules of Montana 12.9.509) seeks to conserve Montana's wildlife populations and natural ecological systems by earmarking hunting license revenues for lease, CE, or fee-title acquisition. Habitat Montana projects are also intended to: 1) conserve land, water, and wildlife; 2) contribute to hunting and fishing opportunities; 3) contribute to non-hunting recreation; 4) protect open space and scenic areas; 5) promote habitat-friendly agriculture; and 6) maintain the local tax base through continued payments of property taxes.

1.5 Relevant Plans

2005 FWP Comprehensive Fish & Wildlife Management Strategy:
Montana's Comprehensive Fish & Wildlife Conservation Strategy (CFWCS 2005) was drafted in response to a charge by Congress for states to develop a comprehensive assessment of their fish, wildlife, and habitats for the purposes of prioritizing State Wildlife Grants (SWG) funding. Its priority is to describe those species and their related habitats that are in "greatest conservation need"—interpreted as focus areas, community types, and species that are significantly degraded or declining, federally listed, or where important distribution and occurrence information to assess species' status is lacking.

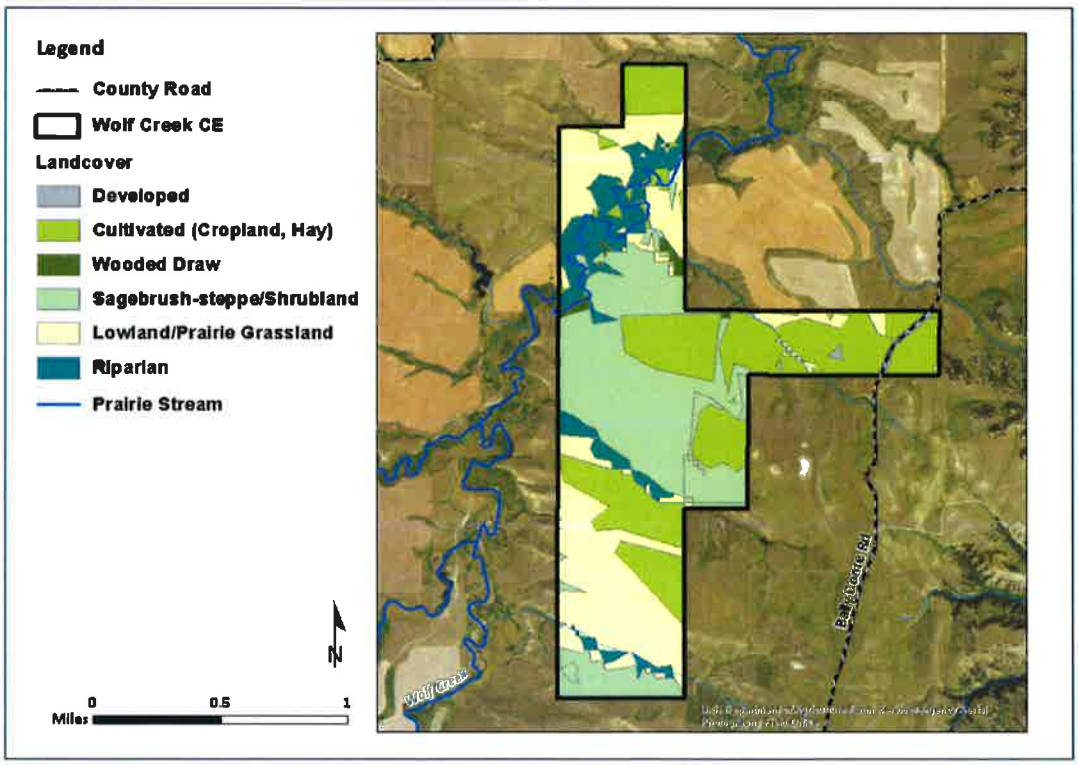
Species of Greatest Conservation Need (SGCN) that inhabit or possibly inhabit the Land include: Great Plains Toad, Plains Spadefoot, Northern Leopard Frog, American Bittern, Baird's Sparrow, Black-billed Cuckoo, Bobolink, Chestnut-collared Longspur, Clark's Nutcracker,

Common Tern, Ferruginous Hawk, Golden Eagle, Great Blue Heron, Green-tailed Towhee, Lewis's Woodpecker, Loggerhead Shrike, Long-billed Curlew, Mountain Plover, Northern Goshawk, Pinyon Jay, Red-headed Woodpecker, Veery, White-faced Ibis, Dwarf Shrew, Fringed Myotis, Hoary Bat, Merriam's Shrew, Preble's Shrew, Townsend's Big-eared Bat, Greater Short-horned Lizard, Milksnake, and Western Hog-nosed Snake.

According to Montana's Comprehensive Fish & Wildlife Conservation Strategy (CFWCS 2005), portions of the Wolf Creek property include Tier I Community Types of Greatest Conservation Need (CTGCN): Sagebrush and Salt Flats, Grassland Complexes, Mixed Shrub/Grass Associations, Riparian and Wetland, and Prairie Streams. The Wolf Creek property lies within the Northwestern Great Plains ecotype. While the Wolf Creek property does not lie within a special focus area, these Tier I Community Types have a low or declining status and efforts for conservation should be extended to and beyond the focus areas addressed in the CFWCS.

<u>2015 State Wildlife Action Plan:</u>
Montana's State Wildlife Action Plan (SWAP), updated in 2015, further identifies specific focal areas within the state that contain the terrestrial CTGCN, as identified by the 2005 CFWCS. The Wolf Creek property contains four identified Tier I CTGCN; these Tier I Community Types have a low or declining status and efforts for conservation should be extended to and beyond the focus areas addressed in the CFWCS (Figure 3).

Figure 3. Ecological community/landcover types on the proposed Wolf Creek CE.



Sagebrush Steppe/Sagebrush-dominated Shrubland: The Wolf Creek property contains a small amount of this community type; the primary sagebrush species found being Wyoming big

sagebrush (*Artemesia tridentata* spp. *wyomingensis*) and Silver sage (*Artemesia cana*). In many parts of this community, overgrazing has put these areas in a disclimax condition. Fire has a negative effect on this area due to the sensitivity of sagebrush to fire, and cheatgrass (*Bromus tectorum*) invasion tends to occur in areas where perennial grasses and forbs have been stressed or reduced.

Lowland/Prairie Grassland: This is a prevalent system east of the Continental Divide. High grass canopy cover and high forb diversity are characteristic of this community. The dynamics of Lowland Prairie Grassland communities are primarily a function of climate, but the magnitude of changes that can occur is influenced by grazing intensity and fire frequency. Plant productivity, distribution, and species richness are a product of environmental conditions (the temporal and spatial distribution of soil moisture and topography).

Floodplain and Riparian: This community type is found throughout Montana and varies greatly across the state, but common to all, the quality and quantity of water input into riparian areas depends entirely on the surrounding landscape. Riparian areas form important links between terrestrial and aquatic systems and like prairie streams, provide important habitat for a variety of species.

Prairie Streams: Prairie streams are low-elevation, intermittent or permanently-flowing streams east of the Rocky Mountain divide. They are generally warmer with a richer species diversity than their mountain counterparts. They provide important habitat for fish, reptile, amphibian, and other terrestrial species. Prairie streams may be negatively-impacted by water flow interruptions such as small dams, diversions, and stock ponds.

The Wolf Creek property provides seasonal, migratory, and year-round habitat for a variety of wildlife species, including pronghorn.

2018 Montana State Action Plan for the Department of the Interior's Secretarial Order 3362: The need to identify and protect big game migration corridors and winter range has recently received focused attention across the western United States. In 2018, former Secretary of the Interior Ryan Zinke signed Secretarial Order (SO) 3362, fostering collaboration between the federal government, states, and private landowners to improve winter range and migration corridors for mule deer, elk, and pronghorn. In response to SO 3362, MFWP drafted the State Action Plan which identifies four areas within the state as priority big game winter range and migration corridors. Priority Area D, Canadian Border to the Musselshell Plains, encompasses the proposed CE. The proposed CE receives annual use by elk, mule deer, and pronghorn—including winter ranges, possible migration stopovers, and fawning/calving habitats.

1.6 Decision to be Made

The decision to be made is whether MFWP should move forward with the proposed purchase of a CE on the 1,000-acre Wolf Creek property owned by Pheasants Forever. Following completion of the draft environmental assessment (EA) and public comment period, the MFWP Region 4 Supervisor will issue a decision notice that makes a recommendation to the Fish and Wildlife (F&W) 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 MFWP CE projects, the F&W Commission would make the final decision. This draft EA and the public comments received are part of the decision-making process.

2.0 Alternatives

2.1 Alternative A: Proposed Action, purchase of a Conservation Easement on the Wolf Creek property

The Department would purchase a CE on the approximately 1,000-acre parcel, primarily using Habitat Montana funds, for the protection of fish and wildlife habitats. Anticipated cost of the CE is $490,988. Anticipated monitoring costs of the CE by MFWP staff is estimated to be $100 annually.

Under the terms of the Deed of Conservation Easement, each party would retain or receive the following rights. See Attachment A for a copy of the Draft CE.

Pheasants Forever, and future landowners (hereafter, "Landowner(s)"), would retain the rights to:

1. Raise, pasture, and graze livestock, provided that livestock grazing maintains or enhances the Conservation Values protected by this Easement and incorporates a grazing system as described in the Management Plan and meets MFWP's Minimum Standards for Grazing Livestock (Attachment B, Appendix A);

2. Lease the land to another agricultural operator for agricultural purposes, provided that the lessee follows the terms of the CE and Management Plan;
3. Conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan;
4. Develop and maintain water resources, including stock water ponds, water wells, spring developments, and pipeline systems necessary for grazing, wildlife, and all agricultural purposes allowed by this Easement, provided any new water development or chance in water use or distribution may not adversely impact the Conservation Values, including instream flow, perennial or ephemeral streams, wetlands, or riparian vegetation. The Landowner reserves the right to plant native vegetation in the riparian areas of the Land to encourage creek bank stabilization and to restore and reclaim damaged or degraded riparian habitats;
5. Construct, remove, maintain, renovate, repair, or replace (with wildlife-friendly) fences necessary for generally accepted agricultural activities. However, any fence that inhibits the movement of fish or wildlife, or that would have significant impacts on fish or wildlife habitat or fish and wildlife migration on and through the Land is prohibited (high fences protecting shelterbelts and upland game bird habitat enhancement projects are exempt). Also, the right to maintain, renovate, repair, or replace utilities existing on the Land at the time this easement is granted. The construction of new utilities must minimize impacts to the Land's Conservation Values and are subject to Prior Notice and/or Approval of the Department;
6. Construct new and maintain existing roads and bridges or waterway crossings in connection with farming, ranching, or other timber management, with Prior Approval, provided they minimize adverse impacts on the Land's Conservation Values;
7. Use the Land for noncommercial recreational purposes, including hunting, in accordance with the terms laid out in the draft CE;
8. Maintain, renovate, repair, or replace utilities existing on the Land, or install and construct new utilities subject to Prior Approval of the Department;
9. Construct wind, solar, hydropower, or other types of renewable energy generation facilities solely for uses on the Land, subject to Prior Approval of the Department and provided that any renewable energy production and associated facilities are consistent with the protection and preservation of the Land's Conservation Values;
10. Use agrochemicals for control of noxious weeds as defined by the State of Montana or other lawful authority with jurisdiction;
11. With Prior Approval, the Landowner may conduct limited mining activity for materials (e.g., sand, gravel, scoria, or shale) solely for the use of agricultural operations and provided that the extraction of such materials is limited, localized, and does not harm the Conservation Values or agricultural uses of the Land;
12. Grant, sell, exchange, devise, gift, convey, transfer, or dispose of all of Landowner's right, title, estate, and interest in the Land in one complete parcel only.

The proposed conservation easement would also prohibit the removal or destruction of riparian or native rangeland vegetation, manipulation of riparian and wetlands areas, transfer of existing water rights, renting or leasing of the parcels for commercial recreation (e.g., outfitting businesses), granting of utility easements that are inconsistent with the terms of the CE, establishment of commercial feedlot or alternative livestock businesses, and processing and

disposal of hazardous materials. In addition, the Landowner would be prohibited from exploring for, developing, mining, producing, or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources that they own on or under the surface of the project parcels, except for the extraction of gravel or similar materials for use on the property.

The Department would acquire the rights to:

1. Identify, preserve, protect, and enhance, in perpetuity, the Conservation Values of the Land;
2. Enter the parcel to monitor compliance of the CE terms and rights to observe, study, and make scientific observations of the Land's fish, wildlife, habitat, and ecosystems upon prior notice to the Landowner;
3. Subject to Landowner's Rights, enjoin any activity on the Land which is inconsistent with the terms of this CE, or which may have a significant adverse impact on the Conservation Values;
4. Place and replace small markers to identify boundaries and other reference points on the parcel; and
5. Establish and maintain vegetation monitoring transects and enclosures upon prior written notice to the Landowner;
6. On behalf of the general public, of access by non-motorized means from public roads and rights-of-ways for the purpose of hunting, wildlife viewing, and other recreational activities in accordance with the terms of the CE. A minimum of 450 hunter days per year must be permitted, when requested by members of the public.

Currently, no grazing occurs on the Land, and at this time a prescribed grazing system has not been planned. However, grazing would be allowed on the Land provided any grazing system adhered to FWP's "Minimum Standards for Grazing," available for reference in Attachment B, Appendix A. Should grazing occur, a prescribed grazing system would be negotiated with the Landowner and added to the Management Plan. The Department would monitor grazing plan adherence to assess effectiveness, functionality, and Landowner compliance. Livestock use and distribution would also be assessed annually.

Farming activity currently occurs on the Land for the benefit of upland game birds. No other sodbusting or conversion of native ground is permitted under this CE. Under possible eventual new ownership, farming activity will continue to focus on upland game bird production and habitat enhancement as described in the Management Plan.

2.2 Alternative B: No Action and no purchase of a Conservation Easement on the Wolf Creek property

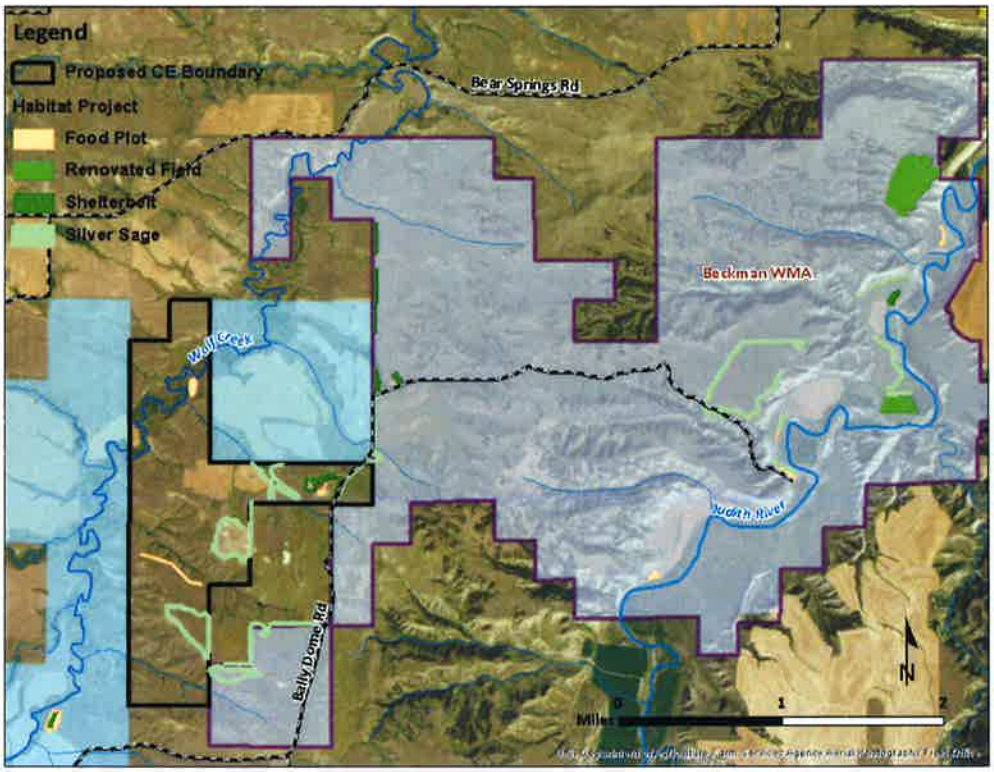
For the No Action Alternative, MFWP would not purchase a CE on the Wolf Creek property. Pheasants Forever would continue to manage the property for upland game birds in the interim, but there would be no guarantee of permanent conservation and public access on the Land, especially if the property were to be sold. Additionally, the opportunity for Pheasants Forever to leverage funds for other habitat projects in the area to benefit wildlife and the public would have to come by other means.

3.0 Affected Environment

3.1 Land Use

Since its purchase by Pheasants Forever in 2008, the Wolf Creek property and adjacent lands have undergone numerous habitat improvement projects tailored for attracting and bolstering wildlife populations, primarily upland game birds. Projects on the Wolf Creek property alone include two winter cover shelterbelts (7 acres), two food plots planted into (4 acres), and six double rows of silver sage (16,420 linear feet, 3.1 miles, or 3.8 total acres; Figure 4).

Figure 4. Habitat projects on the Wolf Creek property and adjoining lands completed in cooperation between the Pheasants Forever and Montana Fish, Wildlife, and Parks.



Of its 1,000 acres, the Wolf Creek property consists of roughly 63% native vegetation and 37% agricultural; although the agricultural activities on the property exist for the benefit of upland game birds and wildlife, in addition to economic output.

3.2 Habitat

The Wolf Creek property provides important year-round habitat for Hungarian partridge, sharp-tailed grouse, pheasant, mule deer, and pronghorn, and a variety of small mammals and other nongame species. The Land also provides seasonal habitat for elk, waterfowl, mourning doves, migratory raptors, and passerine birds.

The Wolf Creek property is bisected by Wolf Creek and includes numerous coulees that drain into either Wolf Creek or the Judith River. Coupled with habitat improvements to the uplands (e.g., shelterbelts, food plots, a grazing system on the Beckman WMA and adjoining Roe Ranch) and associated conserved lands, this parcel is part of a larger landscape providing year-round habitat and an effective travel corridor for wildlife to the Judith River (Figure 4). The mixture of native vegetation and additional forage resources afforded by agricultural fields and habitat plots on the property provide an excellent resource for a variety of wildlife species.

Native sagebrush grassland borders both sides of a shrub-filled coulee draining into Wolf Creek; these native habitats provide cover and travel corridors for upland game birds and a variety of other wildlife species.

A stand of planted dense nesting cover sits between a wheat field and silver sage row on the proposed Wolf Creek CE.

A shelterbelt and pole barn on the Wolf Creek CE. A nearby shop and this pole barn are the only structures present on the ~1,000-acre property.

The Land's native range consists of big sagebrush steppe/shrubland, mixedgrass prairie, some coniferous woodland, and riparian. The non-native range consists of some annual and biennial introduced upland vegetation, as well as pasture/cropland (Figure 3). Under the Lands's current management system, the native range vegetation is considered in good condition.

3.3 Terrestrial Species

Primary game species inhabiting the area include pheasant, sharp-tailed grouse, Hungarian partridge, mule deer, white-tailed deer, and pronghorn. Elk regularly move through the property.

Current ungulate population estimates range from 200 mule deer and pronghorn in the immediate area, depending on season and circumstance. Antelope numbers will be higher during the winter as some migrate through the area. Elk on the neighboring Beckman WMA range in number from 20-100.

The property and surrounding area also provides habitat or potential habitat for several Montana Species of Concern, or Species of Greatest Conservation Need (see above under Relevant Plans).

Additional species that are likely permanent or seasonal residents of the property are: red-tailed hawk, rough-legged hawk, short-eared owl, vesper sparrow, field sparrow, assorted waterfowl, other passerines, prairie rattlesnake, and numerous small mammals.

Game damage from mule deer and pronghorn has not been a concern in the immediate vicinity of the property, however, elk have been expanding in number and there have been elk-related game damage complaints throughout HD 426.

3.4 Fisheries Species and Water Resources

The fishery of Wolf Creek in the vicinity of the proposed Wolf Creek CE is composed primarily of species typical of many Central Montana prairie streams, including white sucker, lake chub, fathead minnow, longnose dace, brook stickleback, and northern redbelly dace. Northern redbelly dace are a state species of special concern due to limited/declining numbers, range, and/or habitat. Within Wolf Creek, sampling indicates that northern redbelly dace appear to relatively rare, although present throughout the lower 40 miles of the drainage. Easement acquisition would not be expected to impact the species distribution or abundance within Wolf Creek. Easement terms may improve the aquatic and riparian habitat to the benefit of the fishery.

3.5 Recreational Opportunities

Since its purchase by Pheasants Forever, the Wolf Creek property has been enrolled in MFWP's Block Management Program, receiving relatively high annual use by hunters. With the purchase of this CE, hunting, wildlife viewing, and other non-motorized recreational activities will continue to be permitted in perpetuity (see Attachment B, Appendix C for access rules and a map on the Wolf Creek CE). A CE on the Wolf Creek property does not prohibit the Land from being eligible for continued enrollment in MFWP's Block Management Program. Per program statute, payments through the Block Management Program help to offset the impacts of providing access for public hunting, which is complementary to FWP's conservation easements that also include public access requirements.

4.0 Predicted Environmental Consequences

4.1 Land Use

<u>Proposed Action:</u>
If the proposed CE were approved, there would be no impact to the productivity or profitability of the Land. The current uses of the Land would be maintained under the terms of the proposed CE.

The proposed CE would serve to maintian future management options for protecting, conserving, and propogating wildlife by perpetually conserving the natural habitats, providing for the continuation of agricultural operations, and maintenance of public recreation on private lands.

Neighboring lands such as those owned by the DNRC are currently managed primarily for livestock grazing, with some grain and hay production on the southern end. There is also a food plot for upland game birds constructed in cooperation between Pheasants Forever and DNRC. Because the proposed Wolf Creek CE will not extend to DNRC lands (albeit a future grazing plan may incorporate neighboring leased lands), management of DNRC lands will not affect management of the Wolf Creek CE and vice versa. The DNRC controls management of school trust lands.

No Action:
If the proposed CE were not approved, current management of the Land would remain unchanged in the near future. However, this no action alternative could potentially result in substantive changes if the land is sold—land use practices that may negatively impact wildlife habitat quality and would provide no guarantee for public recreation.

A conservation easement on the Wolf Creek property would retain the Land's conservation and agricultural values in perpetuity.

4.2 Vegetation

Proposed Action:
This proposed action would result in a positive impact to vegetation resources on the Land. The terms of the CE protect the quantity, quality, and character of the native upland communities found on the Land. Many shrub species are important to wildlife for cover and forage values. The removal, control, or manipulation of shrub species important to wildlife by any means would be prohibited within the terms of the CE unless such activity is mutually agreed upon by the Landowner and MFWP. These prohibitions do not apply to the routine clearing or control of brush in connection with the construction and maintenance of roads and fences permitted under the CE.

The proposed action also ensures the Land's primary use in the future would be agriculture that is compatible with or even enhances wildlife habitat and public recreation, both of which depend on maintaining productive vegetation. The Department would be responsible for establishing a Baseline Inventory Report that would document wildlife habitat, plant communities, roads, fences, and water developments, serving as a baseline for future monitoring. Additional

vegetation photo points and other monitoring plots may be established and maintained by MFWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness.

An upland game bird food plot on the sagebrush-grassland bottoms of the proposed Wolf Creek CE.

No Action:
Without protection of the quantity, quality, and character of the native plant communities found on the property, there would likely be no change in the short-term if the property is maintained under the current operating framework. Some additional native vegetation may be broken for upland game bird food plots, silver sage rows, shelterbelts, etc. However, if the Land is sold to an alternative buyer, there would be no conservation assurances in place to maintain the productivity of the Land, and additional sodbusting or other development and disturbance may occur. Additionally, instead of agriculture for the benefit of wildlife, the property may be farmed for primarily economic benefit. Future impacts to native vegetation and overall productivity of the land could be considerable and potentially detrimental to wildlife if any significant changes to land uses occurred.

4.3 Fish and Wildlife Resources

Proposed Action:
The proposed CE for the Wolf Creek property would ensure perpetual benefits to a variety of wildlife species. The terms of the CE conserve and protect the Land as agricultural and open space to provide year-round and seasonal habitat for many of Montana's wildlife species. Conserving native plant communities is important for most of Montana's indigenous wildlife species. Protection from subdivision and further conversion to tillage agriculture, and maintenance of upland game bird habitat enhancement projects 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 property, resulting in game damage problems. Such circumstances on the Land would be managed through public hunting during a general season framework. Game damage assistance and prescribed hunts would be provided on an "as needed" basis to the Landowner.

The proposed action would ensure perpetual public recreational access to the Land. Hunting and other non-motorized recreation on encumbered lands would not negatively impact the overall distribution and population of game species in the area. The seasonal take of game species would continue to be evaluated on an annual basis by MFWP biologists, with recommendations being submitted to the FW Commission for the annual hunting season setting process.

Any new fence construction would follow the guidelines described in Attachment B, Appendix C (Landowner's Guide to Wildlife Friendly Fences) to ensure the fences do not impede wildlife movements (particularly antelope) within and through the Land.

A male sharp-tailed grouse displays on the Beckman WMA, which adjoins the Wolf Creek property. The Wolf Creek property provides important nesting, brood-rearing, and winter cover for sharp-tailed grouse and other bird species. Photo courtesy of Lori Thomas.

No Action:

In the absence of a CE, there would likely be no change in the short-term if the Land is kept under its current ownership. However, if there were a change in ownership, there would be no

provisions preventing development for recreational purposes or changes in land use that could be detrimental to wildlife species in the future.

The selection of the No Action Alternative could also allow a future landowner to close the land to public recreation, which would result in a lack of valued access to natural habitat and to adjoining state lands. Without the CE, the landowner could remove existing habitat enhancements, increase farmed areas, and greatly diminish the habitat values of the Land.

4.4 Water Resources

Proposed Action:
Current agricultural uses on the Land have proven to be compatible with maintenance of water quality. If the proposed CE is implemented, this trend would continue.

No Action:
There would likely be no impact in the short-term if the No Action Alternative is chosen. However, if the Land was developed, further converted to tillage agriculture, or sold without CE protection, there would be no assurances that over time the use of the parcels would not affect water resources and their associated areas (e.g., riparian and wetland) of Wolf Creek.

4.5 Aesthetics and Recreation

Proposed Action:
Implementing the Wolf Creek CE would provide year-round public recreational opportunities (hunting, wildlife viewing, etc.) on the Land in perpetuity. All permitted activities would be walk-in only via public roads. Additional forms of public recreational activities (e.g., camping) may be permitted at the Landowner's discretion.

Because the Land has already been enrolled in MFWP's Block Management Access Program, the level of public recreation would likely stay the same. Hunting would continue to be allowed on the Wolf Creek CE consistent with Fish & Wildlife (F&W) Commission-established regulations and dates/seasons.

The terms of the CE would prohibit the operation of a commercial hunting business or charging fees (sometimes known as trespass fees) for hunting, trapping, or other recreational activities on the Land or to adjoining public lands.

The terms of the CE would protect scenic values in perpetuity, including open space, native vegetation, wildlife, and sustainable agricultural land uses, while prohibiting subdivision or residential development.

No Action:
In the short term and if the property remains under current management, recreational opportunities and the scenic values would remain unchanged.

However, if the CE is not completed and the ownership/land management changed, hunting and public access on this Land could be restricted or nonexistent in the future, thereby failing to improve recreational opportunities in the area. There would be no guarantee of public access to the Land or across the Land for recreational purposes. If rural subdivision and/or other developments or expanded tillage would occur it could change or reduce the existing scenic, recreational, and habitat values of the area.

4.6 Public Services, Taxes, and Community

Proposed Action:
Under the Proposed Action Alternative, the current farming operations would continue in a similar manner—the property's main purpose would be to continue agricultural activities for economic benefit (primarily to support habitat improvement projects for upland game birds). In addition, neighboring landowners may observe more recreational activities by the public; however, the property has traditionally allowed recreational/hunting access and it has been enrolled in MFWP's Block Management Program for almost the last decade. Current, existing access to public lands has led to a history of relatively high use of associated county roads. Purchase of a CE would likely have a minimal additional impact upon what is already occurring in the general area. To minimize issues of trespass onto neighboring properties, boundary signs will be posted along the exterior of the Ranch, and particularly at any problem areas identified by neighboring landowners. Hunters will be provided with maps of the Conservation Easement/Block Management Area. It is the responsibility of the hunter to know where they are and to avoid trespassing issues. Those guilty of trespassing could be prosecuted. No other impacts to neighboring landowners are expected.

There would be no impact on local or state tax bases or revenues, no alterations of existing utility systems or tax bases or revenues, nor increased use of energy sources. As an agricultural property, the Land would continue to be taxed as it has before.

The terms of the CE would restrict future residential and commercial developments on the Land. Services required from local governments would be remain the same. The proposed CE would not impact local employment opportunities or local schools. 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 these businesses. Infrastructure improvements needed for establishing a grazing system may also result in minor temporary increase in goods and services.

No Action:
Identical to the implementation of the Proposed Action, the No Action Alternative would not impact local taxes and public services if the Land continued to be maintained as a working farm and/or ranch with the Landowner continuing to pay county, state and Federal taxes. However, future ownership changes could allow greater potential for changes in land use classifications (e.g., agricultural to recreational) that could increase local property taxes for the county. Also, a change in ownership and land use may lead to subdivision and or additional residential

development, which may be accompanied by higher demand for utilities, roads, and other services that would have to be partially or wholly provided by state and local governments.

4.7 Cumulative Effects

The Wolf Creek Conservation Easement would contribute to the preservation of habitat for the benefit of numerous resident and transient wildlife species and compatible agricultural values, as well as provide perpetual recreational opportunities for the public. The CE would complement the adjacent Beckman Wildlife Management Area and DNRC Trust Lands, benefiting wildlife resources and recreationists with no substantive negative impacts to the local community or related local services. Under the proposed action, land uses on the Wolf Creek parcel wouldn't change substantially from how the land has been managed over the past decade. In evaluating the potential impacts and considering surrounding circumstances and activities, there are no known negative cumulative effects that would result from the proposed action.

5.0 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.

5.1 Land Resources

Proposed Action:
The proposed CE would ensure that the Land's resources are maintained. Some soil-disturbing activities would occur under normal operations and maintenance to existing facilities. The terms of the proposed CE would prohibit large scale, adverse changes to the existing physical attributes of the Land.

As Pheasants Forever also owns the Mineral Rights to the Land, the Landowner would be prohibited from exploring for, developing, mining, producing, or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources that they own on or under the surface of the project parcels, except as stated in Section II.C.11.b of the Draft CE. Similarly, any renewable energy generation for use on the Land and associated transmission and production facilities must be consistent with the protection and preservation of the Land's Conservation Values. The design and location of such activities would be subject to prior approval of the Department.

Considering information regarding the probability of minerals resources being located within the Land, the likelihood for subterranean resource development is low. Overall, MFWP predicts the potential for long-term change to existing land resources is expected to be minimal.

No Action:
If the Wolf Creek property remained under current management, impacts to the Land's resources are expected to be identical to those described for the Proposed Action. However, if the land were sold to an alternative operator, disturbance of soils from more intensive agricultural practices, residential development, mineral, or other commercial uses may occur.

5.2 Air Quality

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

5.3 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 CE, the Land would retain the right to maintain, repair, or replace utilities existing on the property. Additionally, the proposed CE would allow for new utilities or utilities leases/right of ways as long as they are consistent with the terms of the CE and have no negative impacts on wildlife species.

5.4 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.

5.5 Cultural and Historic Resources

The Proposed Action and No Action Alternatives under current management regime would not cause a change in land use, so MFWP anticipates there would be no impacts to cultural sites. If the Land was sold to an alternative operator, changes in land uses may increase impacts to cultural resources occurring on the Land.

6.0 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 CE would affect approximately 1,000 acres in that it would protect and conserve important wildlife habitat and provide public access in perpetuity with minimal effects (positive or negative) to the current land uses (agricultural) and to the existing natural resources of the property or adjacent lands.

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

7.0 Public Participation

7.1 Public Involvement

Prior to the preparation of this draft EA, a formal public participation specific to the proposed purchase of this CE began with a 30-day scoping process. This scoping process represented the first step in the environmental review process, wherein MFWP invited the public to identify any issues and concerns related to this CE proposal. Copies of the scoping notice were mailed to neighboring landowners, interested parties, and delivered to the Fergus County Commissioners. Additionally, an ad was placed in the Lewistown New-Argus inviting the public to participate and providing instructions on how to provide comment.

Montana Fish, Wildlife, and Parks received two formal comments during the scoping process, as well as fielded questions that did not result in any formal comments. The contents of both comments are summarized below. These comments helped identify specific issues or concerns that have been considered and evaluated in this EA:

1) *I am a sportsman, and have a farm in the Denton area. This easement is one which makes a great deal of sense. The PF project land, is bordered by the Beckman WMA and is a gem in the Fergus county hunting area. It is heavily used by the sporting population, from all parts of the state. This land is a real asset to Montana, and needs to be preserved.*
2) *How is the adjacent Department of Natural Resources and Conservation (DNRC) land managed? Is management of the DNRC parcels likely to create management challenges for Montana Fish, Wildlife & Parks (FWP) long-term?*
3) *We would support FWP having a building envelope identified on the plat if any future buildings might be allowed on the property. Building envelopes should prevent habitat fragmentation to the maximum extent possible. If no buildings will be allowed in the future, then building envelopes would not be needed, but the language in the conservation easement needs to specifically prohibit future building construction.*
4) *Regarding the section described as "optional" items to consider ("restrictions placed upon landowner activities may include") we would support:*
    a. *Item #1 with the following restriction: that the provision only apply to native shrub and tree species. Removal and control of nonnative species should be allowed.*
    b. *Items #2 through # 4 as written.*

c. *Item #6 as written. In addition, we have the following question: is this a split estate or does the landowner also own the mineral rights? If this parcel is a split estate, what challenges does that present to FWP for management over the long-term (or does the conservation easement language effectively eliminate future problems)?*
d. *Items #7 through #13 as written.*
e. *Item #14. It makes sense to us that FWP would require any renewable energy resources to be constructed in specific areas, identified as building envelopes on a plat map. If building envelopes are not identified for the parcel, then any new renewable energy development should minimize habitat fragmentation to the maximum extent possible. If, for example, the development of a new renewable resource project would require a road to an isolated part of the parcel, blanket authorization to build such a structure would not make sense. Consequently, we believe that this provision needs to be modified – and that the environmental review needs to discuss the pros and cons of restricting these structures to a building envelop (or similarly identified) site.*

In addition to normal components of an EA, MFWP addressed the relevant above comments as part of the environmental analysis.

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

- Two public notices in each of the local papers: *Great Falls Tribune* and *Lewistown News-Argus*
- Direct mailing to adjacent landowners and interested parties;
- Public notice on the MFWP web page: News → Recent Public Notices → Environmental Assessments
- An email to elected officials, governmental agencies, and interested publics;
- And a public meeting will hosted at the **Denton Rod & Gun Club on Tuesday, September 9 at 7:00 pm.** Given current uncertainty regarding status of COVID-19, the public meeting may be held outside to maintain social-distancing (weather-dependent) or cancelled.

Copies of this EA will be available for public review at MFWP Region 4 headquarters in Great Falls, the MFWP Area Resource Office in Lewistown, and on the MFWP web site (http://fwp.mt.gov/news/publicNotices/environmentalAssessments/).

7.2 Comment Period

The public comment period will extend for 30 days beginning August 21. Written comments will be accepted until 5:00 p.m., September 20, 2020 and can be mailed or emailed to the addresses below:

Wolf Creek CE c/o Sonja Andersen
Montana Fish, Wildlife, and Parks
Lewistown Area Office
333 Airport Rd
Lewistown, MT 59457

or email comments to: sandersen@mt.gov

After comment period ends, a decision notice based on public input will be prepared by the Region 4 Supervisor and provided to the F&W Commission for ultimate decision to approve or disapprove at their regularly-scheduled meeting in October.

7.3 Approximate Timeline of Events

Public Comment Period	August 2020
Decision Notice Published	September 2020
Project Submitted to Fish & Wildlife Commission	October 2020
Project Close	November 2020

7.4 Offices & Programs Contributing to the Document

Montana Fish, Wildlife, and Parks
Rick Northrup, Habitat Bureau Chief, Helena, MT
Martin Balukas, Lands Agent, Helena, MT
Cory Loecker, Region 4 Wildlife Manager, Great Falls, MT
Clint Smith, Fisheries Biologist, Lewistown, MT

8.0 EA Preparers

Sonja Andersen, Area Wildlife Biologist, Lewistown, MT

References

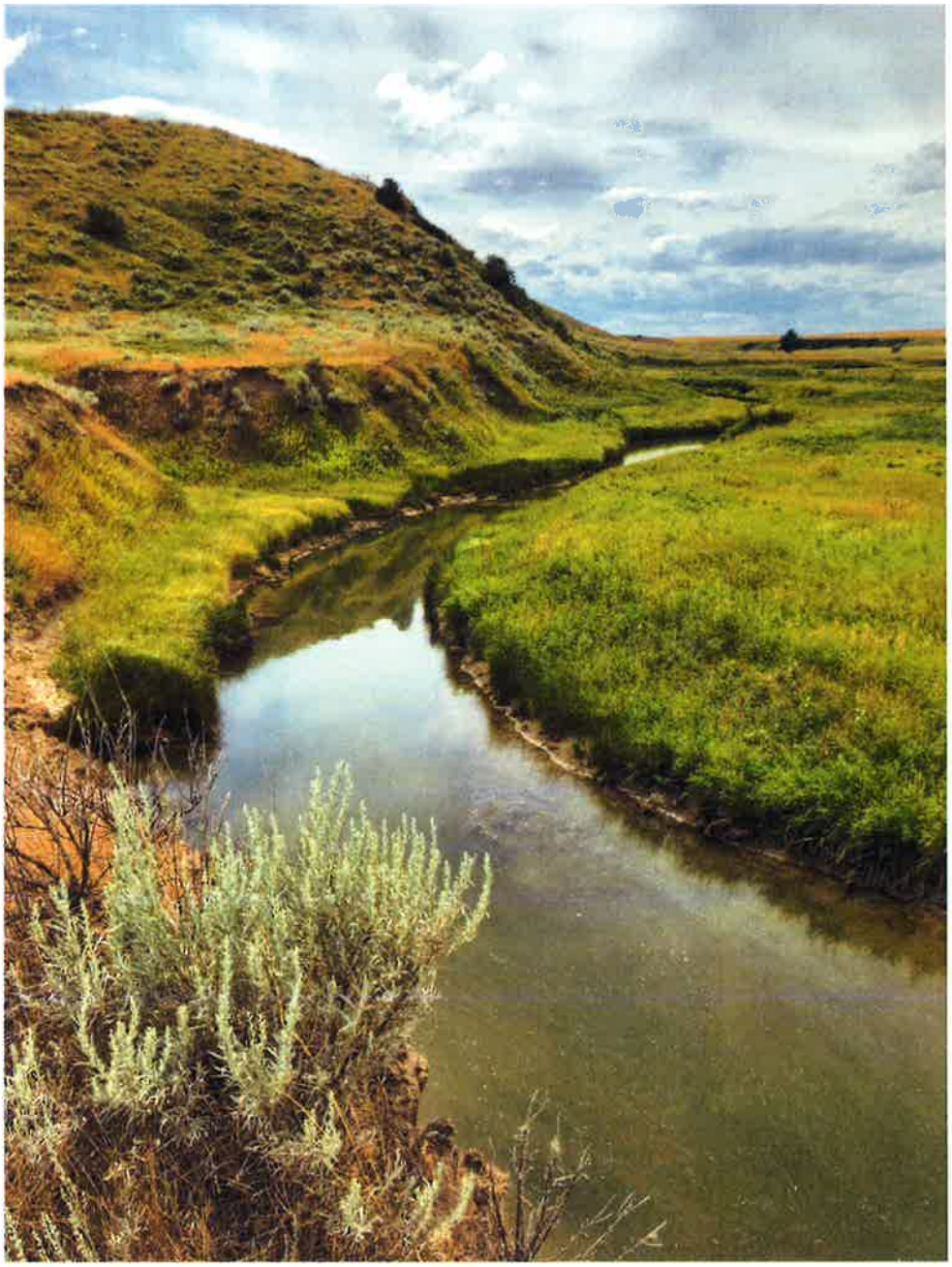
Montana Department of Fish, Wildlife and Parks (MFWP). 2005. Montana Comprehensive Fish & Wildlife Strategy. Retrieved from: http://fwp.mt.gov/fishAndWildlife/conservationInAction/fullplan.html

Montana Department of Fish, Wildlife, and Parks (MFWP). 2015. State Wildlife Action Plan. Retrieved from: http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html

Montana Natural Heritage Program. 2016. Species of Concern Report. Retrieved from: http://mtnhp.org/SpeciesOfConcern/?AorP=a

Attachments:

A. Draft Wolf Creek CE
B. Draft Wolf Creek CE Management Plan
Appendices: A. MFWP Minimum Standards for Grazing Livestock
B. Grazing Plan (place-holder)
C. Hunting and Public Access Rules & Map
D. A Landowner's Guide to Wildlife-friendly Fences



WOLF CREEK
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this _____ day of _____, 2020, by Pheasants Forever, Inc. ("Landowner") having an address at 1783 Buerkle Circle, St. Paul, Minnesota 55110 to the Montana Department of Fish, Wildlife and Parks ("Department"), an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701.

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

Exhibit A - Legal Description of the Land
Exhibit B - Map Identifying the Conservation Easement Boundary
Exhibit C - Minimum Grazing Standards
Exhibit D – Water Rights Associated with the Land

I. RECITALS

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 a willing Landowner by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource values.

A. The Landowner is the owner of certain real property in Fergus 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.

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

C. 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.

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

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

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F. The Department recognizes that the land contains important wildlife habitat, including riparian areas, that is worthy of perpetual conservation and has contributed the funds necessary to acquire this Easement through its Habitat Montana Program.

G. 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.

H. Montana Fish, Wildlife, & Parks recognizes that the Land contains important wildlife and riparian habitat that is worthy of perpetual conservation and has contributed the remainder of the funds necessary to acquire this Easement through its Habitat Montana Program and Upland Game Bird Habitat Enhancement Program.

II. AGREEMENT

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

A. PURPOSES

1. The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of fish and wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the 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 for herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

B. RIGHTS CONVEYED TO THE DEPARTMENT

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

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

2. Access. Upon **Prior Notice** to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly 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. Landowner's Rights; Paragraph 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 Notice** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II.G below.

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

a. 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.

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b. When requested by members of the public during all hunting seasons set by the state of Montana, Landowner must permit a minimum of 450 hunters on the Land per year ("hunter days") on a first-come, first-served basis.

1. A "hunter day" is defined as one hunter hunting on the Land for one day, or any part of one day, measured from Midnight to Midnight.
2. The Landowner, Landowner's immediate family, Landowner's shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowner are not defined as members of the general public by this Easement for the purpose of calculating "hunter days". The term "immediate family" is defined to include spouses, children, in-laws, and parents.
3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
4. The Landowner has the right to manage the distribution of hunters on the Land to address reasonable concerns for the safety of persons and property, including livestock.

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

d. The grant of hunting rights by the Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq*., MCA, and thereby 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.

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

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

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

h. 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 numbers outlined in Paragraph II B.5.

i. 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.

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

C. LANDOWNER'S RIGHTS

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

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with a rest-rotation grazing system as approved in writing by the Department as part of the Management Plan described in Paragraph II.E. of this Easement; is in accordance with the "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 through the years. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing system so adopted or revised must continue to

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conform to a rest-rotation system as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may substitute for cattle with **Prior Approval**.

2. **Leasing the Land.** 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. The Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s). Lease of the Land, or of a portion of the Land, are subject to Prior Notice, so the Department can evaluate and provide input for the Landowner and lessee(s) to assist in compliance with the Conservation Easement, Management Plan and grazing system.

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

4. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, or riparian vegetation is prohibited. Any water resource, structure, or facility that would significantly impact 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.

5. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4.):

   a. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any fence or other barrier that would significantly impact wildlife habitat or wildlife movement or migration on or through the Land is prohibited; however, this prohibition does not apply to corrals, fences, windbreaks and other structures necessary to contain livestock, or protect silage storage, or haystacks.

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b. The right to maintain, renovate, repair, or replace utilities existing on the Land at the time of the grant of this Easement, including any telephone lines, water lines, and residential or agricultural electricity lines. The construction and installation of any new utility line providing services for uses on the Land requires Prior Notice, and the line must follow a route from existing utility services and/or existing roads that will minimize impact to the Conservation Values. The construction of any new utility line, including new natural gas pipe line or other energy transmission or utility line intended to serve uses outside the Land, requires Prior Approval by the Department.

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

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

8. **Utilities.**

a. Existing Utilities. Landowner 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.8.d. ("Utility Plan") below.

c. New Utilities serving adjacent properties. Subject to Prior Approval, the Landowner

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retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.8.d. below.

d. Utility Plan. Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department's approval of the Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of Fergus County, signed by the Landowner, the Department, and the utility service provider prior to construction.

9. **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 (hereafter "renewable energy production") solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off of the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to Prior Approval of the Department. Any renewable energy production for use on the Land and associated distribution facilities, including transmission lines and pipelines, permitted hereunder must be consistent with protection and preservation of the Conservation Values. In particular, proposed hydropower generation may not occur if riparian or wetland habitats are impaired.

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

11. 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, mineral rights are owned by the Landowner.

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.

i. The existing extraction sites will be identified in the Baseline Report.
ii. Landowner shall use 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.

12. Subdivision and Conveyance of Land Ownership.

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

b. 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.13.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

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

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

2. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, 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.

3. **Wetland and Riparian Areas.**

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

b. The draining, filling, dredging, leveling, ditching, or diking of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that materially 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 or as part of the Management Plan.

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

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

4. **Water Rights.** Landowner will not transfer, encumber, sell, lease, or otherwise separate water rights from the Land. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.

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5. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.9. is prohibited.

6. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.5. is prohibited.

7. **Land Cultivation.** The cultivation or farming of any portion of the Land not identified as cultivated the Easement Report (Baseline Survey) referenced in Section II.F is prohibited, except as for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement or the Management Plan.

8. **Cultivated Crops**. The Landowner and the Department must jointly agree to the types of crops planted and these types shall be specified in the Management Plan.

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

9. **Buildings and Structures.** The construction or placement of any structure or building on the Land is prohibited, other than as expressly allowed in Section II.C.

10. **Residential Use.** Residential use of the Land or any portion thereof is prohibited.

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

12. **Shooting Preserve, Wildlife Propagation and Related Activitie**s. The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, Landowner has the right to have ranch dogs and household pets on the Land. This prohibition does not apply to release of wildlife for mentored hunting activities, common domestic livestock, or to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land.

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13. **Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, guest ranching, outfitting, any small business, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes expressly permitted under Paragraph II.C.

14. **Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse and debris on the Land is prohibited; provided, however, that the deposit of natural organic material derived from livestock and crop production on the Land, and the deposit of material from water-resource facility maintenance activities provided for in Paragraph II.C.4., are not considered waste disposal.

15. **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 used as part of hunting and fishing activities and lawfully stored and used in necessary quantities for agricultural purposes and except as part of the oil and gas exploration and development activities specifically provided in this Easement. The installation of underground storage tanks is prohibited.

E. MANAGEMENT PLAN

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

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

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F. EASEMENT REPORT

The parties agree that an Easement Baseline Report ("Baseline Report"), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and determined to be an accurate representation of the physical and biological condition of the Land and its nonresidential physical improvements as of the date of the conveyance of this Easement. The original signed 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. The Baseline Report consists of the sections, subsections, tables, figures, and appendices, outlined in Exhibit D, attached hereto. 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 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.

2. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 30 days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 30 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 theproposed 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

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Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies the Landowner's proposed activity, the Department must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.

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

4. The Landowner shall be under no liability or obligation for any failure to give Prior Notice or seek Prior Approval for any activity undertaken by Landowner necessitated by virtue of fire, flood, drought, acts of God, war, unlawful acts of third-parties, acts of third-parties accessing the property for public recreation, storm, and natural earth movement or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, the Landowner shall notify the Department of any such damage as soon as practicable.

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

To Landowner:
Pheasants Forever, Inc.
Attention: Development Department
1783 Buerkle Circle
St. Paul, MN 55110

With a copy to:
Jordan Martincich
Pheasants Forever, Inc. – Director of Development
15718 Dearborn Street
Overland Park, KS 66223

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

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

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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 as agreed upon by both parties,

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 the injury or to a condition that will allow over time the Land to exist as it did prior to the injury. Nothing set forth herein shall require restoration the cost of which exceeds the monetary consideration paid for this Easement.

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

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement including, , 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

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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. 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. Nothing set forth herein shall require restoration the cost of which exceeds the monetary consideration paid for this Easement.

I.

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, drought, acts of God, war, unlawful acts of third-parties, acts of third-parties accessing the property for public recreation, storm, and natural earth movement or other element, 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 the Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. Attorneys' fees and reasonable costs of suit that are incurred by a prevailing party in enforcing the terms of this Easement against another party, including recovery of costs and damages if authorized under Montana law for temporary or preliminary injunctive relief that is improvidently granted, shall be borne by the non-prevailing party if so ordered by a court.

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.G.

I. HOLD HARMLESS AND INDEMNITY

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

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

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

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

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

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is 65 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 35 percent of the unencumbered value of the real property and the Department shall be entitled to receive 65 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. 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 Purposes of this Easement are to be carried out in perpetuity.

L. AMENDMENT

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

M. RECORDING

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

N. REPRESENTATIONS AND WARRANTIES

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

1. Landowner has clear title to the Land; that Landowner has the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department.

2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in anyway,

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harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.

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

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

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

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

O. GENERAL PROVISIONS

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

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

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

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

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

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perpetuity with the Land.

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

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.

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

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

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

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.

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LANDOWNER

PHEASANTS FOREVER, INC.

_____
By: David R. Bue, Vice President of Development

ACKNOWLEDGEMENT

COUNTY OF FERGUS)

STATE OF MONTANA)

Acknowledged before me this ___ day of _____, 2019, by _____ as the _____ of Pheasants Forever, Inc. known to be the person who executed the foregoing instrument on behalf of Pheasants Forever, Inc. and acknowledged the same.

Notary Stamp

_____
Notary of Montana

_____
Printed Name

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ACCEPTED BY DEPARTMENT:
MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS

_____
By:

ACKNOWLEDGEMENT

STATE OF MONTANA)

COUNTY OF LEWIS AND CLARK)

This instrument was acknowledged before me on_____, 2020, by Martha Williams, as Director of the Montana Department of Fish, Wildlife and Parks.

Notary Stamp

_____
Notary of Montana

_____
Printed Name

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EXHIBIT A

Township 18 North, Range 15 East, M.P.M., Fergus County, Montana

Section 1: LOTS 1, 2, 3, and 4: SW1/4NW1/4,; NW1/4SW1/4
Section 2: LOTS 1, 2, S1/2NE1/4, SE1/4
Section 11: NE1/4

Township 19 North, Range 15 East, M.P.M., Fergus County, Montana

Section 35, NE1/4NE1/4; S1/2NE1/4; SE1/4

-- END OF LEGAL DESCRIPTION --

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END OF EXHIBIT A

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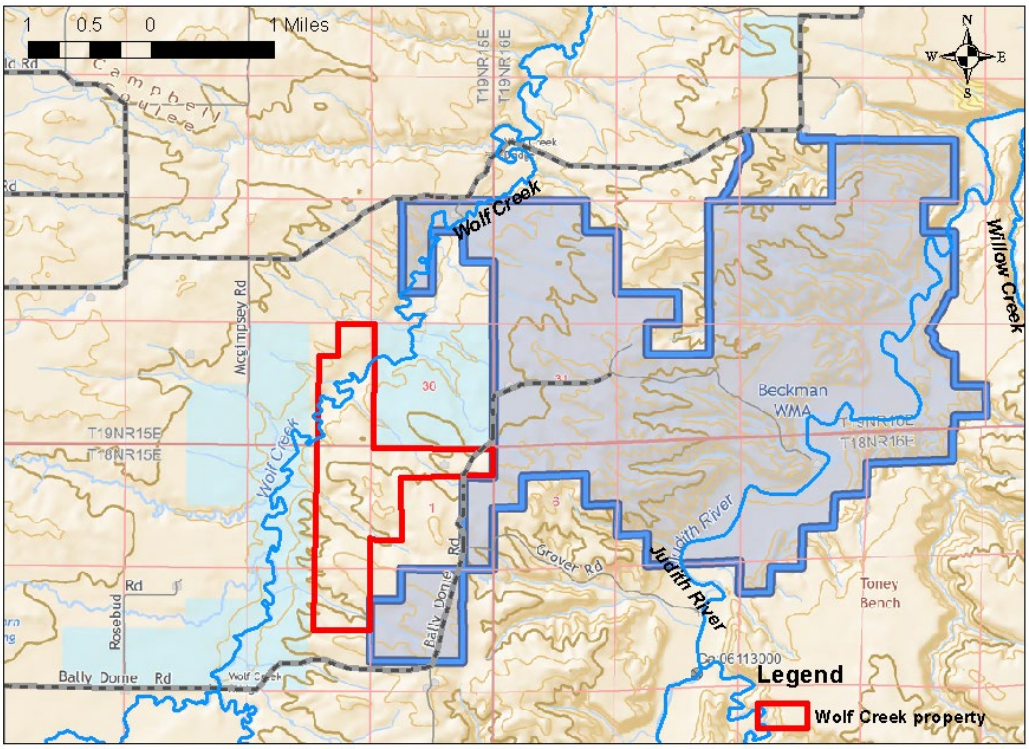
EXHIBIT B

MAP IDENTIFYING THE CONSERVATION EASEMENT BOUNDARY



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.

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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

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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

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EXHIBIT D

Water Rights Associated with The Land

Active Water Rights on Wolf Creek Easement				
Certificate Number	**Owners**	**Type**	**Date**	**Purpose**
41S 18495 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Provisional Permit	5/1/1978	Irrigation
41S 33738 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Provisional Permit	5/7/1981	Irrigation
41S 56031 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Provisional Permit	11/7/1984	Irrigation
41S 30026577	Pheasants Forever Inc.	Ground Water Certificate	1/18/2007	Lawn And Garden
41S 8983 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Ground Water Certificate	7/21/1976	Stock
41S 8983 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Ground Water Certificate	7/21/1976	Stock
41S 8983 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Ground Water Certificate	7/21/1976	Stock
41S 8983 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Ground Water Certificate	7/21/1976	Stock
41S 8983 00	Montana, State Of Board Of Land Commissioners; Pheasants Forever Inc.	Ground Water Certificate	7/21/1976	Stock

END OF EXHIBIT D

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WOLF CREEK CONSERVATION EASEMENT

DRAFT MANAGEMENT PLAN

This Management Plan, dated _____, 2020, is entered into by Pheasants Forever, Inc., whose address is 1783 Buerkle Circle, St. Paul, Minnesota 55110 (hereafter referred to as the "Landowner") and Montana Department of Fish, Wildlife & Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (hereafter referred to as "MFWP" or the "Department").

This Management Plan is being entered into pursuant to Section XX.X. of that certain Deed of Conservation Easement and Public Access Easement granted by the Landowner to the Department on _____, 2020 and recorded in Book __, Page __ of the records of Fergus County, Montana, (the "Easement").

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

The following Appendices are attached and incorporated into this Management Plan by this reference:

Appendix A. MFWP's Minimum Standards for Grazing Livestock
Appendix B. Grazing System (placeholder only)
Appendix C. Hunting/Public Access Rules and Map
Appendix D. Wildlife-friendly Fencing Guidelines

I. Introduction

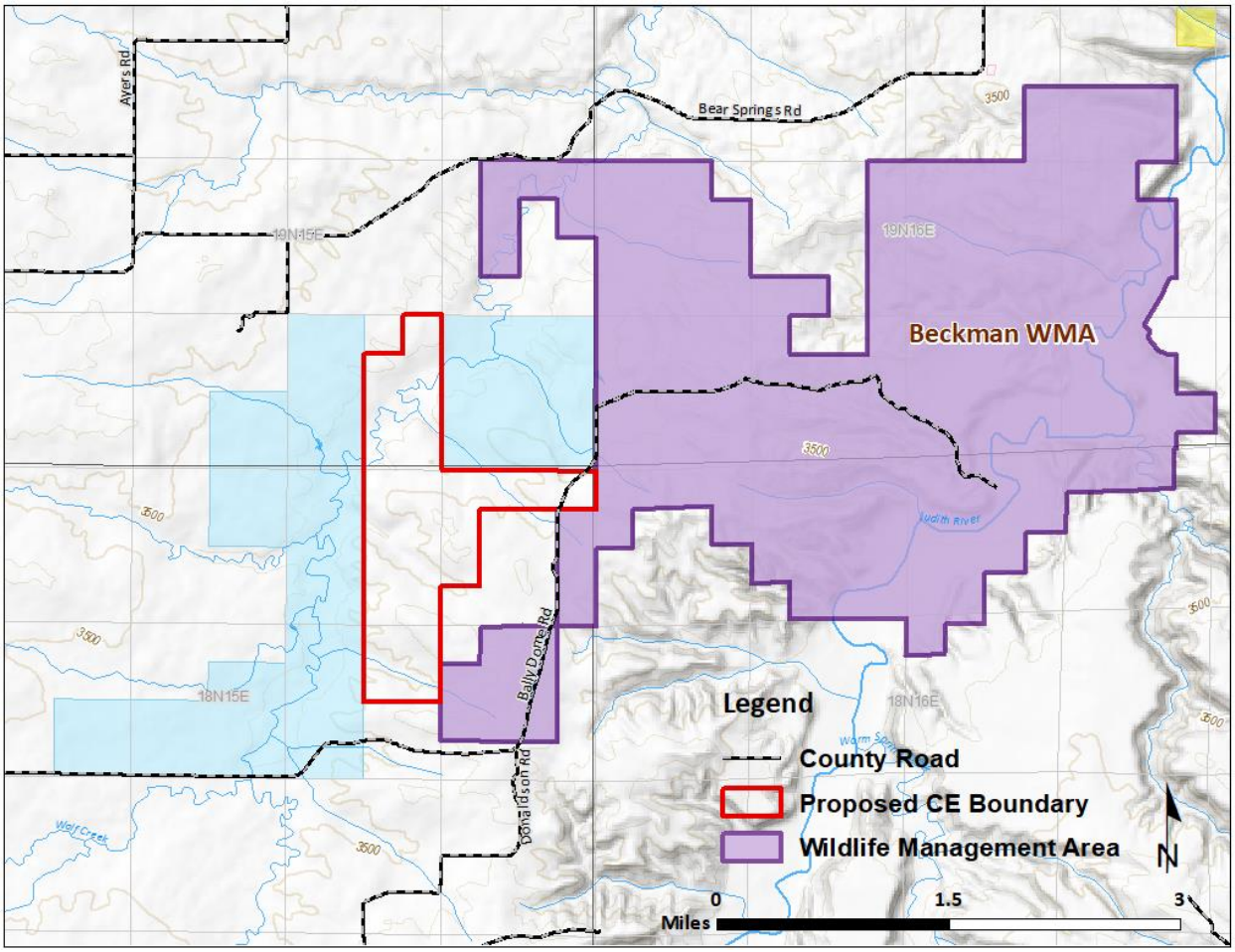
The purpose of the Wolf Creek Conservation Easement (hereafter, "Wolf Creek CE" or "the Land") is to preserve and protect the conservation values of the Land, particularly the habitat the Land provides for its wildlife as well as the agricultural and historic resources into perpetuity. Historic use of the land is primarily livestock grazing. The 1,000-acre Wolf Creek CE is located approximately 8 miles east of Denton, Montana, adjacent to the MFWP-owned Beckman Wildlife Management Area (WMA) in Fergus County, MFWP Region 4, deer/elk hunting district (HD) 426 (Figure 1). The legal description is as follows: Township 18N, Range 15E, Sections 1 and 2, and Township 19N, Range 15E, Section 35.

In 2008, the Pheasants Forever, Inc. (PF) acquired the 1,000-acre Wolf Creek property. Since its purchase, it has been managed under a partnership between the Central Montana Chapter of Pheasants Forever (CMPF) and MFWP. This management has resulted in considerable habitat improvement projects on both the Wolf Creek parcel and the adjoining Beckman WMA. These habitat improvement projects have been tailored for attracting and bolstering wildlife populations, primarily upland game birds, while ensuring public recreational opportunities.

The Wolf Creek CE is bisected north-south by Wolf Creek, a tributary of the nearby Judith River. With numerous coulees and additional ephemeral streams draining into Wolf Creek, coupled with habitat improvements on the uplands, this parcel provides continuous habitat and an effective travel corridor for wildlife to the Judith and Missouri Rivers. Riparian vegetation along Wolf Creek and adjacent coulees is comprised primarily of willow (*Salix* spp.), hawthorn (*Crataegus* spp.), chokecherry (*Prunus virginiana*), buffaloberry (*Shepherdia* spp.), and snowberry (*Symphoricarpos albus*)-dominated plant communities, which provide important forage sources and add to the property's habitat quality. The property has been rested from livestock grazing since 2011 while implementing habitat improvements, resulting in an abundance of dense cover favorable to ground-nesting birds. The mixture of native vegetation and additional forage resources afforded by agricultural fields and food plots on the property provide an excellent resource for a variety of wildlife species. Over time however, the buildup of litter and duff from lack of grazing management may decrease the productivity of native grasses and forbs important to wild ungulates; livestock grazing would be an adequate tool to reduce litter and increase vigor of the native vegetation.

Lands within the Wolf Creek CE contain five habitats of statewide importance, considered Aquatic or Terrestrial Community Types of Greatest Conservation Need (GCN): Prairie Rivers and Streams (i.e., Wolf Creek; Tier I), Sagebrush Steppe (Tier I), Lowland/Prairie Grassland (Tier I), Floodplain and Riparian (Tier I), and Deciduous-dominated Forest and Woodland (Tier II; SWAP 2015). Low-elevation streams like Wolf Creek are warmer than western Montana streams and sustain a richer and different variety of fish species, offering good rearing habitat for these associated fish as well as amphibians, reptiles, and other terrestrial wildlife. Additionally, these habitat types support several state Species of Concern. The Wolf Creek CE also contains about 90 acres of cropland and 35 acres of alfalfa hay. From a statewide and an eco-region perspective, riparian and shrub grassland habitats are highly productive, in need of protection and conservation, and are threatened by subdivision or land-use conversions (e.g., sodbusting).

Figure 1. The Wolf Creek CE juxtaposed with adjacent DNRC School Trust and MFWP-owned Beckman WMA lands.



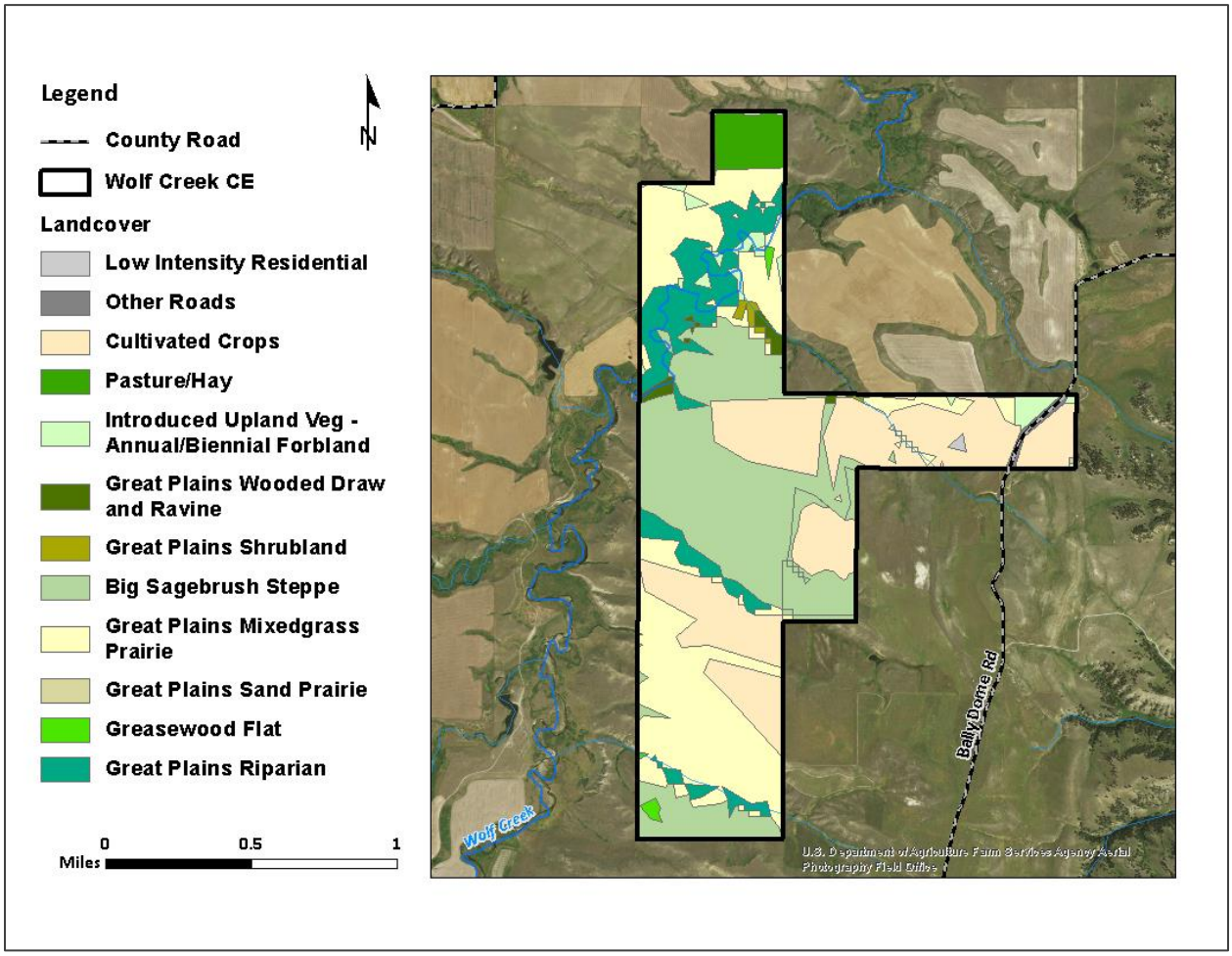
The 1,000 deeded acres consists of approximately 270 acres sagebrush steppe, 231 acres lowland/prairie grassland, 93 acres floodplain and riparian, 351 acres cropland, 35 acres hay, 30 acres annual and biennial forbland (introduced upland vegetation), 9 acres forest and woodland, 7 acres deciduous shrubland, and 6 acres developed (Figure 2). Total native range is 586 acres, or approximately 59% of the CE's landcover. The non-native agricultural lands have been largely managed for upland birds and wildlife in addition to economic income.

The Wolf Creek CE links the MFWP-owned 6,639-acre Beckman WMA to the east with additional 2,564 acres of DNRC School Trust lands to the west and northeast—all currently accessible to the public from Bally Dome Road. A grazing lease on the Beckman WMA with the adjacent Roe Ranch to the south adds an additional 2,771 acres of lands managed for improved wildlife habitat and hunting access (per conditions of the grazing lease). In addition to public access during Fish and Wildlife Commission-established archery and general seasons, the Wolf Creek CE will provide year-round access for hiking, bird watching, and other recreational pursuits.

Wildlife species benefiting from the habitat afforded by the Wolf Creek CE include mule deer, white-tailed deer, sharp-tailed grouse, Hungarian partridge, ring-necked pheasant, wild turkey,

elk, pronghorn, and a host of nongame species, including several species of concern which have or may have potential distribution on the property: Great Plains Toad, Plains Spadefoot, Northern Leopard Frog, American Bittern, Baird's Sparrow, Black-bulled Cuckoo, Bobolink, Chestnut-collared Longspur, Clark's Nutcracker, Common Tern, Ferruginous Hawk, Golden Eagle, Great Blue Heron, Green-tailed Towhee, Lewis's Woodpecker, Loggerhead Shrike, Long-billed Curlew, Mountain Plover, Northern Goshawk, Pinyon Jay, Red-headed Woodpecker, Veery, White-faced Ibis, Dwarf Shrew, Fringed Myotis, Hoary Bat, Merriam's Shrew, Preble's Shrew, Townsend's Big-eared Bat, Greater Short-horned Lizard, Milksnake, and Western Hog-nosed Snake.

Figure 2. Landcover types on the Wolf Creek CE.



II. Goals, Objectives, Concerns, and Strategies

<u>Goal 1:</u> Conserve and enhance native plant communities and enhanced planted habitats on the Wolf Creek CE including the native sagebrush-steppe, prairie grassland, and riparian habitats, as well as tilled or formerly tilled areas to preserve the integrity of these lands for future generations. By implementation of Easement terms, the quality and amounts of native habitats,

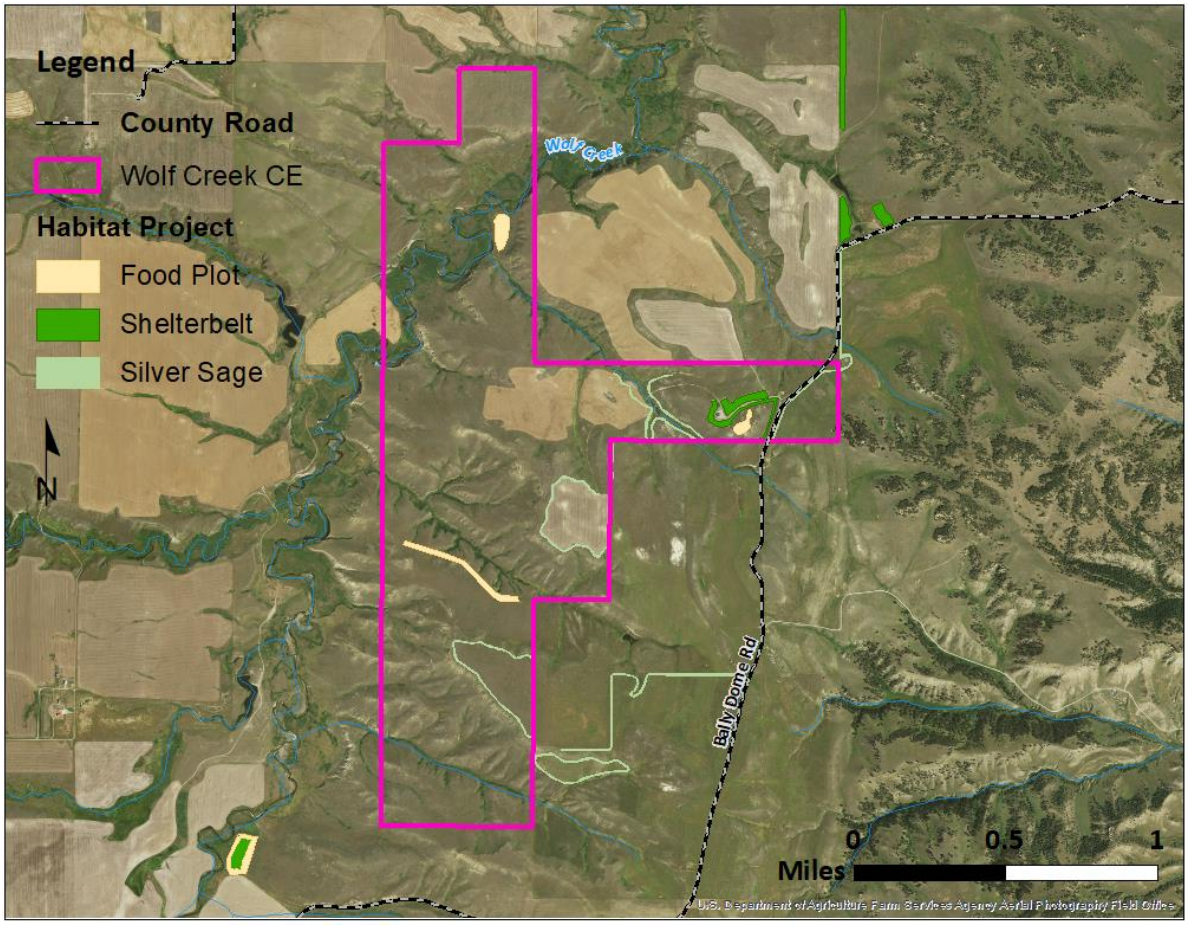
important agricultural habitats, and wildlife potential currently found on the Land shall be maintained without displacing normal private land use.

Objective 1a: *Manage native grassland, shrubland, and riparian vegetation to maintain and improve these plant communities for the benefit of wildlife and livestock.*

Strategy 1: Maintain sagebrush steppe, plains grassland, native riparian habitats, and associated streams for wildlife habitat through Conservation Easement protections. Reduced habitat quality often results in reductions and/or displacement of wildlife.

Many shrub and tree species, such as silver sage, which is the prevailing sagebrush species on the Wolf Creek CE, are important to wildlife for cover and forage values. The removal, control, or manipulation of shrub and tree species by any means is prohibited within terms of the Easement document, including, but not limited to: burning, plowing, chemical treatment or removal of shrub and tree species, unless such activity is mutually agreed upon in writing by the Landowner and FWP. These prohibitions do not apply to the routine clearing or control of brush that is confined to construction and maintenance of trails, roads, fences, and structures permitted under this Easement.

Figure 3. Habitat projects for upland game birds on the Wolf Creek property.



As per CE terms, the Landowner has the right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock handling structures), pipelines, waterlines, dams, and ditches necessary for generally-accepted agricultural practices provided the structures do not significantly impact wildlife habitat or wildlife migration through the Land. All new fence construction (outside of boundary fences) must comply with MFWP's Wildlife-Friendly Fencing guidelines (See *A Landowner's Guide to Wildlife* Friendly Fences; Appendix D).

The Landowner will be responsible for controlling noxious weeds, by chemical, mechanical, or biological methods, in the amounts and frequency of application constituting the minimum necessary to accomplish reasonable control in a manner that will minimize damage to native plants. No aerial application is permitted.

The Department will be responsible for establishing a Baseline Inventory Report that will document wildlife habitat, plant communities, roads, fences, buildings, and other infrastructure that will serve as a baseline for future monitoring. Additional vegetation photo points and/or other monitoring plots will be established and maintained by MFWP in appropriate areas to examine vegetation condition and long- and short-term changes as a measure of management effectiveness.

Strategy: Maintenance and enhancement of existing native plant communities can be accomplished via implementation of a grazing system that meets or exceeds MFWP's Minimum Standards for Grazing Livestock (Appendix A). If the Landowner chooses to initiate livestock grazing, the Landowner and MFWP will work together to establish a grazing plan that is consistent with MFWP's grazing standards, a requirement of the CE. Periodic livestock grazing may be beneficial for the habitat to reduce the buildup of litter and enhance plant vigor and productivity. Any future grazing plan would be included in Appendix B – Grazing System.

Should livestock grazing occur, the Department will monitor grazing plan adherence to assess effectiveness, functionality, and Landowner compliance. Livestock use and distribution would also be assessed annually. The Department, in conjunction with the Landowner, may recommend future fence and/or water improvements/adjustments, if deemed necessary. MFWP and/or the Landowner may partner with other agency(s) such as NRCS for funding and future development of grazing system improvement projects.

Land management activities may occur, for wildlife habitat and agricultural improvement(s). Such activities may include, but are not limited to: prescribed burning, grazing, mechanical brush treatment, disking, food plots, shelterbelts, water developments, conversion of cropland to native vegetation, etc. All habitat manipulations would be designed to improve native habitat and/or upland game bird habitat on the property and will require mutually agreed upon by the Department and the Landowner.

Objective 1b: *Managed and enhance current tilled and non-native habitats for the benefit of wildlife in addition to economic income.*

Strategy: Farming activity, for economic income and the benefit of wildlife, has occurred on the property prior to the establishment of the Wolf Creek CE. Existing cropped fields will be managed for wildlife habitats and food sources, or economic income. Collaborative habitat improvements and enhancements have also taken place, including food plots, shelter belts,

nesting cover plantings, etc. On the Wolf Creek property itself, current habitat projects include two winter cover shelterbelts totaling 7-acres, three food plots totaling 5-acres, and six double rows of silver sage totaling 16,420 linear feet (3.1 miles), or 8.5 acres (Figure 3). As such collaborative habitat enhancement work continues, these projects will be handled through separate term agreements between the Landowner and contributing partners; such enhancements are not a requirement of this Management Plan.

Additional sod-busting or tilling of native rangeland vegetation is not permitted under this Easement. Several existing stands of crested wheatgrass may be converted back to native rangeland or utilized for additional upland game bird habitat projects as crested wheatgrass provides little wildlife value.

In addition to habitat enhancement strategies set forth in Objective 1a, additional habitat enhancement opportunities through participation in Federal, State, and other habitat programs may be pursued provided those habitat programs implemented on the Land do not conflict with terms of the CE. The Department may work with the Landowner to continue to implement habitat improvement projects on the Land in the future through direct contribution of funding via separate agreements through the Upland Game Bird Habitat Enhancement Program, other programs, or other technical support.

Goal 2: Manage wildlife populations in balance with resources and provide guaranteed public hunting, hiking, and wildlife viewing opportunities with minimal impact to CE lands and adjacent physical and human environments.

Objective 2a: *Maintain wildlife use of the property in balance with resources.*

Strategy: The Land and adjacent lands provide critical year-round habitat for numerous big game and upland game bird species. The area also provides seasonal habitat for waterfowl, mourning doves, migratory raptors, passerine birds, and numerous potential species of concern, listed above. Wild game populations fluctuate and at times may exceed MFWP management objectives, which could contribute to above-average wildlife use of the Land, resulting in game damage problems, particularly to newer shelterbelts and possibly adjoining private lands. Such circumstances will be managed through public hunting during a general season framework. Game damage assistance will be provided on an “as needed” basis to the Landowner.

Objective 2b: *Provide guaranteed public hunting access and public recreation opportunity.*

Strategy: As per MFWP Conservation and Public Access CE terms, the Landowner must allow reasonable non-motorized public access for hunting, wildlife viewing, and other forms of non-motorized recreation (hereafter, recreational access). The Landowner may not charge fees, lease, or commercially outfit hunting, or charge trespass fees on deeded land or to adjoining public lands.

Hunting will be allowed on the Wolf Creek CE consistent with Fish and Wildlife Commission-established regulations and dates/seasons. Recreational access will be allowed from April 1 through January 1, via walk-in only access from a designated parking area. No further permissions are required. Wolf Creek CE Hunting and Access Rules (Appendix C) as defined in this Management Plan may be altered upon mutual agreement between MFWP and the

Landowner. Trapping, recreational/trap shooting, and use of riding stock are not permitted on the Wolf Creek CE.

Camping is not permitted on the Wolf Creek property. Occasionally overnight stay in or around the existing buildings may be allowed for official administrative purposes only (state- or CE-related, not recreational). The Landowner may deny access to, or expel from the Land, any person for cause, including but not limited to: intoxication or use of illegal substances, reckless behavior that jeopardizes human life, wildlife habitat, or Landowner's property, or is in violation of law or regulation applicable to public use of the Land; or misconduct under or violation of the terms of public access provided in this Easement, including any plan of access adopted and implemented under this Management Plan.

The Landowner may apply for MFWP access and habitat enhancement programs such as the Block Management Program or Upland Game Bird Habitat Enhancement Program. Services and/or compensation for public use impacts through the Block Management or any other access or habitat program is contingent upon program continuation, sufficient program funding8888, and a prioritized ranking and selection of the application.

III. Overall Conservation Easement Compliance

Annual monitoring will be conducted by MFWP or a designated third party and will involve meeting with the Landowner, field reviews to assess Management Plan effectiveness, and to review Landowner compliance with Easement terms. The Landowner is encouraged to thoroughly familiarize themselves with the Management Plan including the grazing system (if applicable), recreational access provisions, terms in the Deed of Conservation Easement, and to contact MFWP with any questions or concerns to avoid non-compliance.

Final Management Plan Approved By:

_____	_____
Jordan Martincinch, Pheasants Forever, Inc.	Date
_____	_____
Cory Loecker, MFWP Region 4 Wildlife Manager	Date
_____	_____
Gary Bertellotti, MFWP Region 4 Supervisor	Date
_____	_____
Ken McDonald, MFWP Wildlife Division Administrator	Date

WOLF CREEK CONSERVATION EASEMENT

APPENDIX A – MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

The following grazing standards represent the minimum required by Montana Fish, Wildlife & Parks (MFWP) of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all MFWP funded projects; at times, it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements (CEs) and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On MFWP 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 some areas where wildlife production is the primary objective, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, MFWP 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

MFWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape.' Addressing cover is especially important in the implementation of MFWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

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

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

Grazing plan

Prior to grazing livestock, the Landowner and MFWP 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 CEs. 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 CE For other projects, the management plan will be included as an attachment to the grazing lease or contract. On CEs, the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Standards for Summer/Fall Systems

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

beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show 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 years. Hay, grain, salt, protein, or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in Table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designated for winter grazing is divided into

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

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

Scope

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

Non-native Pasture

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

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

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

Stocking Rate

Usually MFWP 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 MFWP any grazing that occurs will be at stocking levels determined by the agency and approved by the MFWP 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 MFWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On MFWP 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 MFWP 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 MFWP representative of the problem. In a timely manner the local MFWP 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. MFWP 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.

WOLF CREEK CONSERVATION EASEMENT

APPENDIX B – GRAZING SYSTEM

This Appendix B – Grazing System, serves as a placeholder until such time that the Landowner chooses to initiate livestock grazing on the Wolf Creek Conservation Easement. At that time, the Grazing Plan will be developed, mutually-agreed upon by the Landowner and the Department, and provided herein. The Grazing System will meet or exceed Montana Fish, Wildlife & Park's Minimum Standards for Livestock Grazing (Appendix A).

WOLF CREEK CONSERVATION EASEMENT

APPENDIX C – HUNTING/PUBLIC ACCESS RULES & MAP

The Wolf Creek Conservation Easement (hereafter, Wolf Creek CE) is located within FWP Deer/Elk Hunting District 426, and Antelope Hunting District 471.

1) The Wolf Creek CE is open to public hunting of all legally available game and fish species during Fish and Wildlife Commission-established upland game bird, waterfowl, fishing, and big game hunting seasons between April 1 and January 1 each year. Recreational access for wildlife viewing, hiking, and birding is also permitted within this same timeframe.
The Wolf Creek CE is closed to all public access from January 2 through March 31 for the benefit of wintering wildlife.

2) No reservations or written permission is required to access lands on or across the Wolf Creek CE. Walk-in access is permitted via the designated parking area shown on the attached map.

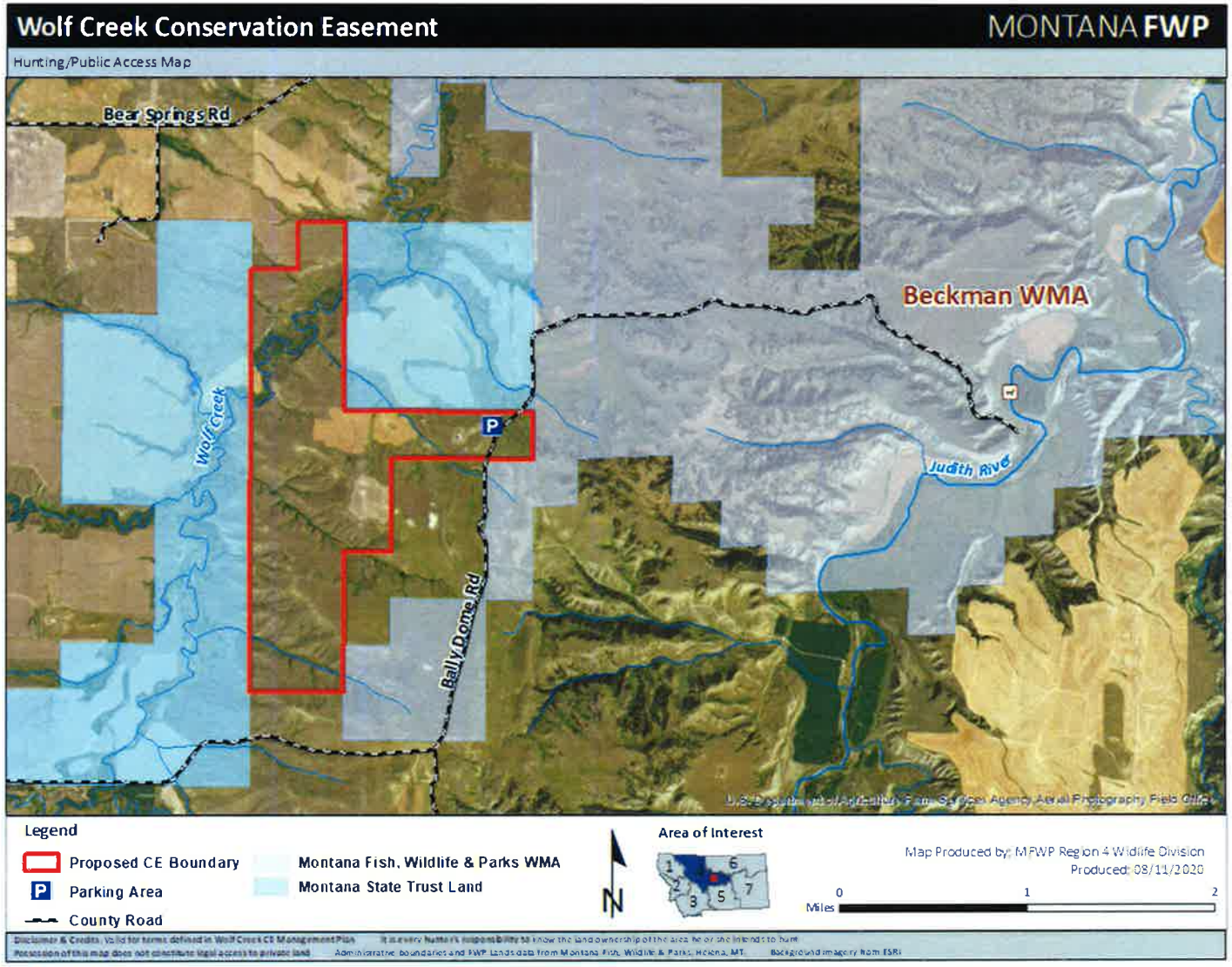
3) Hunting and other recreational activity is permitted by **non-motorized only** access from public roads, authorized/designated trails, parking areas, and any other adjoining public land. Hunters must come prepared to retrieve harvested game (i.e., game cart, backpack, etc.). Users are encouraged to come with a detailed map of the area as not all boundaries may be properly marked. It is the user's responsibility to know where they are in relation to neighboring land. Use of stock (e.g., horses, mules, llamas, pack goats) is not permitted on CE lands.

4) No hunting is permitted in the vicinity of buildings or residences.

5) No overnight camping on the Wolf Creek CE. Overnight camping is permitted on adjacent DNRC lands or the Beckman Wildlife Management Area (WMA). If camping on adjacent public lands, users must follow those respective agencies' camping regulations. No open fires are permitted on the Wolf Creek CE.

8) The Landowner may deny access to an individual(s) for cause, ARM rule 12.4.205 (d). An example – intoxication, belligerence, or violent behavior, violation of Conservation Easement or standard BMA rules, etc.

9) Violators of any Wolf Creek CE rules and/or State hunting regulations will be prosecuted. Convictions may result in the loss of Conservation Easement/Block Management access privileges in addition to other penalties. Violations can be reported to **1-800-TIP-MONT**.


Wolf Creek Conservation Easement
MONTANA FWP
Hunting/Public Access Map
Bear Springs Rd
Beckman WMA
Wolf Creek
Judith River
Bally Dome Rd
P
Legend
Proposed CE Boundary
Parking Area
County Road
Montana Fish, Wildlife & Parks WMA
Montana State Trust Land
N
Area of Interest
1
2
3
5
6
7
Map Produced by: MFWP Region 4 Wildlife Division
Produced: 08/11/2020
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1
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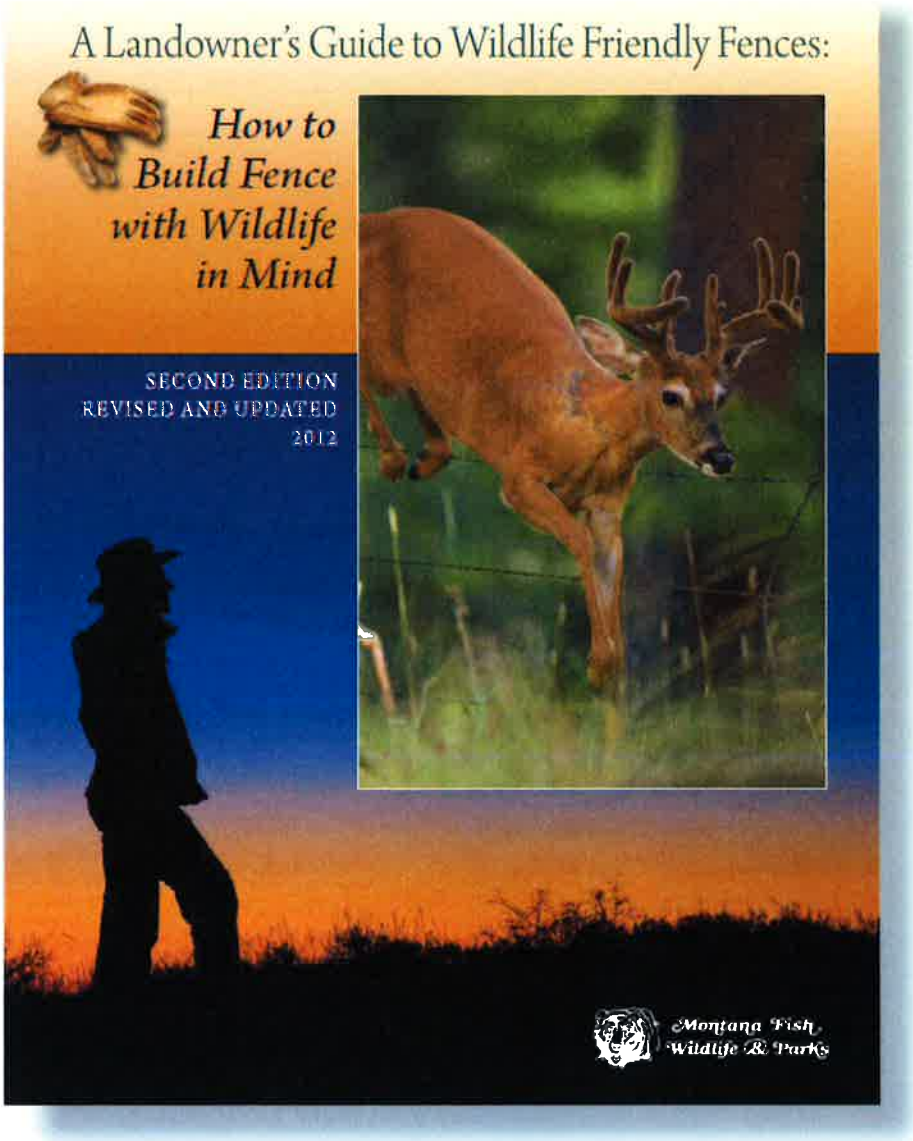
WOLF CREEK CONSERVATION EASEMENT

APPENDIX D – WILDLIFE-FRIENDLY FENCE GUIDELINES

The complete guidelines will be published in the final Wolf Creek Conservation Easement (CE) held by the Landowner and the Department. Other copies of the Management Plan will contain a link to access these guidelines: http://fwp.mt.gov/fishAndWildlife/livingWithWildlife/