4600 Giant Springs Rd.
Great Falls, MT 59405
August 24, 2020

Dear Interested Parties:

Montana Fish, Wildlife & Parks (MFWP) is proposing to purchase and manage a conservation easement (CE) on 4,306 acres owned by David Bergum and 313 acres owned by David Bergum, Ryan Hagen, and Daniel Hagen north of Winifred, MT. This proposed CE, called the "Whiskey Ridge Conservation Easement," will protect and conserve in perpetuity ~ 4,619 deeded acres of mixed sagebrush-grassland habitat adjoining the Missouri River Breaks in deer/elk hunting districts (HDs) 417 and 426. 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 25 – September 24, 2020. A public informational meeting is scheduled for September 10, 2020 in Winifred, MT.

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 24, 2020.

Whiskey Ridge 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

WHISKEY RIDGE CONSERVATION EASEMENT

August 2020

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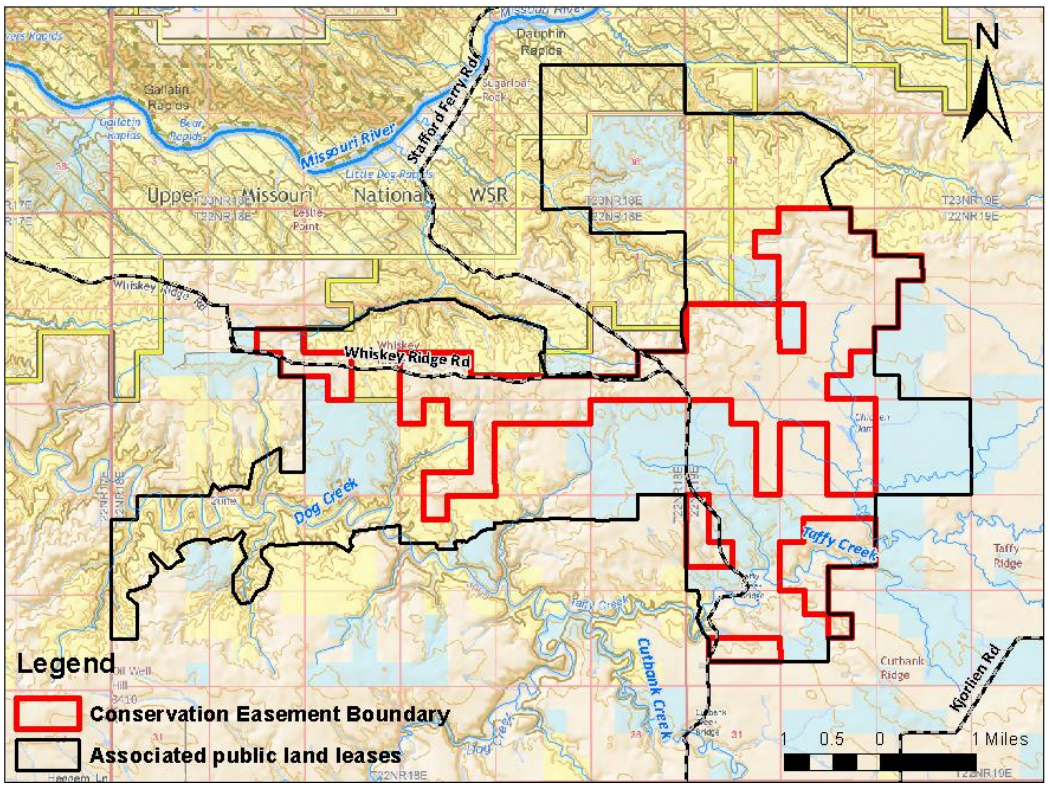
1.0 Purpose of and Need for Action

1.1 Proposed Action

Montana Fish, Wildlife & Parks (hereafter, "MFWP" or "the Department") proposes to purchase a perpetual Conservation Easement (CE) to protect wildlife habitat and ensure continued public access on lands owned by David Bergum, with a small portion (313 acres) owned by David Bergum, Ryan Hagen and Daniel Hagen (hereafter, "the Land," or "the Ranch"). The CE, called the Whiskey Ridge CE, would protect approximately 4,619 acres of primarily sagebrush steppe above the Missouri River Breaks (Figure 1).

Figure 1. The proposed Whiskey Ridge CE and associated leased public and private lands.



Conservation easements are voluntary, binding agreements between a landowner and another entity, in this case, MFWP, wherein MFWP purchases certain uses (rights) of the land in order to protect its conservation values. The Deed of CE is then recorded at the County Courthouse and remains with the property in perpetuity.

Montana Fish, Wildlife & Parks CEs only encumber private lands, however a grazing system will be prescribed on private and associated leased lands that enhances habitat values and increases the conservation footprint to encompass a total of ~15,500 acres.

Developing and implementing CEs require ongoing partnerships between MFWP and willing private landowners with the primary intent of conserving important native wildlife habitats and providing free public recreational access, while keeping the land in private ownership and agricultural production. The proposed Whiskey Ridge CE would prohibit subdivision and development outside of identified building areas, expanded tillage or other destruction of native vegetation (currently-farmed lands are permitted to remain under production), implement a grazing system to maintain and/or enhance native vegetation on private and associated leased lands, allow free, year-round public recreational access, and prohibit grazing by domestic sheep, llamas, and goats, until such a time effective management practices are developed and implemented to mitigate concerns of disease transmission between wild and domestic sheep, thereby protecting the Land's conservation values in perpetuity.

1.2 Need for Action

This CE ties well into the mission, goals, benefits, and application of MFWP's Habitat Montana Program as stated in ARM Rule 12.9.508 through 511. It consists of approximately 4,619 deeded acres comprised primarily of sagebrush-grassland situated above the Missouri River Breaks in Fergus County, with an additional 10,839 acres of associated leased lands (primarily BLM and DNRC). The property straddles two State Wildlife Action Plan (SWAP) Terrestrial Focal Areas, the Greater Sage-Grouse Core Area and the Judith River Focal Area. It includes a portion of the larger landscape key to maintaining viable populations of bighorn sheep, elk, mule deer, pronghorn, Merriam's wild turkey, sage grouse, sharp-tailed grouse, mountain lion, and a host of native non-game species in central Montana. This property also facilitates improved recreational access to over 15,400 acres of DNRC and BLM lands (including the above-mentioned leased acres and the Upper Missouri River Breaks National Monument (UMRBNM).

Notably, this property and associated breaks provide important habitat and access to the Southern Missouri River Breaks hunting district (HD) 482 bighorn sheep herd which constitutes an important ecological and recreational resource to Montana. The Missouri Breaks sheep herd comprises of a portion of the state's largest metapopulation of bighorn sheep (>1,000 individuals estimated between HDs 482 and 680).

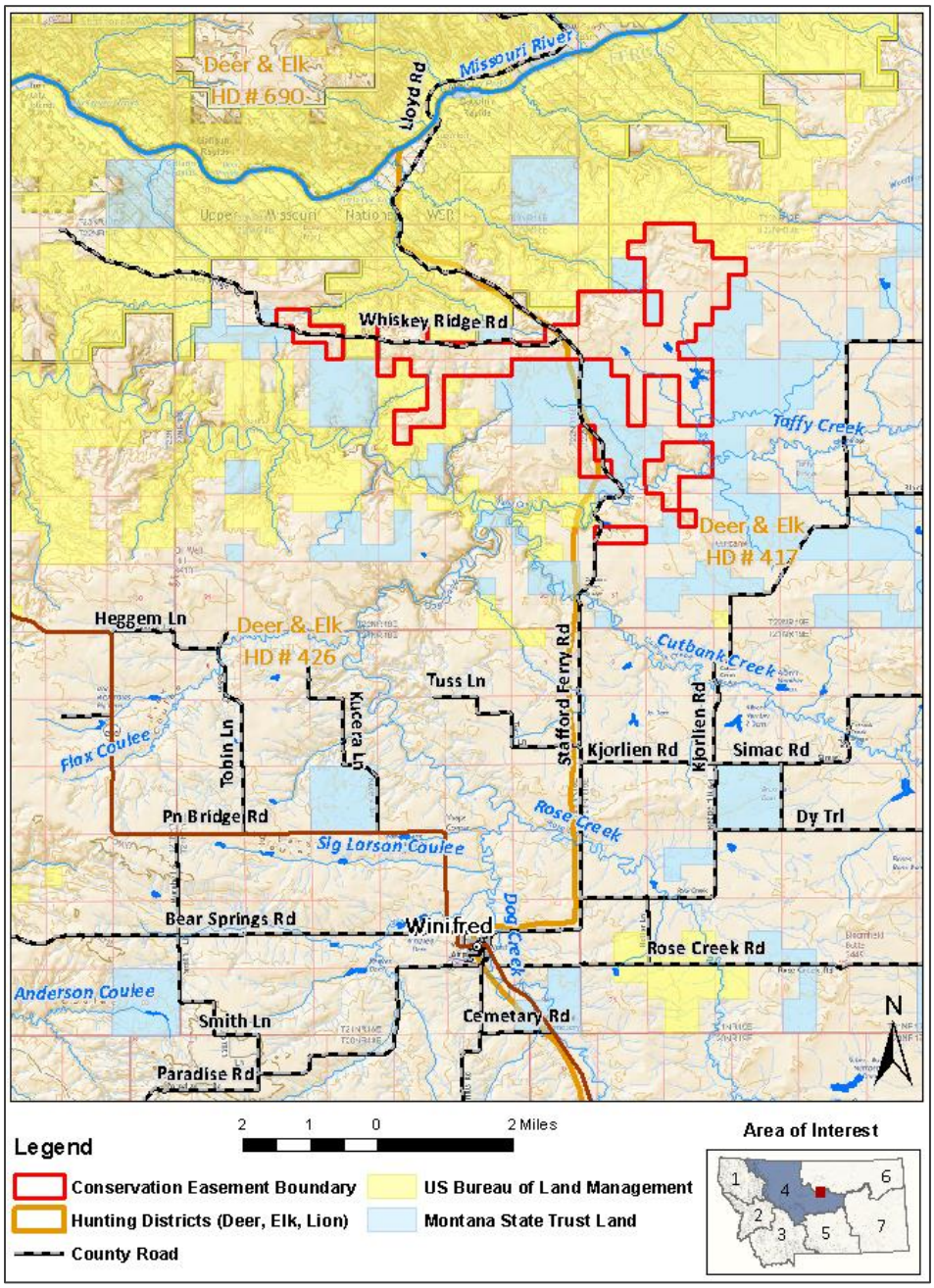
Landowner David Bergum currently runs a successful cattle operation on the property, however had sought to diversify his operation by grazing domestic sheep. This landowner approached MFWP about the risks of domestic/wild sheep interactions and the implications to this world-renowned wild sheep herd. As an alternative to running domestic sheep while supplementing ranch income, Mr. Bergum enrolled in MFWP's Block Management Program in 2018, and is now expanding upon his relationship with the Department and shifting to long-term ranch protections by pursuing a CE. Ryan and Daniel Hagen recently inherited a parcel within the proposed CE and are supportive of protecting the conservation values of the parcel.

Funding for the easement would come from MFWP's Habitat Montana and Bighorn Sheep License Auction funds, Wild Sheep Foundation (National and Montana Chapters), Great Falls Chapter Safari Club International, Northwestern Energy, and the Montana Fish & Wildlife Conservation Trust.

1.3 Location

The project area is located about 8.5 miles north-northeast of Winifred, split between Hunting Districts (HDs) 417 and 426, in Township 22N, and Range 18E, Sections 8, 9, 10, 11, 12, 14, 15, and 22, and Township 22N, Range 19E, Sections 4, 5, 6, 7, 8, 9, 17, 18, 19, 20, 29, and 30 (Figure 2).

Figure 2. Location of the proposed Whiskey Ridge Conservation Easement.



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.

- Montana Fish, Wildlife & Parks 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 MCA § 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 MCA § 76-6-206 provides for the review of proposed CEs by local planning authorities to determine compliance with local growth policies. The proposed Deed of Conservation Easement would be submitted to Fergus County for its review in accordance with this requirement.

- State statute MCA § 87-2-722 authorizes the Fish & Wildlife (F&W) Commission to issue one male mountain sheep license each year through competitive auction. The revenue generated for MFWP must be used by the Department for "the substantial benefit of mountain sheep. The proceeds from the auction must be used in addition to any other funds the department uses for the management of mountain sheep." This includes securing conservation and enhancing habitats for bighorn sheep.

- 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

<u>2005 FWP Comprehensive Fish & Wildlife Management Strategy:</u>
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, Northern Leopard Frog, Plains Spadefoot, American Bittern, Baird's Sparrow, Black Tern, Black-billed Cuckoo, Bobolink, Brewer's Sparrow, Burrowing Owl, Cassin's Finch, Chestnut-collared Longspur, Clark's Nutcracker, Common Tern, Ferruginous Hawk, Forster's Tern, Golden Eagle, Great Blue Heron, Greater Sage-Grouse, Green-tailed Towhee, Horned Grebe, Loggerhead Shrike, Long-billed Curlew, McCown's Longspur, Mountain Plover, Northern Goshawk, Peregrine Falcon, Pinyon Jay, Red-headed Woodpecker, Sharp-tailed Grouse, Sprague's Pipit, Veery, White-faced Ibis, Black-tailed Prairie Dog, Dwarf Shrew, Fringed Myotis, Hoary Bat, Merriam's Shrew, Preble's Shrew, Swift Fox, Townsend's Big-eared Bat, Greater Short-horned Lizard, Milksnake, Spiny Softshell, and Western Hog-nosed Snake.

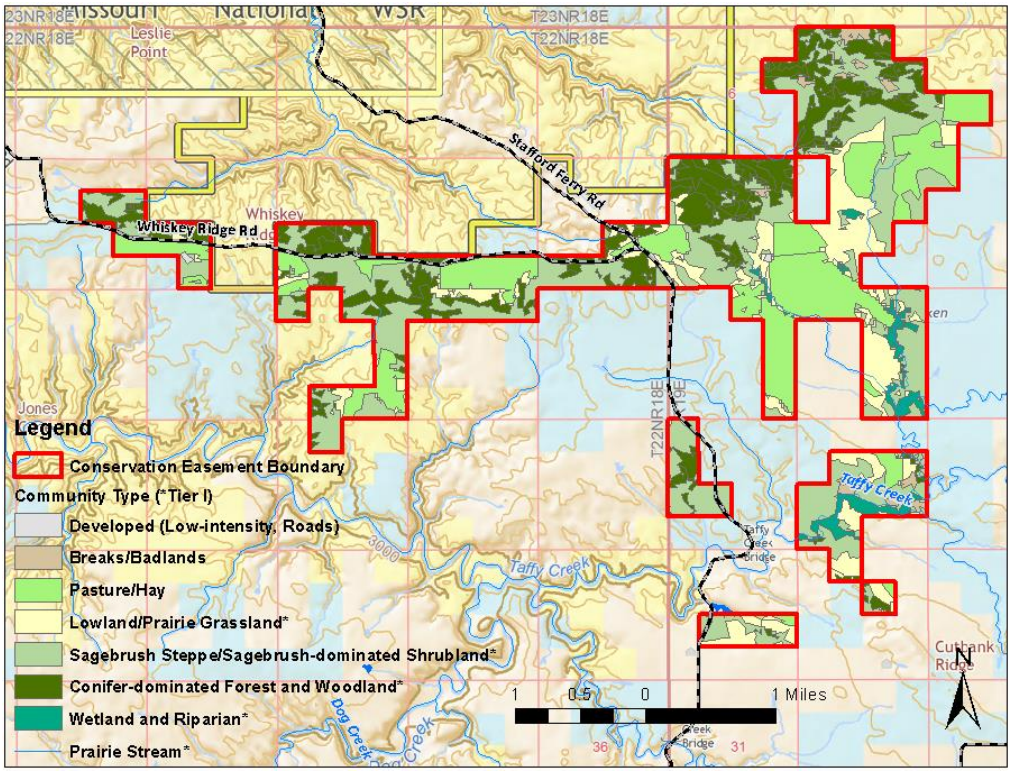
A Greater short-horned lizard, considered a species of "greatest conservation need," found on lands associated with the proposed Whiskey Ridge CE.

<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 Land's location within the Northwestern Great Plains ecoregion contains five identified CTGCN: Prairie Streams, Floodplain and Riparian, Conifer-dominated Forest and Woodland, Lowland/Prairie Grassland, and Sagebrush Steppe/Sagebrush-dominated Shrubland (Figure 3). In addition to these Tier I Community Types, the proposed Whiskey Ridge CE straddles two SWAP Terrestrial Focal Areas, the Greater Sage-Grouse Core Area (Tier I) and the Judith River

Focal Area (Tier II), and a portion contains two Aquatic Focal Areas, the Lower and Middle Missouri Focal Areas (both Tier I).

Sagebrush Steppe/Sagebrush-dominated Shrubland: This is the dominant community type on the proposed Whiskey Ridge CE, making up 37% of its total landcover. The primary sagebrush species found here are Wyoming big sagebrush (*Artemesia tridentata* spp. *wyomingensis*) and Silver sage (*Artemesia cana*). In many parts of this community's range, 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.

Figure 3. Landcover types on the proposed Whiskey Ridge CE. Tier I Community Types of Greatest Conservation Need are designated in the Legend with an asterisk (*).



Conifer-dominated Forest & Woodland: This landcover type comprises 21% of the proposed CE lands. The dominant species in this system in the Missouri River Breaks are ponderosa pine (*Pinus ponderosa*) and Rocky Mountain juniper (*Juniperus scopulorum*). Tree cover varies from sparse patches on south-facing slopes to nearly closed-canopy forests on north-facing slopes or in draws with higher moisture, resembling those found west of the Continental Divide. Frequent, low-intensity fires were the predominant dynamic process in this system, and in the absence of fire, periodic prescribed burns, selective thinning, and fuels reduction can be used to maintain and restore this system to pre-settlement conditions. Grazing should be managed to prevent the loss of common perennial grass species and the proliferation of exotics, primarily cheatgrass, in these systems, which could then affect the dynamics of fire.

Lowland/Prairie Grassland: This is the third-most dominant native community type on the proposed Whiskey Ridge CE, making up 14% of its total landcover. 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).

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.

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. The prominent type of wetland found on the proposed Whiskey Ridge CE is the Closed Depressional Wetland. This wetland type differs from other wetlands in being completely isolated from both the regional groundwater system and inter-wetland drainage systems, and occurring as their name suggests, in depressional basins. Their major sources of input are precipitation and snow melt, with water loss occurring via evapotranspiration. Unmanaged cattle grazing can affect the propensity of beneficial perennial grasses or inhibit the health and restoration of hydrology in these systems.

<u>2018 Montana State Action Plan for the Department of the Interior's Secretarial Order 3362:</u> 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 swath of land included in this area, as well as 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 4,619-acres as delineated in Figure 1. 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 based on public input.

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 the proposed Whiskey Ridge Conservation Easement.

The Department would purchase a CE on the approximately 4,619-acres for the protection of fish and wildlife habitats. The anticipated purchase price of the CE would be no greater than $2,315,000. Funding for the easement would come from MFWP's Habitat Montana Program, MFWP's Bighorn Sheep License Auction Fund, Wild Sheep Foundation (National and Montana Chapters), Great Falls Chapter Safari Club International, Northwestern Energy, and the Montana Fish & Wildlife Conservation Trust. Anticipated monitoring costs of the CE by MFWP staff is estimated to be $200 annually. Habitat Montana funds are earmarked state funds derived from the sale of Montana hunting licenses and Montana Sheep License Auction Funds are derived from the annual competitive sale of one male bighorn sheep hunting license, which allows the successful bidder to hunt for a legal ram during the open season in any legally-described HD listed in the bighorn sheep hunting regulations; no Montana state tax dollars would be used to fund this CE. In addition to the purchase cost of the CE, MFWP and Mr. Bergum will enter into a 50/50 cost-share for rangeland infrastructure improvements needed to implement a grazing system as described in Attachment B, Appendix B; estimated infrastructure costs total $66,788 (MFWP cost-share not to exceed $33,400).

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. Landowners David Bergum Ryan Hagen, and Danial Hagen, as well as 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 Minimum Standards for Grazing Livestock (Attachment A, Exhibit C and Attachment B, Appendix A);
2. Use the Land and equipment on the Land for agricultural purposes and to manage habitat for wildlife;
3. Lease the land to another agricultural operator for agricultural purposes, provided that the lessee follows the terms of the CE and Management Plan;
4. Conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan;
5. 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 change 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;

6. Maintain two existing residences, one within a 20-acre area and one within a 5-acre area, and construct two new cabins, each within a 5-acre area (building envelopes identified in Draft CE, Attachment A);
7. 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;
8. Maintain existing roads and bridges or waterway crossings in connection with farming, ranching, or other timber management, and with Prior Approval, construct new roads, provided they minimize adverse impacts on the Land's Conservation Values;
9. Use the Land for noncommercial recreational purposes, including hunting and fishing, in accordance with the terms laid out in the CE and Management Plan;
10. Maintain, renovate, repair, or replace utilities existing on the Land;
11. Use agrochemicals for control of noxious weeds as defined by the State of Montana or other lawful authority with jurisdiction;
12. Regulate public use of the land subject to the right of public recreational access granted to the Department;
13. 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.
14. Collect or extract fossils and artifacts provided it does not adversely impact the Conservation Values of the Land, with Prior Approval

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 as stated in Section II.C.12.b of the CE.

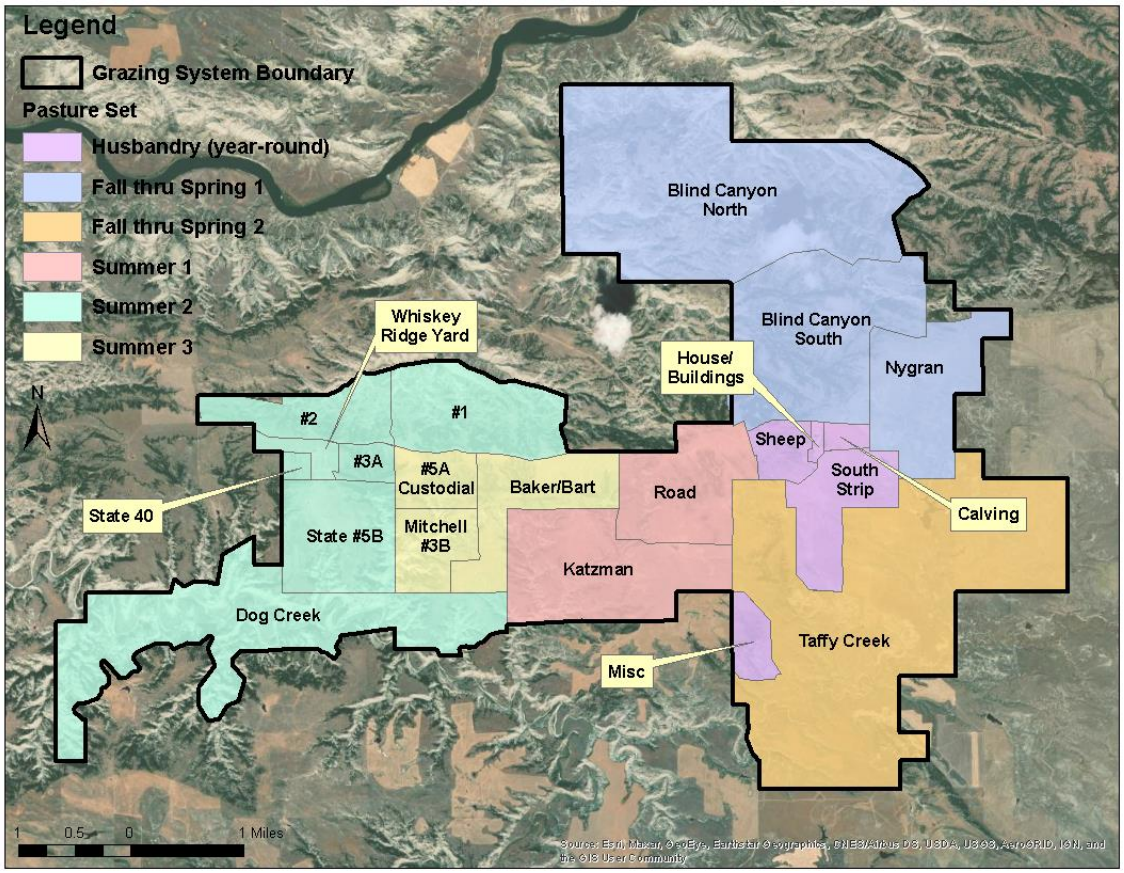
The Department would acquire the rights to:

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;
5. On behalf of the general public, access to the property by non-motorized means from public roads and rights-of-way for the purpose of hunting, trapping, wildlife viewing, and other recreational activities in accordance with the terms of the CE.

As a component of the CE, a grazing system would be developed to encompass the private 4,619 acres and 11,071 (current at the time of CE purchase) leased acres. The grazing system would adhere to MFWP's "Minimum Standards for Grazing Livestock," available for reference in Attachment B, Appendix A. The Department would monitor grazing plan adherence to assess effectiveness, functionality, and Landowner compliance. Livestock (i.e., cattle and horses) use and distribution would be assessed annually. Classes of livestock may be changed upon agreement of the Landowner and MFWP, but domestic sheep, llamas, and goats are prohibited until such a time effective management practices are developed and implemented to mitigate concerns of disease transmission between wild sheep domestics.

Figure 4: Pastures and pasture sets (pastures sharing the same color) recognized in the grazing system as part of the proposed the Whiskey Ridge CE.

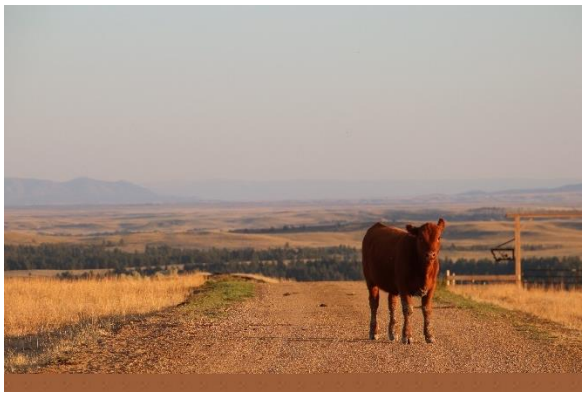


Highlights of the grazing system include: Livestock will be managed using a three-treatment rest-rotation grazing system during the summer, with a separate fall/spring schedule. The grazing system comprises the 20 existing pastures (Figure 4): 12 summer pastures (divided into three

treatment groups, or pasture "sets"), four fall-through-spring pastures, and four additional pastures existing as "animal husbandry" pastures that can be used at the Landowner's discretion at any time of the year.

For summer grazing, livestock would move into one of three Summer pasture "sets," approximately May 15. They would remain here through the growing season (approximately May 15 through July 15) and then move to the next scheduled pasture set for the post-seed ripe grazing period (approximately July 15 until September 15), when they would move to one of the husbandry areas for pre-conditioning. Livestock would then return to the grazing system in one of the Fall pastures (Nygran or Taffy Creek), where they would remain until shipping. After shipping, livestock return to that same Fall pasture, where they would remain through the winter months until calving begins. After calving, they would move into the same "Fall through Spring" pasture set (Blind Canyon or Taffy Creek) until the start of summer. Each year, the summer pasture sets rotate such that for every three years, the pasture sets receive two growing seasons of rest (one year complete rest and one year deferred grazing). For a more detailed explanation of the grazing system designed for the Whiskey Ridge CE, see Attachment B, Appendix B.

No farming activity currently occurs on the Land; however, the Landowner maintains ~2,000 acres sainfoin alfalfa on private and leased DNRC lands used for grazing livestock. No hay is currently harvested on the Land. No other sodbusting or conversion of native ground is permitted under this CE. Returning previous cultivated acres (now under hay production) to cropland will be permitted upon Prior notice to the Department and possibly require adjustments to the grazing system.



A grazing system applied to deeded CE and associated leased lands will maintain the Land's traditional agricultural character while enhancing the vigor and productivity of native vegetation and preserving cover values for wildlife.

2.2 Alternative B: No Action and no purchase of the proposed Whiskey Ridge Conservation Easement.

For the No Action Alternative, MFWP would not purchase the proposed Whiskey Ridge CE. Dave Bergum would continue to manage the Land as a working cattle ranch, 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 Landowner may decide to diversify his interests by running domestic sheep, and disease transmission among wild sheep and domestics may occur as a result.

3.0 Affected Environment

3.1 Land Use

The proposed Whiskey Ridge CE is a working cattle ranch, and would remain so under the Proposed Action Alternative. Approximately 800 acres of former cultivated crops have been reseeded into sainfoin alfalfa/grass hay mixture; combined with existing hay includes a total of 1,028 acres in hay cover used for grazing. The formerly cultivated area may return to cultivation, but any tillage of additional native vegetation or original hay ground is prohibited (outside of periodic renovation of hay ground). See Attachment B for maps and acreages of native vs. non-native cover. Two residential areas with single-family dwellings exist on the Ranch, approximately 20-acres and five-acres in size. Along with these dwellings are various ranch-related infrastructure developments (i.e., outbuildings, shops, and corrals). Locations of these existing dwellings are depicted in Exhibits D1 and D2 of the CE document (Attachment A, Exhibits D1 and D2). Two additional residential building areas will be permitted, each up to five-acres in size, with the locations for each designated building area depicted in Exhibit D3 of the CE document (Attachment A, Exhibit D3).

3.2 Habitat

Of its 4,619 private acres, the proposed Whiskey Ridge CE consists of approximately 3,444 acres native vegetation and 1,172 acres non-native vegetation, or 75% and 25%, respectively. The area is considered general and winter range for a variety of big game species which inhabit or move through the property on a regular basis, including mule deer, elk, pronghorn, bighorn sheep, and mountain lion. As stated above the property is within the Greater Sage Grouse Core Area Focal Area, and its intact Wyoming big sagebrush grasslands provide winter, brood-rearing, and nesting cover for sage grouse and other sagebrush-associated species. Sharp-tailed grouse and Merriam's wild turkey are also year-round residents of the property. In addition to game species, the proposed CE provides habitat for a host of non-game species and is within the range of 45 SGCN as identified by the CFWCS 2005 and SWAP 2015 (see above).

The Land's native range consists of big sagebrush steppe/shrubland and mixed grass prairie dominated by Wyoming big sagebrush, western wheatgrass (*Pascopyrum smithii*) and other cool season bunchgrasses, coniferous woodlands (mainly on the northern/western portion of the CE abutting the badlands of the Missouri and Dog Creek drainages), and wetland/riparian areas along prairie streams. The non-native range consists of some annual and biennial introduced upland vegetation, as well as sainfoin and alfalfa.

Under the Lands's current management system, the native range vegetation is considered in good condition.

Native sagebrush grassland abuts conifer coulees draining into Dog Creek on the proposed Whiskey Ridge CE.

3.3 Terrestrial Species

Primary game/furbearer species inhabiting the proposed Whiskey Ridge CE include mule deer, elk, pronghorn, bighorn sheep, mountain lion, sage-grouse, sharp-tailed grouse, bobcat, coyote, red fox, badger, racoon, and skunk. The Ranch also hosts a variety of raptors, songbirds, reptiles, amphibians and small mammals, including a wide range of identified SGCN, as listed in Section 1.5 above.

Current ungulate population estimates range from 100-200 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 in both HDs 417 and 426 are over objective, however the proposed CE is on the periphery of their main concentrations. Montana Fish, Wildlife & Parks estimates that 50-100 elk reside in immediate vicinity of the CE. The most notable big game population associated with the property is the HD 482 Southern Missouri River Breaks bighorn sheep herd. The current population is estimated at ~400 individuals, with up to a quarter of those animals using habitat on and adjacent to proposed CE lands.

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

Mule deer, bighorn sheep, and elk are among the game species inhabiting the proposed Whiskey Ridge CE and adjacent public lands.

Game damage has not been a concern in the immediate vicinity of the Ranch, however, elk have been expanding in number and there have been elk-related game damage complaints throughout both HDs 417 and 426.

3.4 Fisheries Species and Water Resources

Dog Creek is the only fishery-containing drainage associated with the Whiskey Ridge CE. The fishery of Dog Creek in the easement vicinity is composed of a typical Central Montana prairie assemblage. Species present include brassy minnow, brook stickleback, common carp, fathead minnow, flathead chub, lake chub, longnose dace, plains minnow, and white sucker. These species are common and widespread throughout Central Montana. Acquisition of the proposed Whiskey Ridge CE would not be expected to impact fish species distribution or abundance within Dog Creek. Terms of the CE, including the grazing plan mentioned herein, may improve the aquatic and riparian habitat to the benefit of the fishery.

3.5 Recreational Opportunities

The current landowner has allowed free public hunting access on and across his private lands for many years. Since 2018, the property was enrolled in MFWP's Block Management Program, receiving relatively high annual use by hunters. With the purchase of this CE, hunting, trapping, wildlife viewing, and other non-motorized recreational activities would continue to be allowed in perpetuity (see Attachment B, Appendix C, for the access rules and map). A minimum of 400 hunter days, not to include recreational use outside hunting season, would be provided on the proposed Whiskey Ridge CE. A CE on the Ranch does not prohibit the Land from being eligible for continued enrollment in Block Management. Per program statute, payments through the Block Management Program help offset hunter impacts to the Land, which is complementary to MFWP's CEs that also include public access requirements. As long as the land is enrolled in Block Management, hunting access will be managed through that program; should the property not be enrolled in Block Management, a mutually agreed-upon means of hunter access will be established and detailed in the Management Plan.

4.0 Predicted Environmental Consequences

4.1 Land Use

Proposed Action:
If the proposed Whiskey Ridge 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 protect, conserve, and propogate wildlife by perpetually conserving the natural habitats, providing for the continuation of agricultural operations and maintenance of public recreation on private lands.

No Action:
If the proposed Whiskey Ridge 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.

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 would protect the quantity, quality, and character of the native plant communities found on the Land. The grazing system as proposed in Attachment B, Appendix B would maintain and enhance the vigor of native vegetation on lands incorporated into the proposed CE as well as associated leased lands. The grazing system would support and enhance

forage quantity and palatability for wildlife and cattle, and protect other important habitat components (i.e., cover) for numerous big game, upland game bird, and nongame species inhabiting and breeding in the area.

As part of the proposed grazing system, providing season-long and year-long rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively, allows plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the "late summer" pasture following seed-ripe, hoof action tramples mature seeds into the soil, thereby facilitating seed planting. The following year's rest treatment allows these seedlings to establish root systems and grow before growing-season livestock grazing commences again the following spring. This rest-rotation approach enables plants to maintain vigor and thus recover more rapidly following grazing activity.

This summer grazing system would help establish adequate quantity and quality of forage and cover for a variety of wildlife species using upland and riparian habitats. For instance, high quality, early spring forage would be available for wild ungulates the spring following the post seed-ripe treatment. These rested pastures would become critical for big game species coming out of a negative energy balance from winter, as they get ready to give birth to young. Standing herbaceous cover in pastures subject to deferred and rest treatments provide valuable cover for ground-nesting and -brooding birds, primarily sage and sharp-tailed grouse, as well as cover for small mammals and other wildlife. Critical food items such as seeds and insects would also be more abundant in these rested pastures. Periodic rest in upland pastures also helps maintain shrub (sagebrush) cover, important for browse as well as hiding and thermal cover for neonate ungulates and a variety of birds and other wildlife. Increased residual vegetation across the area would improve soil fertility, quality, stability, and moisture content which in turn improves overall vegetation and habitat quality.

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 would also ensure 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 that would serve as a reference 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.

<u>No Action:</u>
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 was maintained

under the current operating framework. However, if the Land were sold, there would be no conservation assurances in place to maintain the productivity of the Land, and additional conversion of native habitats to tillage agriculture or other development and disturbance may occur. Additionally, instead of agriculture working in balace with the needs of wildlife, the property may be managed to maximize 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 Whiskey Ridge CE would ensure long-term benefits to a variety of wildlife. 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 conversion to tillage agriculture as well as managed livestock grazing would ensure adequate quantity and quality of forage and cover as well. No adverse effects are expected on the diversity or abundance of game species, non-game species, or unique, rare, threatened, or endangered species.

The hunting district (HD) 482 bighorn sheep population is one of Montana's most treasured resources. The proposed Whiskey Ridge CE would conserve habitat values of this population as well as other wildlife.

Wild game populations fluctuate over time and may periodically exceed MFWP management objectives, thus contributing to above-average wildlife use of Ranch 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 public access to the CE lands in perpetuity. 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 quota recommendations being submitted to the Fish & Wildlife (F&W) Commission annually and season structures biennially during hunting season-setting process(es).

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

The Southern Missouri River Breaks (HD 482) bighorn sheep herd provides an important wildlife resource in this area. A CE on this property would include terms prohibiting the introduction and grazing of domestic sheep, llamas, and goats, thereby minimizing the spread of disease-causing bacteria between both wild and domestic sheep.

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 future landowner(s) 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 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).

4.5 Aesthetics and Recreation

Proposed Action:
Implementing the Whiskey Ridge 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 kinds of public recreational activities (e.g., camping) may be permitted at the Landowner's discretion.

Because the Land has already been enrolled in Block Management, the level of public recreation would likely stay the same. Hunting would continue to be allowed on the Whiskey Ridge CE consistent with 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.

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 further residential development outside the two permitted building envelopes allotted on the property.

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.

Dog Creek is the main drainage to the south of the Whiskey Ridge CE. This proposed CE would help conserve the aesthetic and recreational values of this drainage.

4.6 Public Services, Taxes, and Community

Proposed Action:
Under the Proposed Action Alternative, the current ranching operations would continue in a similar manner—the property's main purpose would be to continue agricultural activities. 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 two years. 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 would be posted along the exterior of the Ranch, and particularly at any problem areas identified by neighboring landowners. Hunters would continue to be provided with maps of the Conservation Easement/Block Management Area. 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 was prior to the CE.

The terms of the CE would restrict future residential and commercial developments on the Land. Services required from local governments would 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 ranch. Future ownership changes could speculatively 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 proposed Whiskey Ridge CE would contribute to the preservation of habitat for the benefit of numerous resident and transient wildlife species and compatible agricultural values, as well as recreational opportunities for the public. The CE would complement the adjacent BLM (including UMBNM 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 Whiskey Ridge CE would not change substantially from how the Land has been managed in the past. 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.

Purchase of the Whiskey Ridge CE would result in a habitat conservation outcome and better-facilitated public access. Implementation of the proposed grazing system would improve wildlife

cover values, vigor, and productivity of approximately 15,458 acres of deeded and leased lands. A CE on deeded lands along Whiskey Ridge Road would better facilitate access to adjoining public land in perpetuity. This CE would help retain a traditional ranching operation with the associated economic and community values. Other than impacts listed in this EA, no additive or interacting ties to other circumstances or events in the local area are known at this time. Based on the similar, existing CEs held by MFWP, some of which have been in place since the mid 1980's, the anticipated cumulative effects of the proposed Whiskey Ridge CE are largely positive in nature.

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 could 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.

Considering information regarding the probability of minerals resources being located within the Land, the likelihood for subterranean resource development is low.

No Action:
If the proposed Whiskey Ridge CE 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 4,619 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 & Parks received 12 formal comments during the scoping process, as well as fielded questions that did not result in any formal comments. All formal comments were supportive of the proposed CE; with some additional suggestions/concerns. These comments helped identify specific issues or concerns that have been considered and evaluated in this EA:

- *I would like to see the area be kept in its natural state in perpetuity. Specifically, that no mining or subdivisions would be allowed and that all motorized and non-motorized vehicles be confined to the existing roads. Because this is prime bighorn sheep habitat, it's necessary that the easement specifically state that domestic sheep and goat ranching is prohibited.*
- *Allowable classes of livestock should include sheep, bison, llamas, hogs, chickens, turkeys, etc. MFWP should be given advance notice and give approval prior to changes in livestock.*
- *Renewable energy resources, including wind and solar, should be pre-approved by MFWP. Current wind equipment kills birds and bats and this is sage grouse habitat.*
- *Fences should be modified as needed to reduce potential mortality to pronghorn antelope and sage grouse.*
- *We would like to request that you consider the valuable impacts of increasing public access to Montana's sportsmen and women in moving forward with this proposal to purchase a CE on the Bergum property. In purchasing this easement, you are presented with an extremely valuable opportunity to further conservation and the success of your state's economy. This can all be accomplished with the purchasing of this easement and the increase in public access to Montana's public lands. With this increase in access and hunting opportunities, it increases the possibility of preserving a white-tailed deer hunting tradition that is so deeply rooted in the history of Montana while increasing the viability of Montana's economy. According to the Congressional Sportsmen's Foundation, Montana's sportsmen and women contribute $983 million annually to the state's economy and support 16,515 jobs. Montana's sporting heritage is a staple to the state's economy. We respectfully ask that you take into consideration the weighty economic impacts that your state stands to benefit from giving access to sportsmen and women.*
- *The specific terms of the CE are important and to obtain public support the environmental analysis should be clear about monitoring procedures, recreational access, recreational uses, any proposed structures or developments, the plan for livestock grazing, travel management, sod busting. As with other CEs, it will be also be important that the compensation to the landowner be fair, but consistent with other CEs acquired in the area.*

- *In our discussions with MFWP and the landowner we have expressed strong commitment to support, both financially and otherwise, this easement. We encourage and will financially support provisions in the easement that state "the only allowable classes of livestock to be grazed on the deeded parcel are cattle and horses", or similar language.*

In addition to standard components of an EA, MFWP addressed relevant comments above as part of this EA.

Public notification of the draft EA 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 **Winifred Community Center on Thursday, September 10 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 25. Written comments will be accepted until 5:00 p.m., September 24 and can be mailed or emailed to the addresses below:

Whiskey Ridge 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

7.3 Approximate Timeline of Events

Public Comment Period	September 2020
Decision Notice Published	September 2020
Project Submitted to Fish & Wildlife Commission	October 2020
Project Close (pending approval by F&W Commission)	November 2020

7.4 Offices & Programs Contributing to the Document

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

8.0 EA Preparers

Sonja Andersen, Area 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 Whiskey Ridge CE
B. Draft Whiskey Ridge CE Management Plan
Appendices: A. MFWP Minimum Standards for Grazing Livestock
B. Grazing System
C. Hunting and Public Access Rules & Map
D. A Landowner's Guide to Wildlife-friendly Fences

WHISKEY RIDGE
DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this _____ day of _____, 2020, by David Bergum, a/k/a David K. Bergum ("Landowner 1"), whose mailing address is PO Box 125, Winifred, MT 59489-0125, and Ryan K. Hagen and Daniel Hagen ("Landowner 2"), whose mailing address is 200 Plymouth Dr., Vista, CA 92083 (collectively "Landowners") to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department").

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

Exhibit A - Legal Description of the Land
Exhibit B - Map Identifying the Conservation Easement Boundary
Exhibit C - FWP Minimum Standards for Grazing Livestock
Exhibit D1 - Map Identifying Designated Routes, Parking Areas and Building Areas
Exhibit D2 - Detail Map Identifying Current Building Areas
Exhibit D3 – Detail Map Identifying Future Building Areas
Exhibit E – Map Identifying Native Rangeland and Hay/Grain Fields
Exhibit F – Water Rights

I. RECITALS

A. The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation, and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq*., Montana Code Annotated ("MCA"), from willing landowners by voluntary, cooperative means to conserve native plant communities, habitat and other natural resources of value.

B. The Landowners are the owners of certain real property in Fergus County, Montana (the "Land"), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Land is depicted in Exhibit B.

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

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

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

F. The Land provides important opportunities for public recreational hunting and wildlife watching and the Landowners and the Department specifically intend that this Easement afford public hunting for recreational purposes and for wildlife management purposes.

G. The Department recognizes that the land contains important wildlife habitat, including sagebrush grasslands, river breaks and riparian areas, that is worthy of perpetual conservation and has contributed the funds necessary to acquire this Easement through its Habitat Montana Program and/or Bighorn Sheep Auction Program, and through funding contributions from Great Falls Chapter Safari Club International, Montana Chapter Wild Sheep Foundation, Wild Sheep Foundation, Montana Fish and Wildlife Conservation Trust, Northwest Energy and Mule Deer Foundation.

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

II. AGREEMENT

In consideration of the sums paid by the Department, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq*., MCA; the Department's wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowners voluntarily grant and convey 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 enhance upon mutual agreement with the Landowners, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of plant and wildlife species, and to prevent any use that will interfere with these Conservation Values. The Landowners and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.

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

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

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

B. RIGHTS CONVEYED TO THE DEPARTMENT

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

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

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

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

4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowners 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, wildlife viewing and hiking on the Land and across the Land to 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.

b. Landowners must permit a minimum number of hunters on the Land per year ("hunter days") on a non-preferential basis, as more fully described in the Management Plan. When demand exists during the general hunting season~~s~~ set by the State of Montana, the Landowners shall permit hunters to obtain vehicular access and park as more particularly depicted in Exhibit D and more particularly described in the Management Plan; and to access the Land and hunt as more particularly described in the Management Plan. For purposes of this Easement, the parties agree the general hunting season is the fall hunting season for big game and bird which commonly exists from September 1 to January 1 of the following year. The parties further agree that the general season may be extended, or seasons may be added by mutual agreement through the Management Plan.

1. When requested by members of the public, particularly during the fall hunting seasons set by the State of Montana, Landowners must permit a minimum of 400 hunter days of use on the Land per year. Recreational use outside general hunting seasons will not be counted toward the minimum hunter days.
2. 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.
3. Landowners, Landowners' immediate family, Landowners' shareholders, partners, employees, and immediate family of shareholders, partners, and employees of the Landowners 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.
4. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
5. Landowners have 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 Landowners to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space

Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq*., MCA, and thereby creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

e. Those members of the public who have recreational access to the Land pursuant to this Paragraph II B.5.shall also have motor vehicle access over and across the Access Road and shall park in those designated areas referred to as Parking Area(s) identified for that purpose in Exhibit D attached to this Easement and incorporated herein by this reference. The public may not drive off these designated areas for any purpose, except with the express permission of Landowners or the Landowners' agent(s). Upon agreement with Landowners, the Department may open additional designated roads and parking areas, as allowed for in the Management Plan. The public may have nonmotorized recreational access from the Parking Area(s) or from other publicly accessible areas to hunt 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 nonmotorized means from the Parking Areas to access adjacent publicly accessible lands which allow recreational use. Upon agreement with Landowners, the Department may relocate, or substitute Access Roads or Parking Areas identified in Exhibit D. Notwithstanding the right of the public to vehicular access described in this paragraph, public access or use by snowmobile is not permitted under this Conservation Easement.

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

g. Notwithstanding any provision that may be construed to the contrary, Landowners 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 wildlife viewing and hiking 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 subparagraph II.B.5.b above and the Management Plan.

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 on the Land.

j. Landowners may participate in programs offered by the Department or other entities intended to manage hunting activities or to reimburse or compensate Landowners for the impacts of hunter use of the Land. However, Landowners 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 Landowners' participation; and that nothing in this

Easement provides any assurance that Landowners will be offered the opportunity for or be accepted into any such program.

C. LANDOWNERS' RIGHTS

Landowners reserve to themselves, their respective heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Easement; (c) are consistent with the purposes of this 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 Landowners' activities in this Easement set forth in Paragraph II.D. hereof, Landowners expressly reserve the following rights:

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with the Conservation Values protected by this Easement, and with the Management Plan described in Paragraph II.E. of this Easement, and in accordance with the "FWP Minimum Standards for Grazing Livestock," more particularly described in Exhibit C attached hereto and incorporated herein by this reference. The Management Plan provides the details of livestock grazing on the Land, including class of livestock and schematic diagrams of the pasture systems. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph II.E. in this Easement, and any grazing management so adopted or revised must continue to conform to the minimum grazing standards as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other classes of livestock (e.g., horses) may substitute for or supplement cattle with **Prior Approval** of the Department.

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

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

   b. The areas designated in the Baseline Report as native "**rangeland**" at the time the Easement is granted and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.

3. **Leasing the Land**. The Land may be leased to another agricultural operator for agricultural purposes, provided that: (i) a written lease must be entered into by the Landowner(s) and the lessee(s); (ii) the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (iii) a copy of the executed lease must be provided to the Department. Landowners retain 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 Landowners and lessee(s) to assist in compliance with the Easement, Management Plan and grazing system.

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

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

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

   a. **Fences.** 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 movement or migration on or through the Land is prohibited; however, this prohibition does not apply to corrals, windbreaks and other structures necessary to confine livestock, or protect silage storage, or haystacks.

   b. **Designated Building Areas.** The purpose of the Designated Building Areas, identified in Exhibit D as Designated Building Areas 1-4, is to allow

flexibility in the use of these areas and to cluster residential and agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside the Designated Building Areas.

i. Currently, two Designated Building Areas exist of approximately 20 and 5 acres in size, respectively. The Baseline Report describes the existing structures located within these areas.

ii. Two additional, future Designated Building Areas of 5 acres each are depicted in Exhibit D. With **Prior Approval** and within each future Designated Building Area, Landowners may place, construct, alter, improve, remove, replace and maintain one cabin site, along with associated non-residential improvements necessary for agricultural purposes. Landowners must submit the proposed location, dimensions and building plans and specifications of each new building to the Department for its review and approval prior to submitting county permit applications and prior to breaking ground.

iii. Landowners may explore, dig, collect or extract fossils or artifacts within the Designated Building Areas and may contract with others to do so.

c. **Agricultural/Commercial Structures.** The right to place, construct, alter, improve, remove, replace and maintain construct, remove, maintain agricultural structures that are not used for human habitation, including but not limited to barns, chicken houses, shelters, sheds and machine sheds. The right to place agricultural structures outside of the Designated Building Areas with **Prior Approval**.

7. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings as herein permitted. Any new road construction (but not including maintenance of existing roads) shall be subject to the **Prior Approval**, 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) it will not materially disturb wildlife or wildlife habitat. Landowners' 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 are required on any new road construction.

8. **Noncommercial Recreational Use.** Landowners reserve to themselves and to their respective immediate family the right to use the Land for noncommercial recreational

purposes, including hunting and fishing, in accordance with Section II.B.5 and Section II.D.9.

9. **Utilities.**

a. **Existing Utilities.** Landowners retain 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**, Landowners retain the right to install and construct new Utilities upon, over, or beneath the Land to existing or subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. Prior to construction of new Utilities, Landowners shall submit to the Department a Utility Plan as provided in Paragraph II. C.8.d ("Utility Plan") below.

c. **New Utilities Serving Adjacent Properties.** Subject to **Prior Approval**, Landowners retains the right to construct new utilities and grant any associated utility right-of-way easement serving adjacent properties. Prior to the construction of new utilities, Landowners shall submit to the Department a Utility Plan as provided in Paragraph II. C.9.d below.

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

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

12. **Oil, Gas and Mineral Exploration, Extraction and Development.** Subject to, and without limiting any obligations of Landowners under, Montana Code Annotated § 82-11-202, Landowners shall not mine or extract or initiate the mining or extraction of, soil, sand, gravel, oil, natural gas, fuel, coal or any other mineral substance owned by Landowners as of the date of this Easement or later acquired by Landowners, using any surface mining, subsurface mining or dredging method.

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

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

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

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

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

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

    c. Landowners shall provide the Department with **Prior Notice** before entering into an agreement that would commit Landowners 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 compliance with this Easement and consistency with the provisions of this Paragraph II.C.13.

14. **Industrial and Commercial Uses.**

a. The right to conduct agricultural production and related activities as provided for in this Easement and the Management Plan;

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

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

15. **Paleontological, Anthropological and Archeological Activity**. With **Prior Approval** and provided it does not adversely impact the Conservation Values of the Land, explore, dig, collect or extract of fossils and artifacts. **Prior Approval** is contingent upon approval of a negotiated written plan addressing how the activity or activities would be consistent with the purposes of this Easement and would not adversely impact the Conservation Values, location of each proposed activity, and description of each proposed activity, and attaching a signed written contract in the event Landowners hire a third party to perform any of the proposed activities.

D. RESTRICTIONS ON LANDOWNERS' 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.** Landowners shall not transfer, encumber, sell, lease or otherwise sever any timber right from the Land; except, however, Landowners may sell the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II.D.2, below. Landowners shall not engage in commercial timber operations without a forest management plan approved by the Department.

2. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, planted nesting cover, or permanent cover is prohibited, except as part of or incidental to land uses specifically allowed by this Easement or as provided below:

a. For firewood, fencing, corrals, protection and maintenance. Landowners are permitted to harvest timber for firewood, fencing, and corrals to be used on the Land as provided for in the Management Plan. Landowners also are permitted to harvest timber and other woody vegetation for the protection of persons and

property; and for maintenance of roads and trails. All timber harvested pursuant to this paragraph by Landowners must be disposed of or used on the Land.

b. For habitat enhancement or disease control. Subject to **Prior Approval** by the Department, Landowners may conduct other forest management activities only for the primary purpose of restoring or enhancing wildlife habitat or for controlling forest disease. Any request to perform forest management activities must be accompanied by a timber management plan prepared by a qualified forester or other qualified natural resource professional. Landowners and the Department will mutually determine the completeness of the plan and its adherence to the general and specific intentions of this Easement prior to the approval of the plan and the initiation of any timber harvest.

3. <u>Wetland and Riparian Areas.</u>

a. For the purpose of this Easement, riparian areas are defined as vegetation zones adjacent to streams, springs, and wetlands including banks and adjacent uplands and are influenced by adjacent flowing or standing water or groundwater.

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

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

4. **<u>Subdivision.</u>** The legal or *de facto* division or subdivision of the Land, including the portion owned together by Landowner 1 and Landowner 2, is prohibited. For the purposes of this Easement the legal or de facto division or subdivision of Land shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. Landowners 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. Landowners and the Department mutually intend that the entire Land shall be maintained as a single unit and with unity of title to the extent possible. Notwithstanding any other provision of this Paragraph to the contrary, however, Landowners 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 Landowners transfer any development or subdivision rights separate from the Land.

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

6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.10 is prohibited.

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

8. **Land Cultivation.** The cultivation or farming of any portion of the Land is prohibited, except for current production within the current boundaries as depicted in the Baseline Report, and except for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement and the Management Plan.

9. **Commercial Recreation.** The sale or lease of access to the Land for hunting or fishing or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Commercial hunting or fishing operations, 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, are prohibited.

10. **Future Paleontological, Anthropological and Archeological Activity.** Except as expressly allowed in Section II.C, Landowners may not enter into any contract, verbal or written, for the exploration, digging, collection or extraction of fossils or artifacts outside the Designated Building Areas.

11. **Certain Livestock.** The raising, grazing, or presence on the Land of domestic sheep, goats and llamas is prohibited until such time effective management practices are developed and implemented to mitigate concerns of disease transmission between wild sheep and domestics.

12. **Mineral and Energy Exploration and Development.** Landowners may not engage in, authorize, or contract for any exploration for or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, or similar materials, except as provided for Paragraphs II.C.12 and II.C.14. Any other mineral exploration, development, or extraction is prohibited. Commercial wind and solar energy development are prohibited.

13. **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.

14. **Residential Use**. Residential use of the Land or any portion thereof is prohibited other than as expressly allowed in Section II. C.

15. **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 Landowners from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowners from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.

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

17. **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 are prohibited, including but not limited to guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes.

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

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

E. MANAGEMENT PLAN

The parties to this Easement developed a Management Plan for grazing and vegetation management, public recreational access and use, 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 Landowners and the Department, and represents a contract 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 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. The Successor in Interest may sign, acknowledge and thereby continue the Management Plan that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed with the Department a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect.

F. EASEMENT BASELINE REPORT

The parties agree that an Easement Baseline Report ("Baseline Report"), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowners, 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 Baseline Report shall be maintained in the files of the Department and shall be made available to Landowners for inspection and reproduction at Landowners' request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowners' compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. From time to time, with the agreement by Landowners, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other changed habitat conditions. Upon review and approval of the updated report by Landowners and the Department, the changed 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, Landowners must notify the Department as provided for in this section in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances. The purpose of requiring Landowners 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, Landowners must notify the Department in writing not less than 60 days prior to the date Landowners intend 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 45 days from its receipt of such notice to review the proposed activity and to notify Landowners of any objections to the proposed activity. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform Landowners of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowners' 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 Landowners' 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 verbally or in writing to Landowners' proper notice of Prior Approval within 45 days of its actual receipt of the notice, the proposed activity shall be allowed so long as the activity is consistent with the terms and intent of this Easement and the Management Plan, and provided Landowners provide notice of completion no later than 30 days after completion.

4. Landowners shall be under no liability or obligation for any failure to give Prior Notice or seek Prior Approval for any activity undertaken by Landowners necessitated by fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowners to exist; provided, however, after such an event, if there is damage to the Conservation Values, Landowners 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 with confirmation, addressed as follows:

To Landowner 1: David Bergum
PO Box 125
Winifred, MT 59489-0125

To Landowner 2: Ryan Hagen
200 Plymouth Dr.
Vista, CA 92083

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
4600 Giant Springs Rd.
Great Falls, MT 59405

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

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

1. If the Department determines that either Landowner has violated the terms of this Easement, or if either Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to that 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 that Landowner:

a. Fails to cure the violation within 30 days after receipt of notice from the Department, or
b. 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

c. Fails to continue diligently to cure such violation until finally corrected,

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

2. 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 Landowners or without waiting for the period provided for cure to expire.

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

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

5. 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 Landowners or either of them may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or

omission by the Department in the exercise of any right or remedy upon any breach by Landowners may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

6. Costs of restoration of the Conservation Values that are attributable to either or both Landowners' violation or breach of the terms of this Easement shall be borne by that Landowner in proportion to percentage of fault as between each Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In any action arising from the terms of this Easement, each side shall bear its own costs and attorneys' fees.

7. If a dispute arises between Landowners 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 Landowners agree in writing not to proceed with the use or activity pending resolution of the dispute, either Landowners or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowners 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, Landowners and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

I. HOLD HARMLESS AND INDEMNITY

Landowners 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 Landowners or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by Landowners 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 Landowners or their respective agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify Landowners and their respective 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 either 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**, 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. Landowners 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 58.66 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 Landowners 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, Landowners shall be entitled to receive from the financially liable party ____ percent of the unencumbered value of the real property and the Department shall be entitled to receive ____ percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

K. SUBORDINATION

If at the time of conveyance of this Easement, the Land is subject to a mortgage in favor of First Bank of Montana, Division of Glacier Bank, 224 West Main St., PO Box 540, Lewistown, MT 59457 ("Lienholder"). Said Mortgage was recorded on December 13, 2017, Instrument No. 127515, Records of Fergus County, Montana (the "Mortgage"). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this

Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

L. ASSIGNMENT

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

M. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, Landowners 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 Landowners or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Cascade County.

N. 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.

O. REPRESENTATIONS AND WARRANTIES

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

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

release of any hazardous substance has occurred on or from the Land, in violation of applicable law.

3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.
4. Landowners 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 Landowners might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

P. GENERAL PROVISIONS

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

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

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

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

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

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

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

8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowners 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. Landowners agree that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).

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

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

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

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

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

GRANTED BY: LANDOWNER 1

_____
David K. Bergum, a/k/a David Bergum

STATE OF MONTANA)
: ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2020, by David K. Bergum, a/k/a David Bergum.

_____
Notary Public for the State of Montana

[STAMP]

GRANTED BY: LANDOWNER 2

_____
Ryan K. Hagen

STATE OF CALIFORNIA)
: ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2020, by Ryan K. Hagen.

_____
Notary Public for the State of _____
Printed Name:_____
Residing at _____
[STAMP] My Commission Expires _____

_____
Daniel Hagen

STATE OF _____)
: ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2020, by Daniel Hagen.

_____
Notary Public for the State of _____
Printed Name:_____
Residing at _____
[STAMP] My Commission Expires _____

ACCEPTED BY: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

_____
Martha Williams, Director

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

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

_____
Notary Public for the State of Montana

[STAMP]

EXHIBIT A
Legal Description

Owned by David K. Bergum, a/k/a David Bergum:
T22N, R18E, P.M.M., Public Records of Fergus County, Montana:

Section 8: S ½ NE ¼, and NE ¼ SE ¼
Section 9: N ½ SW ¼, and SE ¼ SW ¼
Section 10: W ½ SE ¼, and SW ¼, and SE ¼ SE ¼
Section 11: S ½ S ½
Section 12: S ½ SW ¼, and SE ¼
Section 14: N ½ N ½
Section 15: NW ¼ NE ¼, and NW ¼ NW ¼ , and E ½ E ½, and SW ¼ SE ¼, and SE ¼ SW ¼
Section 22: NE ¼ NW ¼

T22N, R19E, P.M.M., Public Records of Fergus County, Montana:

Section 4: N ½ SW ¼, and SW ¼ SW ¼
Section 5: E ½ SE ¼, and SE ¼ SW ¼, and SW ¼ SE ¼, and Lots 2, 3 and 4, and S ½ N ½, and N ½ SW ¼, and NW ¼ SE ¼, and SW ¼ SW ¼
Section 6: SE ¼ NE ¼
Section 7: Lots 3 and 4, and SE ¼, and E ½ SW ¼
Section 8: E ½ NW ¼, and SW ¼, and W ½ NE ¼, and NW ¼ SE ¼, and E ½ NE ¼
Section 9: NW ¼ NW ¼
Section 17: E ½, and N ½ NW ¼
Section 18: N ½ NE ¼, and SE ¼ NE ¼, and E ½ SE ¼
Section 19: Lots 1, 2 and 3, and NE ¼ SW ¼
Section 20: S ½ NE ¼, and SE ¼ NW ¼, and N ½ SE ¼, and SW ¼
Section 29: NE ¼ NW ¼, and SW ¼ NE ¼
Section 30: NE ¼ SW ¼, and N ½ SE ¼

Owned by Ryan Hagen, Daniel Hagen and David K. Bergum:
T22N, R19E, P.M.M., Public Records of Fergus County, Montana:

Section 7: Lots 1 and 2, and E ½ NW ¼, and NE ¼ .

EXHIBIT B

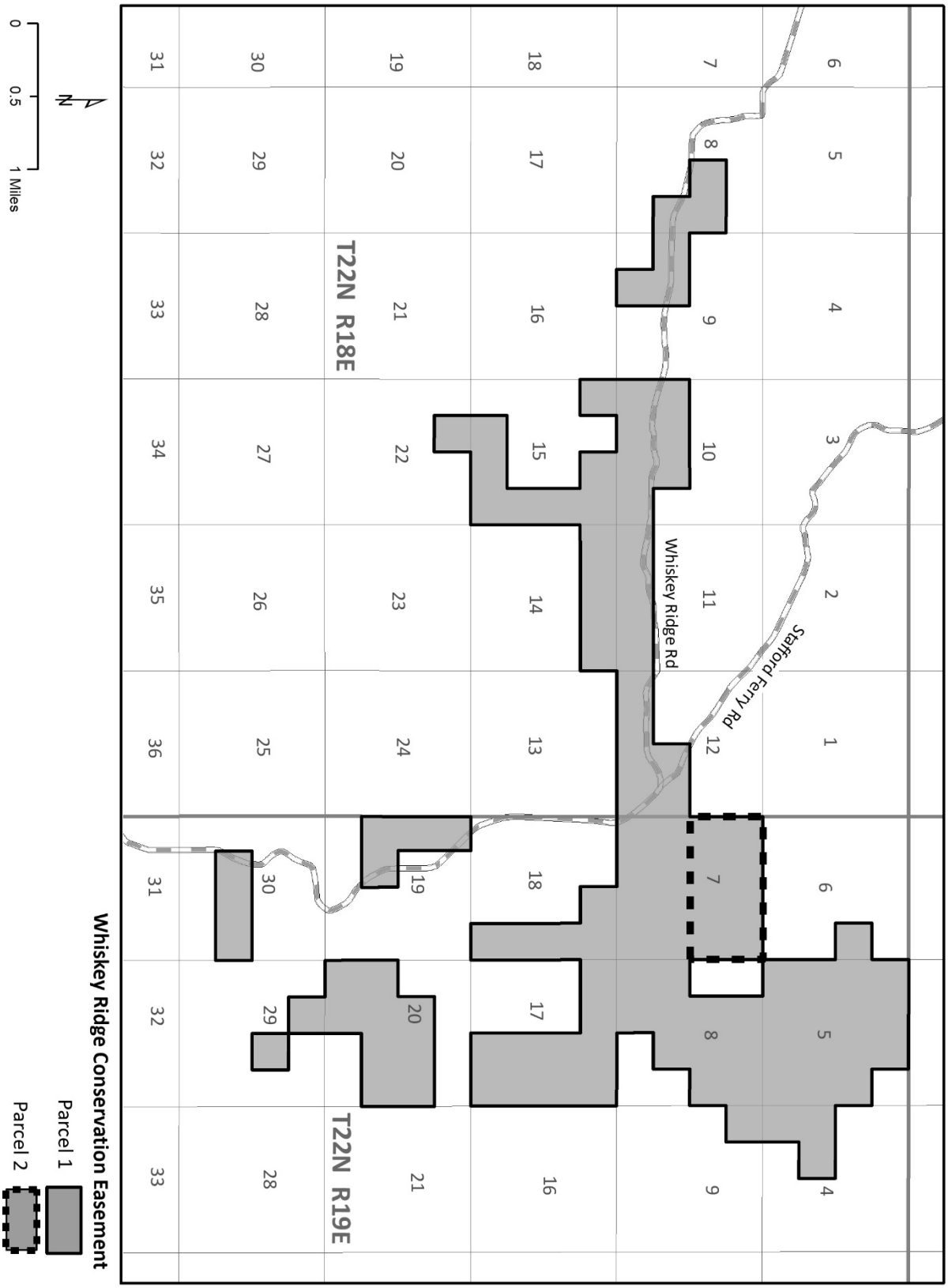

Whiskey Ridge Conservation Easement
Parcel 1
Parcel 2
Whiskey Ridge Rd
Safford Ferry Rd
T22N R18E
T22N R19E
N
0
0.5
1 Miles

EXHIBIT C

FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

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

Why a minimum standard?

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

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

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

Grazing plan

Prior to grazing livestock, Landowners 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 Easement. For other projects the management plan will be included as an attachment to the grazing lease or contract. On conservation easements the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Standards for Summer/Fall Systems

This standard applies to upland pastures in native plant communities (i.e., generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing allowing native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e., grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

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

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

Grazing Seasons*	**Pasture 1**	**Pasture 2**	**Pasture 3**
Year One	A	B	C
Year Two	B	C	A
Year Three	C	A	B

*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.
A = livestock grazing allowed during the growing season
B = livestock grazing begins after seed-ripe time
C = rest from livestock grazing yearlong

Winter and/or Early Spring Grazing

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

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two years. Hay, grain, salt, protein, or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in Table 1. As a minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designate for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact

will vary depending on the objectives (i.e., a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

Scope

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

Non-native Pasture

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

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

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

Stocking Rate

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the

operator's ability to conform to the grazing system. In other words, the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

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

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

Mineral and Other Supplements

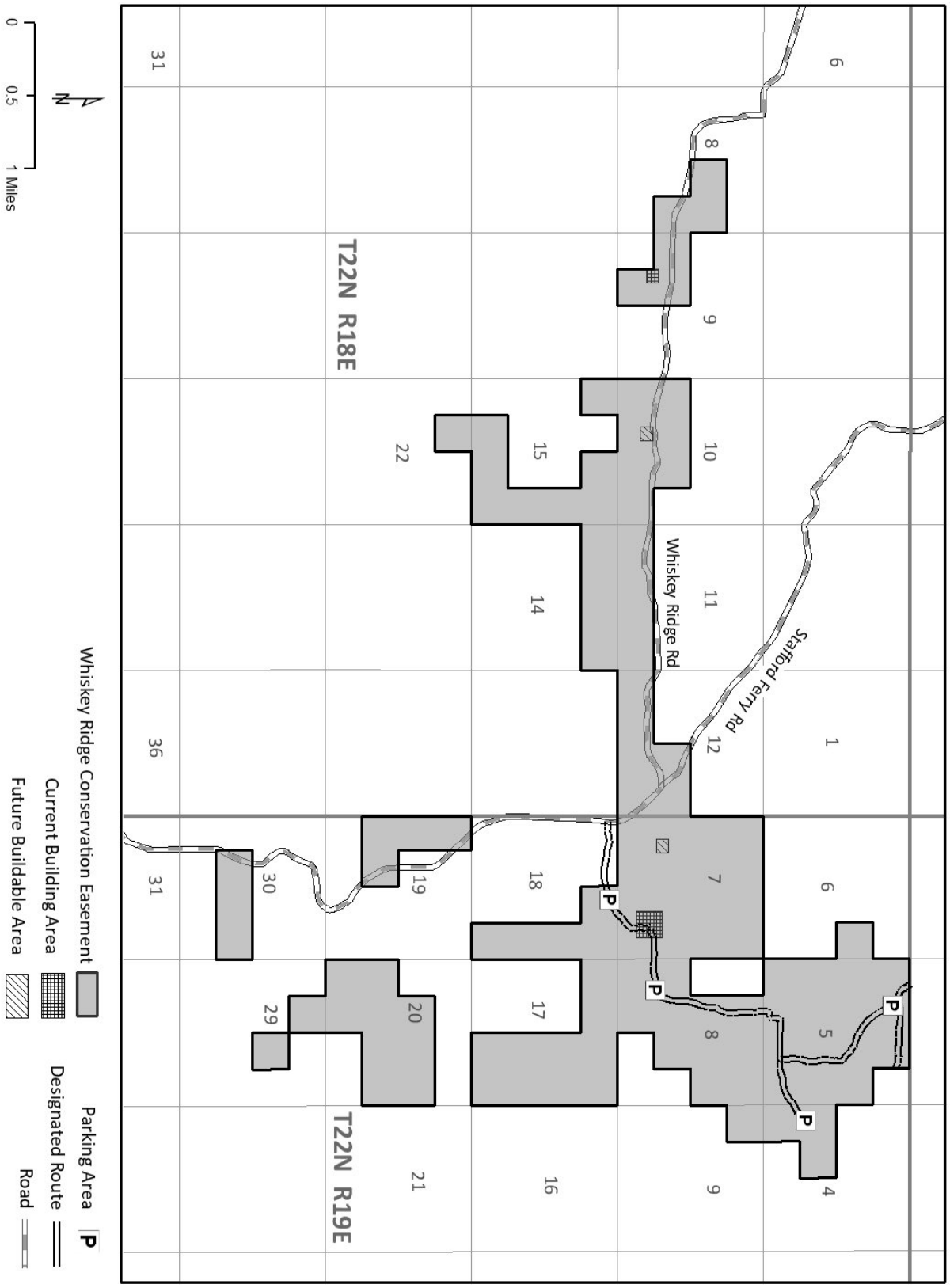
On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will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

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

Flexibility

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

EXHIBIT D1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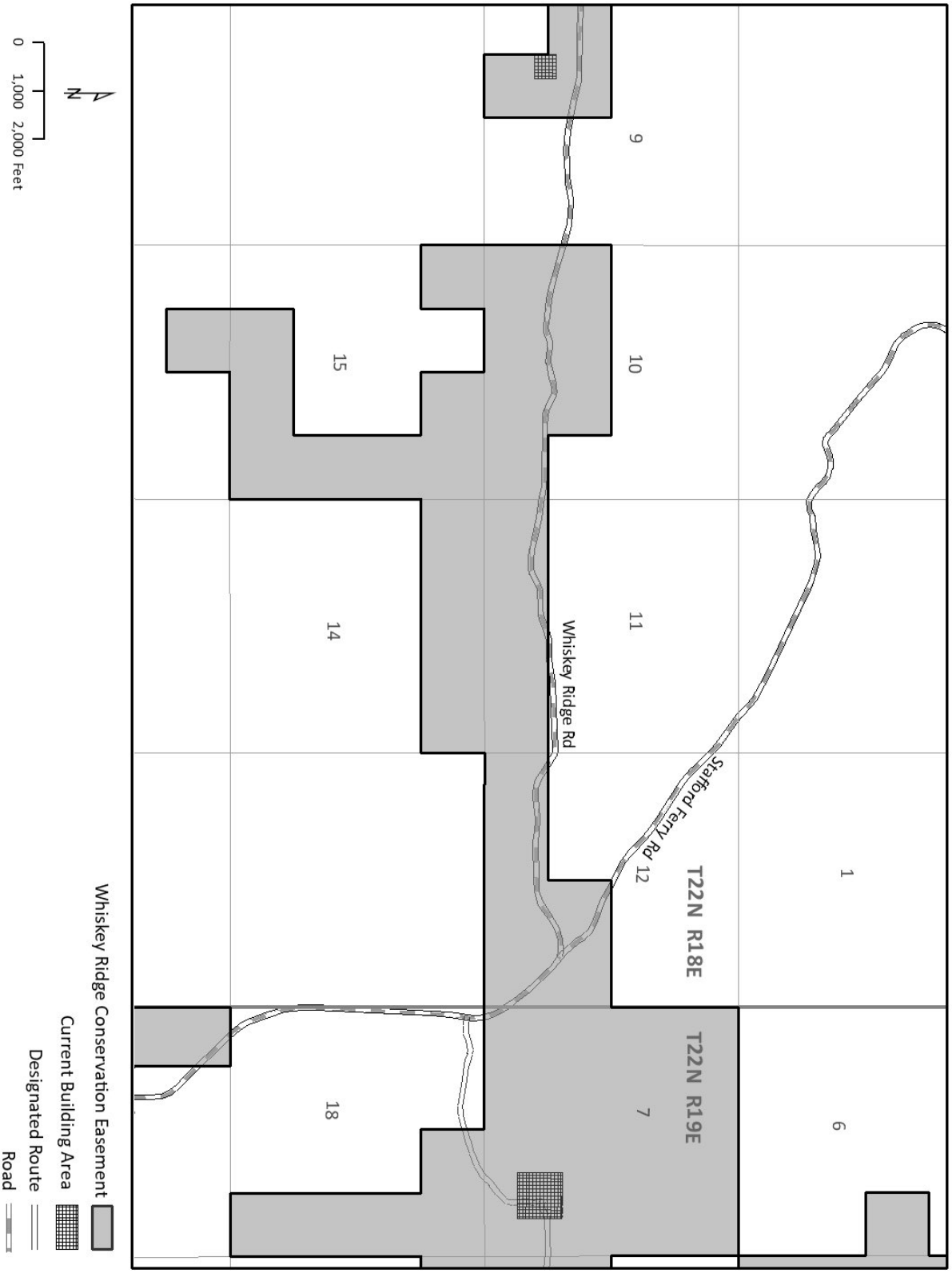
Future Buildable Area
Parking Area
Designated Route
Road

EXHIBIT D2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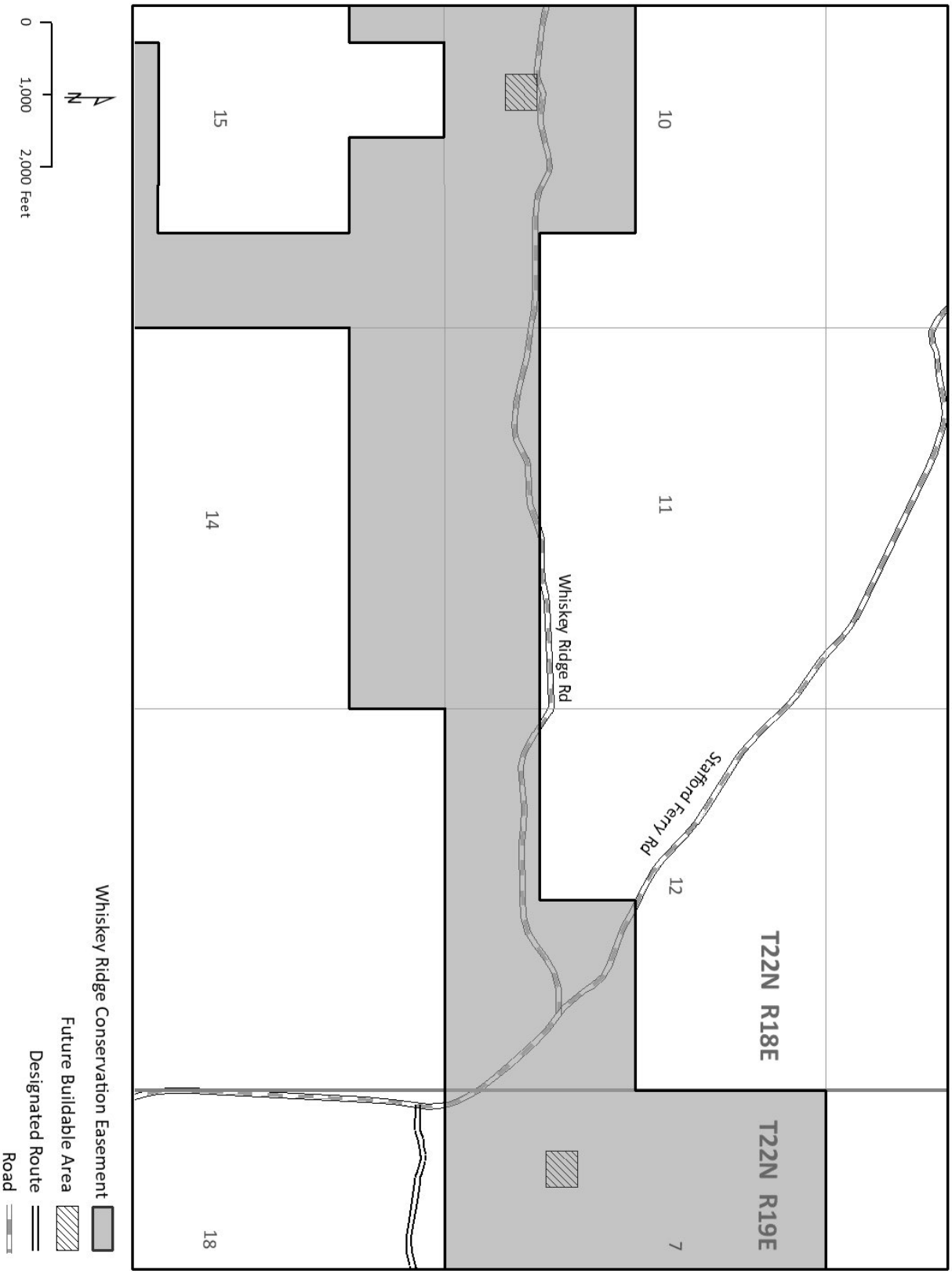
Whiskey Ridge Conservation Easement
Current Building Area
Designated Route
Road

EXHIBIT D3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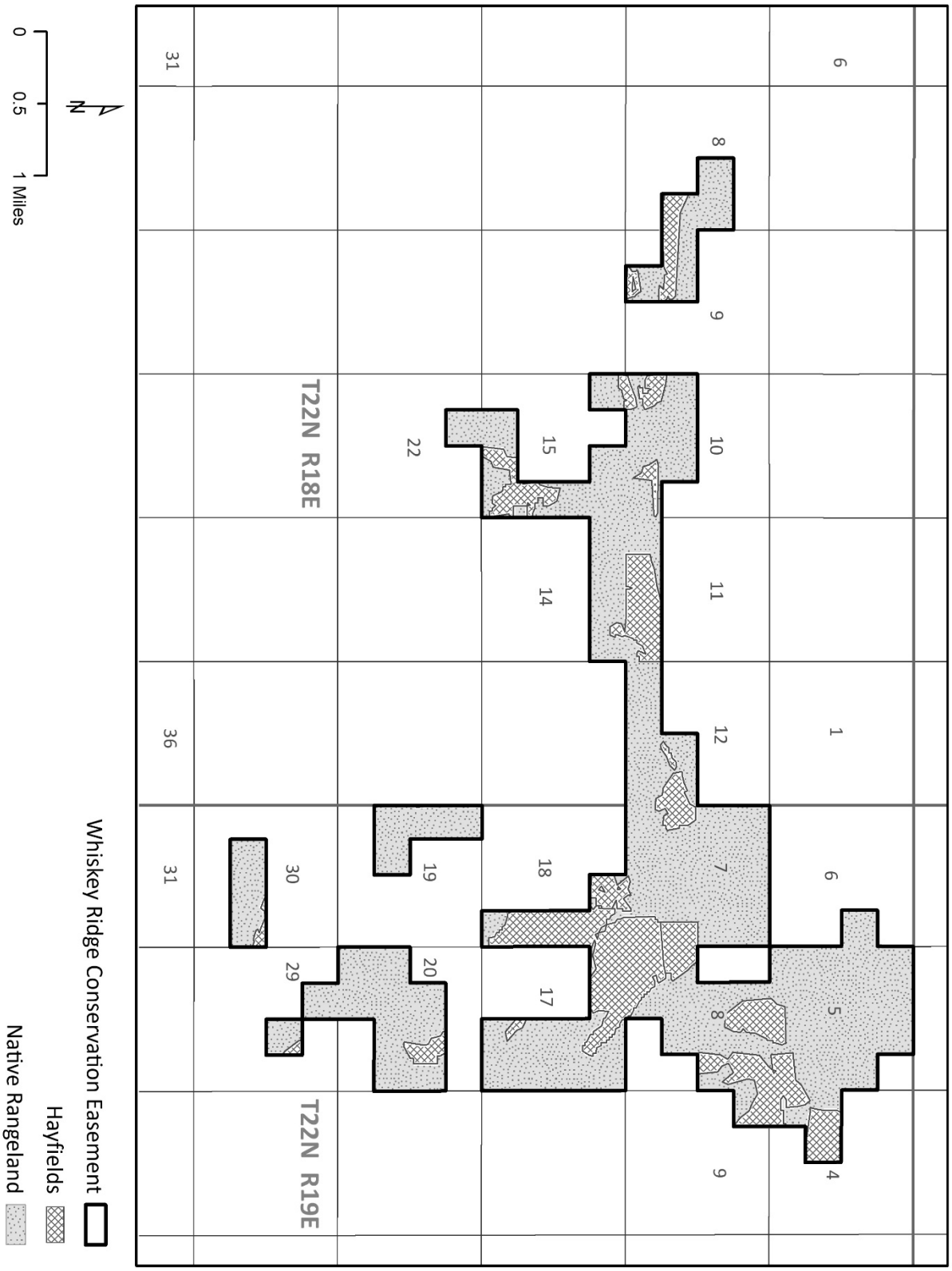
Whiskey Ridge Conservation Easement
Future Buildable Area
Designated Route
Road

EXHIBIT E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1 Miles
Whiskey Ridge Conservation Easement
Hayfields
Native Rangeland

EXHIBIT F
Water Rights

Water Right Number	Water Right Description	Priority Date	Source	Owner	Flow Rate	Flow Vol.	Township Range	Section	Quarter
41T 10432900	Statement Claim	9/18/1962	UNNAMED TRIBUTARY OF DOG CREEK	BERGUM DAVID			22N18E	15	SENWNW
41T 3841700	Groundwater Cert.	12/4/1981	GROUNDWATER	BERGUM DAVID	1.66 GPM	2.69	22N18E	9	NWSESW
41T 9550 00	Statement Claim	12/31/1946	UNNAMED TRIBUTARY OF DOG CREEK	BERGUM DAVID			22N18E	14	NWNENW
41T 6816100	Statement Claim	6/13/1988	UNNAMED TRIBUTARY OF TAFFY CREEK	BERGUM DAVID		48.1	22N19E	17	NE
41T 7788400	Statement Claim	6/3/1991	UNNAMED TRIBUTARY OF TAFFY CREEK	BERGUM DAVID		77.7	22N19E	17	NE
41T 9546 00	Statement Claim	12/31/1914	UNNAMED TRIBUTARY OF TAFFY CREEK	BERGUM DAVID			22N19E	7	E2SWSE
41T 9547 00	Statement Claim	12/31/1910	UNNAMED TRIBUTARY OF TAFFY CREEK	BERGUM DAVID			22N19E	7	SWNESE
41T 9548 00	Statement Claim	12/31/1920	UNNAMED TRIBUTARY OF TAFFY CREEK	BERGUM DAVID			22N19E	8	SWNWSE
41T 9549 00	Statement Claim	12/31/1942	UNNAMED TRIBUTARY OF TAFFY CREEK	BERGUM DAVID			22N19E	8	SESESW

WHISKEY RIDGE CONSERVATION EASEMENT

DRAFT MANAGEMENT PLAN

This Management Plan, dated as of _____, 2020, is entered into by **DAVID BERGUM**, whose principal address is PO Box 125, Winifred, MT 59489 (hereafter referred to as the "Landowner 1" or "the Ranch"), and **RYAN HAGEN** and **DANIEL HAGEN** ("Landowner 2"), whose mailing address is 200 Plymouth Dr., Vista, CA 92083 (collectively "Landowners") and **the MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS**, 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 David Bergum Ryan Hagen, and Daniel Hagen 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 Landowners, and to be amended as needed upon agreement by all three parties. Its function is to document strategies for land management in which MFWP and the Ranch would be cooperating to ensure consistency with the terms and intent of the CE. The principal strategy is periodic meetings with the landowners and field monitoring of compliance with CE terms. Additionally, this Management Plan details strategies for managing native grazing lands, controlling noxious weeds, and allowing public access as guaranteed in the CE.

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

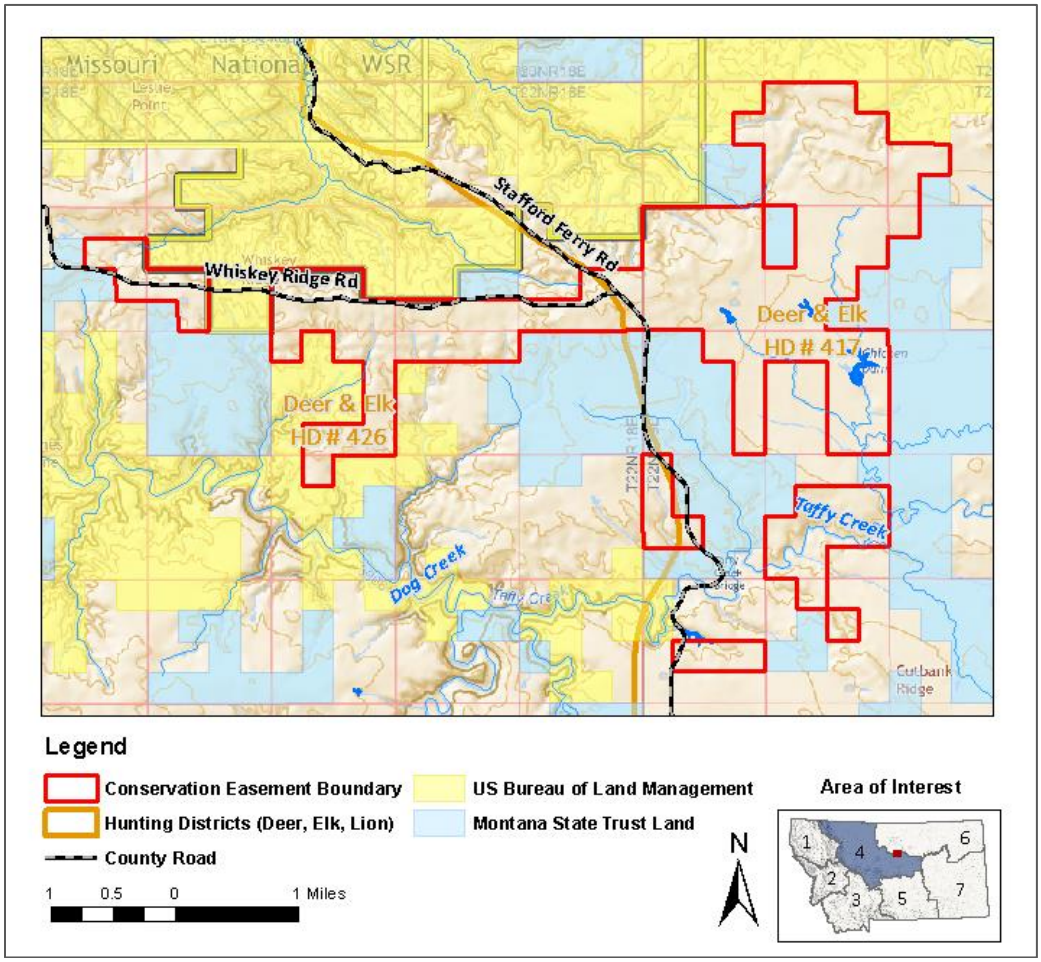
Appendix A. MFWP's Minimum Standards for Grazing Livestock
Appendix B. Grazing System
Appendix C. Hunting/Public Access Rules & Map
Appendix D. Wildlife-Friendly Fencing Guidelines

I. Introduction

The purpose of the Whiskey Ridge Conservation Easement (hereafter, Whiskey Ridge CE) 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 4,424-acre property which makes up the Whiskey Ridge CE is located 9 miles north of Winifred, Montana, and 43 miles north of Lewistown, Montana, in Township 22N, Range 18E, portions of Sections 8, 9, 10, 11, 12, 14, 15, and 20, and Township 22N, Range 19E, portions of Sections 4, 5, 6, 7, 8, 9, 17, 18, 19, 29, and 30 (Fergus County, FWP Region 4, Hunting Districts (HDs) 417 and 426; Figure 1). The majority of lands fall under the ownership of David Bergum, however approximately ½-section on the northern portion of this CE belongs to David Bergum and Ryan and Daniel Hagen. The Ranch lies within two State Wildlife Action Proposal (SWAP) Focal Areas, the Greater Sage-grouse Core Area and the Judith River Focal Area, and is primarily composed of native sagebrush-grassland and the coniferous Missouri River breaks.

Figure 1. Whiskey Ridge CE deeded lands.



The lands within the Whiskey Ridge CE consist of four habitats of statewide importance: lowland/prairie grassland, sagebrush steppe & sagebrush-dominated shrubland, riparian and wetland, and conifer-dominated forest and woodland, as identified in Montana's Comprehensive Fish and Wildlife Strategy (CFWCS), published in 2005, as Tier I Community Types in Greatest Need of Conservation. Additionally, these four habitat types support several state Species of Concern. From a statewide and an eco-region perspective, riparian and shrub grassland habitats are important habitats that are highly productive, in need of protection and conservation, and are threatened by subdivision or land-use conversions (e.g., conversion to cropland).

Most notably, this property, with its associated breaks and shrub-grasslands, provides important habitat and public access to the Southern Missouri River Breaks (HD 482) bighorn sheep herd, which constitutes an important ecological and recreational resource to Montana. The Missouri Breaks sheep herd comprises a portion of the state's largest metapopulation of bighorn sheep (>1,000 individuals estimated between HDs 482 and 680).

Prior to selling a CE to MFWP, Landowner 1 ran a successful cattle operation on the property, but wished to diversify his operation by grazing domestic sheep. As an alternative to running domestic sheep, Landowner 1 decided to work with FWP to conserve long-term cattle ranch operations and the property's wildlife, rangeland, and recreational values.

The deeded lands contain approximately 1,696 acres big sagebrush steppe, 648 acres mixedgrass prairie, 985 acres coniferous woodland, 69 acres breaks/badlands, 107 acres wetland/riparian, and 1,028 acres sainfoin/alfalfa (Figure 2). Of the hayground acres, almost 800 was formerly cropland seeded back to sainfoin/grass mixture prior to the purchase of this CE. Total native range is 3,445 acres, or approximately 75% of the property's landcover.

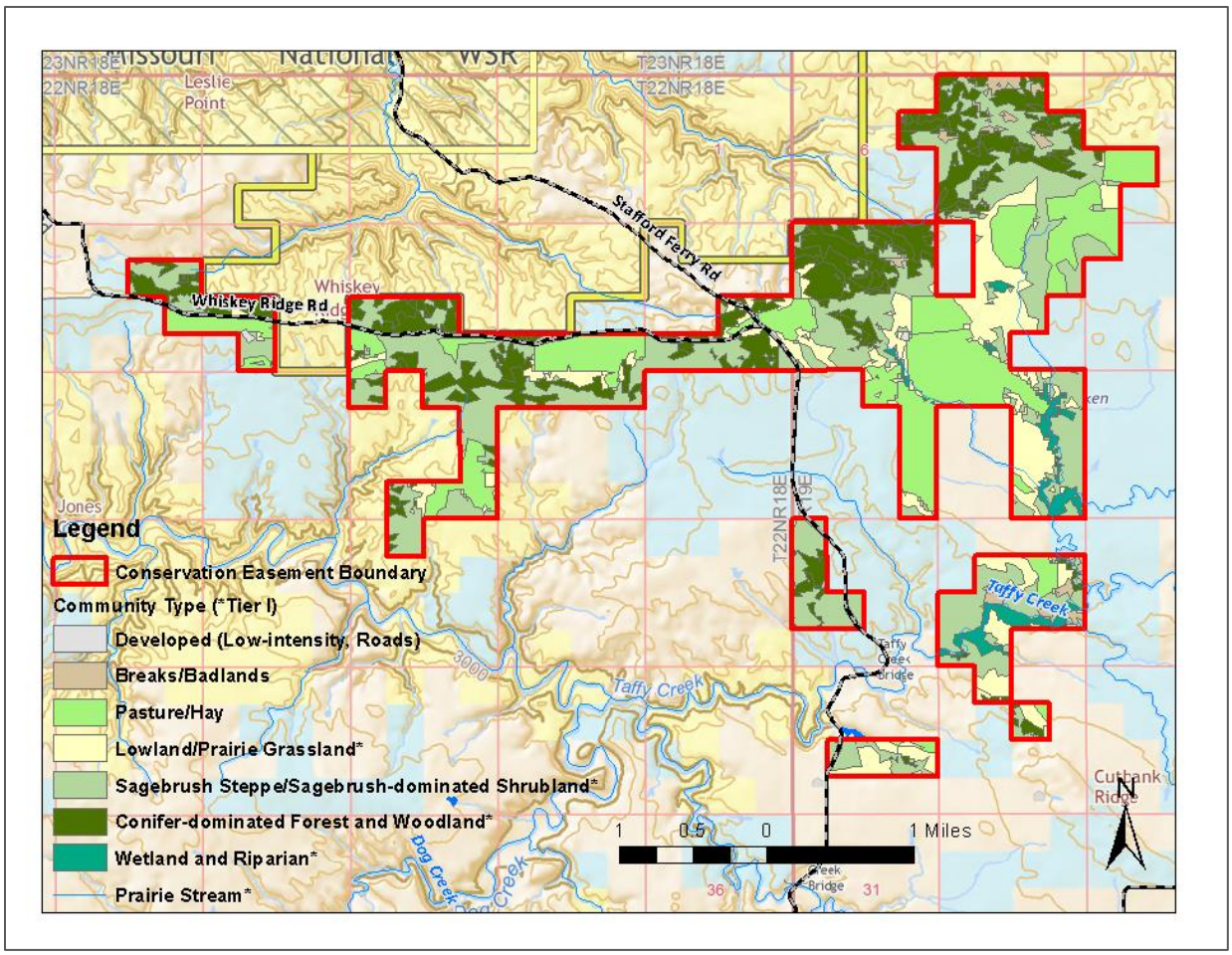
The Whiskey Ridge CE encompasses five (one large, four smaller) parcels, connected via adjoining BLM and DNRC lands (Figure 3). Because Landowner 1 leases the majority of these adjacent public lands, conservation activities through this CE will be realized on a much larger scale through the application of this Management Plan and cooperation with relevant public land management agencies.

As previously stated, the property is managed as a working cattle ranch, simultaneously maintaining wildlife habitats throughout. Primary game/furbearer species inhabiting the Ranch and adjoining public lands include bighorn sheep, elk, mule deer, pronghorn, sharp-tailed grouse, mourning doves, wild turkey, mountain lion, and bobcat. Numerous species of birds and other non-game are also afforded habitat and/or potential habitat. Several Species of Concern have potential distribution on the Ranch, including Black-tailed prairie dog, dwarf shrew, Merriam's shrew, Preble's shrew, Townsend's big-eared bat, spotted bat, hoary bat, little brown myotis, fringed myotis, swift fox, American bittern, burrowing owl, Cassin's finch, chestnut-collared longspur, Clark's nutcracker, long-billed curlew, common tern, ferruginous hawk, Forster's tern, golden eagle, great blue heron, greater sage-grouse, green-tailed towhee, horned grebe, loggerhead shrike, peregrine falcon, pinyon jay, red-headed woodpecker, Sprague's pipit, veery, white-faced ibis, Great Plains toad, northern leopard frog, plains spadefoot, greater short-horned lizard, milksnake, spiny softshell, and western hog-nosed snake.

Primary funding for the Whiskey Ridge CE is being provided through Habitat Montana, which is administered by the Department pursuant to 87-1-209 (Montana Code Annotated), created to

acquire interests in "important habitat that is seriously threatened" for the purposes of protecting, enhancing, and regulating "the use of Montana's fish and wildlife resources now and in the future (87-1-201, MCA)." The Montana Sheep License Auction Fund, derived from the annual competitive sale of one male bighorn sheep hunting license, is the other MFWP-funding source for this CE. Additional contributors include the Wild Sheep Foundation, Northwest Energy, Montana Fish and Wildlife Conservation Trust, Great Falls Chapter Safari Club International, and the Mule Deer Foundation. Upon completion, FWP will hold and monitor the Easement.

Figure 2. Landcover types on the Whiskey Ridge CE.



II. Goals, Objectives, Concerns, and Strategies

<u>Goal 1:</u> Conserve and enhance native plant communities within the Whiskey Ridge CE boundaries including the native sagebrush-grassland, conifer woodlands, and riparian habitats, and 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 Ranch 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 1a: Maintain big sagebrush steppe, plains grassland, conifer woodland, and native riparian habitats and associated streams for wildlife habitat through CE protections. Reduced habitat quality often results in reductions and/or displacement of wildlife.

Many shrub and tree species, such as Wyoming Big Sagebrush, which is the prevailing sagebrush species on the Whiskey Ridge CE, are important to wildlife for cover and forage values. The removal, control, or manipulation of shrub and tree species important to wildlife by any means is prohibited within terms of the Easement, 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 Landowners 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.

As per Easement terms, the Landowners have 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 must comply with MFWP's Wildlife-Friendly Fencing guidelines (See *A Landowner's Guide to Wildlife* Friendly Fences; Appendix E).

Approximately 1,028 acres are in hay production. A portion of these acres (779) had been in crop production (referred to as cropland), but Landowner 1 reseeded these acres to a sainfoin, alfalfa, and grass mix prior to selling a CE to the Department. Haying practices currently ongoing on the Whiskey Ridge CE are permitted under this easement on existing hay and former cropland, and if Landowner 1 chooses, farmed acres may go back into cultivated cropland production upon notification to the Department. Any new sod-busting or tilling of native rangeland vegetation, or establishment of cropland on hay ground (outside of the 779 acres) is not permitted under this CE.

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 on the Land provided those habitat programs implemented on the Land fall within the requirements set forth by the Easement.

The Landowners will control 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.

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 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.

Objective 1b: *Maintain and/or enhance existing native plant communities. This shall be accomplished via implementation of a grazing management plan (Appendix B) involving a rest-rotation grazing system that meets or exceeds the MFWP minimum grazing standards (Appendix A).*

Strategy 1b: To perpetually define and ensure sound grazing practices across time and Landowners, this Conservation Easement requires following MFWP's Minimum Standards for Grazing Livestock (Appendix A) while being tailored to the Ranch's needs on ~4,424 Whiskey Ridge CE deeded acres and 11,071 (current at time of purchase) leased acres, divided into twenty (20) pastures. A detailed grazing management plan for the Whiskey Ridge CE, including pasture maps and tables, is located in Appendix B.

For the summer grazing system each year, one pasture or pasture set will be available for grazing during the growing season, and one pasture or pasture set will be available to graze after seed-ripe occurs. The remaining summer pasture(s) will be rested from livestock grazing that entire year. In addition to the summer pastures, cattle will alternate yearly use of spring and fall pastures such that each spring/fall pasture is rested for a year between each use.

The Department will monitor grazing plan adherence to assess effectiveness, functionality, and Landowners' compliance. Livestock use and distribution will also be assessed annually. The Department, in conjunction with Landowner 1, may recommend future fence and/or water improvements/adjustments, if deemed necessary, in addition to the rangeland improvements recommended for initial implementation of this grazing system (Appendix B, Section 6). MFWP and/or Landowner 1 may partner with other agency(s) such as NRCS for funding and future development of grazing system improvement projects.

Goal 2: Manage wildlife populations in balance with resources and provide guaranteed public hunting 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 2: The Ranch and adjacent breaks habitats provide critical year-round habitat for bighorn sheep, elk, mule deer, pronghorn, upland game birds, and a host of other game and nongame species listed above. The area also provides seasonal habitat for waterfowl, mourning doves, and migratory raptors and passerine birds. Implementation of a rest-rotation grazing system, control of noxious weeds, prohibition of sodbusting and development, and the preservation of shrub species on the property will ensure the habitat values for all these species are maintained.

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

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

Strategy 2b: As per MFWP Conservation and Public Access Easement terms, the Landowners must allow reasonable non-motorized public access for hunting, wildlife viewing, and other forms of non-motorized recreation (hereafter, hunting and recreational access). The Landowners may not charge fees, lease, or commercially outfit hunting, or charge trespass fees on deeded land or to adjoining public lands.

A minimum of 400 hunter-days of hunting will be allowed on the Whiskey Ridge CE consistent with Fish and Wildlife Commission-established regulations and dates/seasons. Recreational access will be allowed in the same manner year-round (Appendix C). Whiskey Ridge CE Hunting and Access Rules as defined in this Management Plan may be altered upon mutual agreement between MFWP and the Landowners.

Camping opportunities on the Whiskey Ridge CE are not specified or allocated in these hunting and recreational access provisions except at the sole discretion and permission of the Landowners. The Landowners 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 Landowners' properties, 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 Landowners may apply for enrollment in, and MFWP may make available to the Landowners certain services and compensation offered through various (present or future) access and land management programs as may exist at any time. A current example at the time of this Easement's establishment is the Block Management Program. Services and/or compensation for public use impacts through the Block Management or any other access or land management Program is contingent upon Program continuation, sufficient Program funding and a prioritized ranking and selection of the Ranch and its access and hunting opportunities when compared to other land enrollment applications.

III. Overall MFWP/ Whiskey Ridge Conservation Easement Compliance

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

Final Management Plan Approved By:

David Bergum, Bergum Ranch	Date
Ryan K. Hagen	Date
Daniel Hagen	Date
Cory Loecker, MFWP Region 4 Wildlife Manager	Date
Gary Bertellotti, MFWP Region 4 Supervisor	Date
Ken McDonald, MFWP Wildlife Division Administrator	Date

WHISKEY RIDGE 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.

WHISKEY RIDGE CONSERVATION EASEMENT

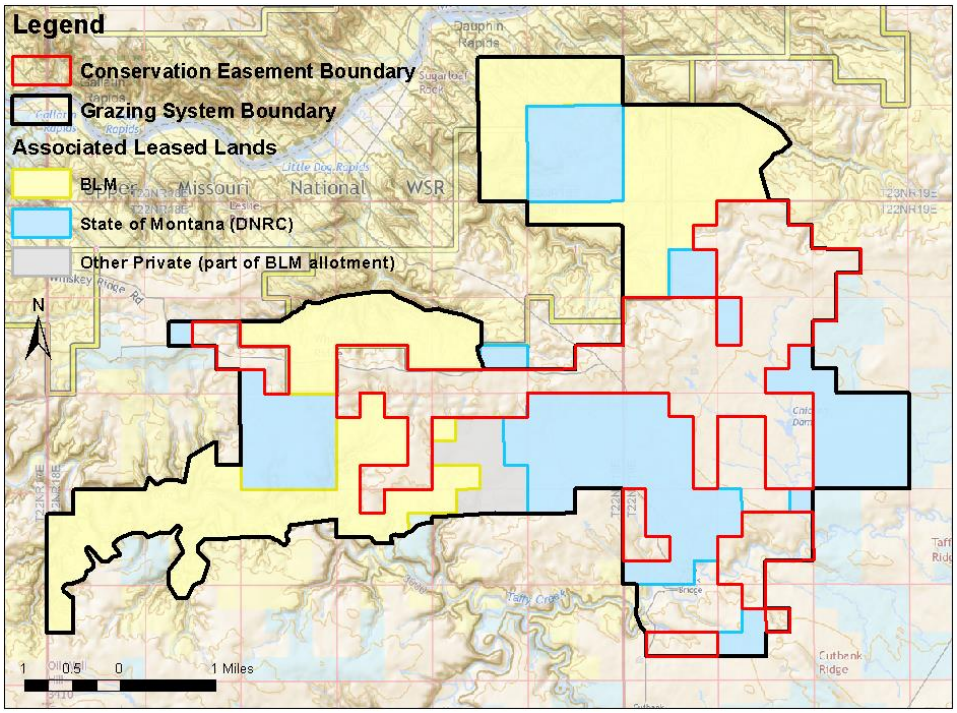
APPENDIX B – GRAZING SYSTEM

1) Land Unit Description

Montana Fish, Wildlife & Parks' (MFWP) conservation easements (CEs) require a Management Plan, referenced in the Deed of CE, which provide a living document to ensure the terms and conditions of the CE are met, reflect ongoing habitat management and recreational access, and provide flexibility for changing conditions on the Land. To warrant effective, long-term habitat management on the working ranchlands of the Whiskey Ridge CE, a grazing system or plan is required. The grazing system herein is a working document, mutually agreed upon by all parties involved, that will ensure habitat conditions are maintained and enhanced into the future.

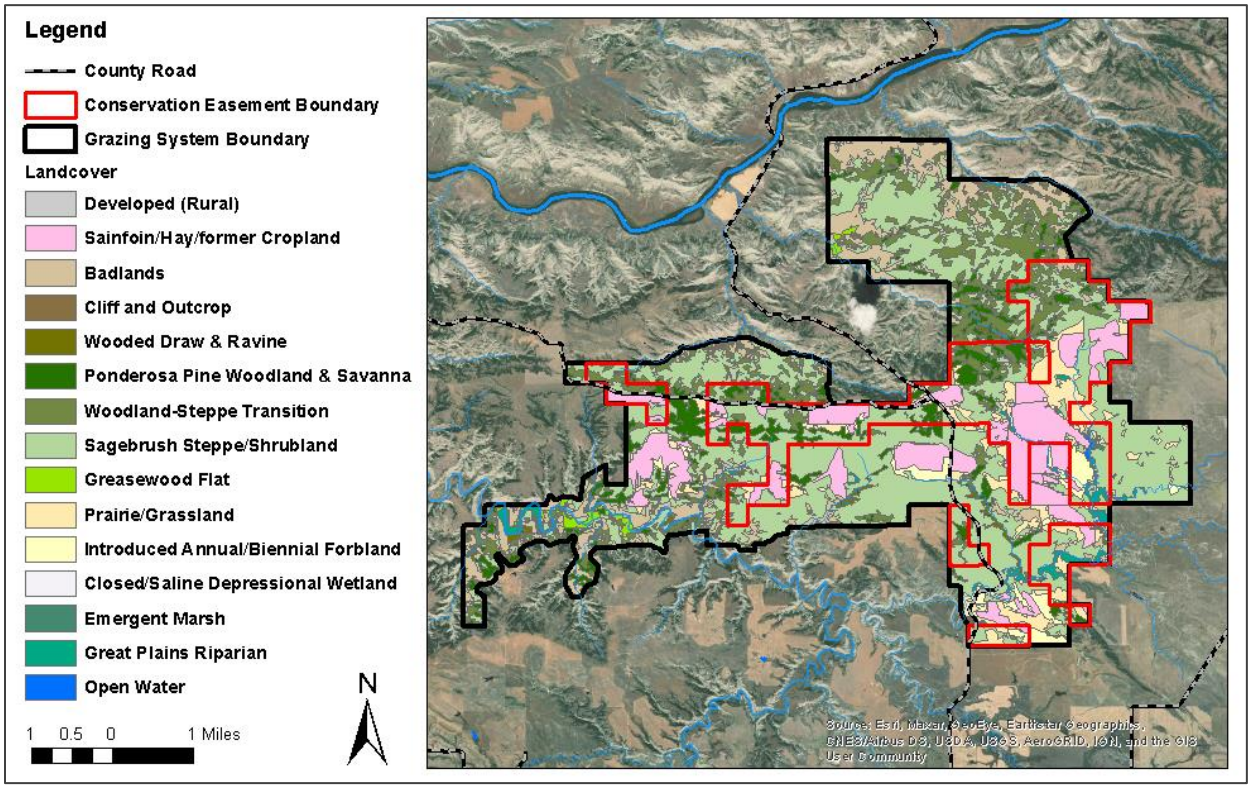
The grazing system on the Whiskey Ridge CE encompasses ~15,458 acres (approximately 4,619 deeded and 10, 839 leased public lands; Figure 1). The summer grazing system will follow MFWP's Minimum Standards for Grazing (Appendix A). Spring, fall, and winter pastures will receive treatments every other year, thereby also ensuring complete rest every other year.

Figure 1. Deeded and leased lands included in the grazing system.



A breakdown of the total acres under this grazing system is as follows: 12,462 acres native range, 2,248 acres non-native range (i.e., sainfoin/alfalfa hay fields), 233 acres wetland/riparian, and 133 acres developed (i.e., roads, buildings; Figure 2). Although the CE terms apply only to deeded lands, the grazing system incorporates leased DNRC and BLM lands. Therefore, the respective public land management agencies collaborated with MFWP to develop this grazing plan, and its implementation will be dependent upon further and pending MEPA/NEPA analysis for those respective agencies. This grazing system is divided into 16 pastures, which undergo a rest-rotation grazing system, as well as four husbandry (i.e., Landowner 1's discretion) pastures for a total of 20 individual pastures. This system is described in detail in Section 3, Grazing System.

Figure 2. Landcover types included in the Whiskey Ridge CE grazing system.



2) Current Management Narrative & Considerations

This section describes what has occurred with grazing management on the deeded and leased grazing lands (hereafter, the "Ranch"), prior to adoption of this grazing plan. The Ranch currently runs approximately 360 cow/calf pairs and 15 bulls. In addition to cattle, the Ranch owns 10-20 horses that reside year-round near the buildings.

A total of 20 different pastures make up the Ranch's current grazing operation (Figure 3). The main limitations of the Ranch's current grazing operation are water availability and variable weather, which can significantly affect turnout and removal dates. Dependable water limitations

occur in the Blind Canyon North, Blind Canyon South, and State #5B pastures. These three pastures have reservoirs that run dry or turn alkaline by mid-summer; thus, they are more ideal for grazing during spring/early summer. The State #5B, Mitchell #3A, Baker/Bart, and Road pastures also contain ~2000 acres of sainfoin/alfalfa, which the Ranch generally would prefer to graze during the early summer months. The Ranch does not currently hay any of the alfalfa on the property. The Taffy Creek pasture is imperative for fall/winter use, as it lacks pine trees. Pine needles contain a resin acid, which if consumed by pregnant cows can lead to late-term abortions.

Figure 3. Current pasture layout on the Whiskey Ridge CE.

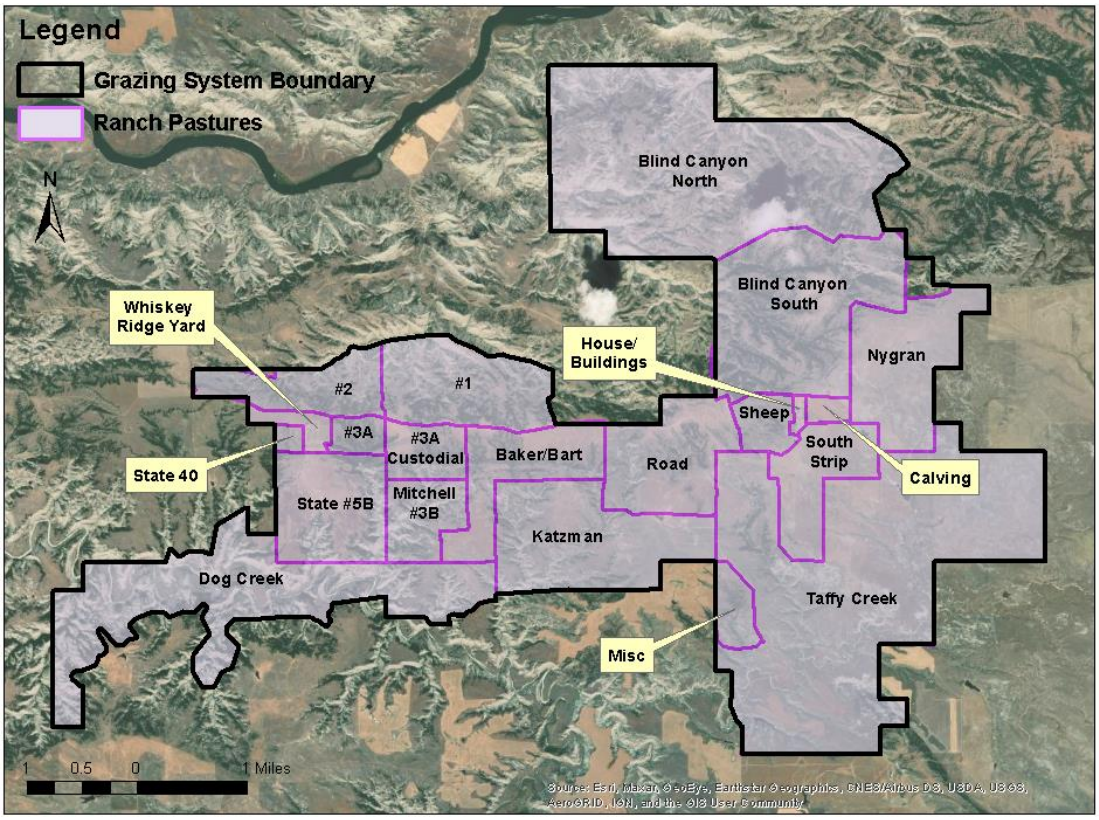


Figure 3 illustrates the Ranch's current pasture layout. A typical grazing year might go as follows: Livestock calve in the Calving pasture in March. After calving, livestock will reside in the Nygran pasture from mid-April until approximately May 1. Around May 1 (but up until May 20, depending on winter conditions/spring greenup), livestock move into the Blind Canyon pastures. Cattle stay in these pastures for approximately three-to-four weeks. From here, livestock move into the Road pasture, which serves as a holding pasture for approximately one week in early June. From the Road pasture, livestock move into #1, #2, and the State #5B pasture complex (which includes State 40, #3A, and Whiskey Ridge Yard). These pastures are fenced separately but livestock are free to move among them. Livestock stay in these six pastures from the second week in June through around the first week in July. From mid-July to pre-conditioning (which occurs in mid-to-late September), livestock move among the Mitchell #3B, #5A Custodial, Baker/Bart, and Katzman pastures. Post-conditioning, cattle are held in the Taffy

Creek pasture until shipping, which occurs at the end of October. After shipping, cattle come back into the Taffy Creek pasture for the duration of fall/winter, but sometimes depending on fall regrowth and weather, spend additional time back in the Road pasture.

The Ranch turns 15 bulls in with the cows when they leave the Blind Canyon allotment in early June. The bulls remain with the cows until pre-conditioning, when they are moved to and kept in South Strip pasture. Yearlings reside in the Sheep pasture. Horses are generally kept around the houses/buildings or in the South Strip pasture; occasionally they are held in the Misc pasture. The Dog Creek pasture, while it contains abundant forage, is rarely used and the Ranch has a difficult time keeping cattle in this pasture, mainly due to its steep topography.

3) Planned Management Narrative with Tables and Maps

To meet MFWP's Minimum Standards for Grazing Livestock, as required for a CE, this grazing system resembles current grazing practices on the Ranch but introduces scheduled deferment and/or a year of complete rest into the spring, summer, and fall pastures annually. Per CE terms, cattle and horses are the only classes of livestock permitted in the grazing system—any other class of livestock will require Department approval per CE terms (domestic sheep and goats are prohibited). As previously stated, some deeded and all leased BLM lands comprise portions of three BLM grazing allotments. Because this grazing system will involve changes to current permitted use in these allotments, implementing the grazing system described herein will be contingent upon NEPA analysis and approval by the BLM for changes in the Blind Canyon #20010 allotment and rangeland infrastructure improvements (described below) in the Whiskey Ridge #15132 allotment. The DNRC will also have to undergo MEPA for some of the needed rangeland improvements to occur. Outside of these NEPA and MEPA requirements, this grazing system will introduce additional rest, thereby continuing to meet allowable use requirements referenced in the respective leases.

Summer pastures will require a three-treatment rest-rotation grazing system, with a separate fall/spring schedule on remaining pastures. This grazing system comprises 20 pastures: 12 summer pastures (divided into three treatment groups, or pasture "sets"), four fall-through-spring pastures, and four additional pastures existing as "animal husbandry" pastures that can be used at the Landowner 1's discretion at any time of the year (Figure 4).

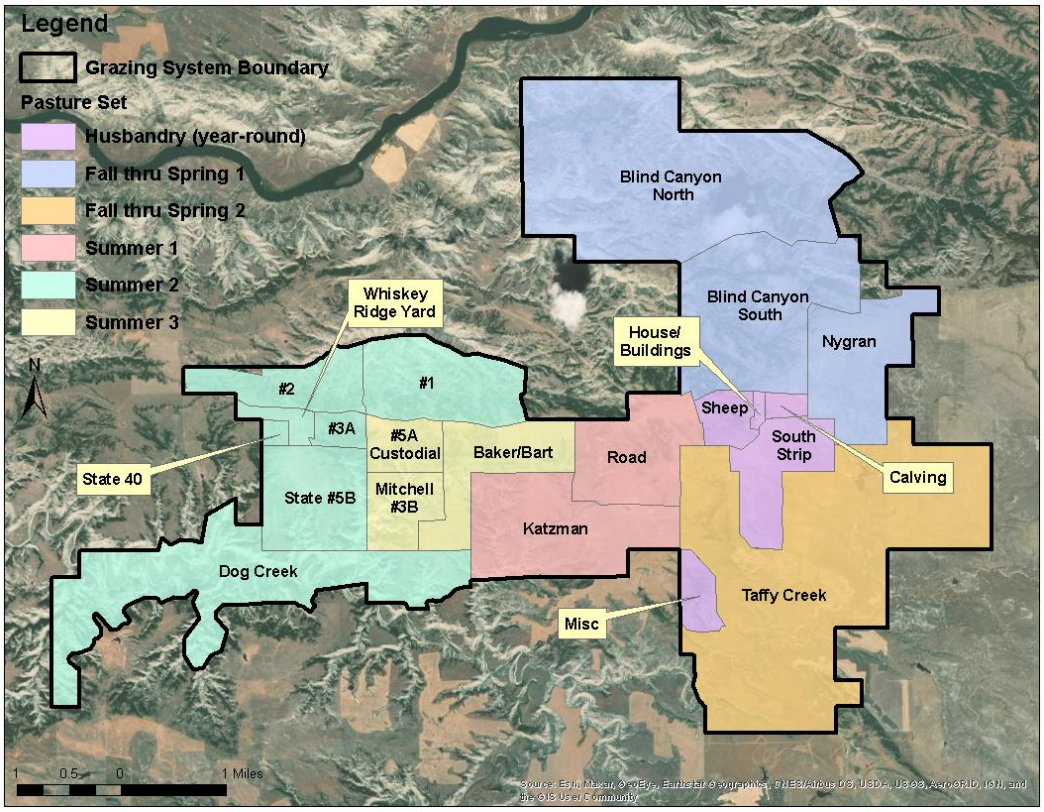
Fall Through Spring Grazing:

"Fall through Spring" (e.g., Fall/Winter/Spring) grazing will occur in pastures where cattle move into and out of the summer grazing system. These pastures will be available for livestock grazing and winter feeding. Cattle will stay in their scheduled Fall/Winter pasture until calving (where they move into the Calving or other husbandry pasture). After calving, they will move into their scheduled Spring pasture. Dates for spring grazing will be after calving through approximately May 15. Dates for fall and winter grazing/feeding will occur from post-conditioning (mid-September) through early March, when calving begins.

For fall through spring grazing, the Blind Canyon/Nygran pastures will operate as one unit (Fall thru Spring 1), and the Taffy Creek pasture as another (Fall thru Spring 2), alternating between

treatments every other year. In other words, Bling Canyon/Nygran will receive fall through spring grazing (beginning October through the following year's April) during even years (e.g., 2022, 2024, etc.) while Taffy Creek will receive fall through spring grazing during odd years (e.g., 2023, 2025, etc.). A "grazing year" therefore references May 15 thru the following year's May 15. Throughout the remainder of this document, odd years will be referred to as "2021-22, 2023-24," etc., and even years as "2022-23, 2024-25," etc.

Figure 4. Pastures and pasture groupings for the Whiskey Ridge CE grazing system.



Due to their lack of pine trees, both the Taffy Creek and Nygran pastures are critical for fall grazing (see landscape considerations above), which may often overlap early winter weather. Additionally, the Taffy Creek pasture contains stands of crested wheatgrass, which can be better managed through early spring grazing. Ideally, early spring grazing of crested wheatgrass will set it back to improve the health and productivity of native vegetation. The Blind Canyon pastures are ideal for early spring grazing because there is sufficient water and adequate forage in this pasture during this time as reservoirs dry or become alkaline as the season progresses. Without additional water developments, these pastures are unavailable for cattle grazing during summer months. Their location relatively close to the calving/husbandry areas also make them ideal sites for early spring grazing. Furthermore, big game scouting and hunting is a common recreational use of this area, so spring grazing is one of the better times to avoid potential hunter/recreationist and cattle conflicts during summer and fall months.

Summer Grazing:

The 12 summer pastures are divided into three pasture "sets." The first set comprises the Road and Katzman pastures (Summer 1). The second set comprises the #1, #2, State #5B, State 40, Whiskey Ridge Yard, #3A, and Dog Creek pastures (Summer 2). The third set comprises the Mitchell #3B, #5A Custodial, and Baker/Bart pastures.

Livestock (cow/calf pairs) will enter the summer grazing system approximately May 15. This date range is flexible; if green-up begins later pairs may remain in their spring pasture (Blind Canyon or Taffy Creek) until this time. Livestock will remain in one summer pasture set during the growing season, from approximately May 15 until July 15 (seed-ripe), and then move to the next scheduled pasture set for the post-seed ripe grazing period (approximately July 15 until September 15), when they would move to one of the husbandry areas for pre-conditioning. Livestock would then return to the grazing system in one of the Fall pastures (Nygran or Taffy Creek), where they remain until shipping. After shipping, livestock return to that same Fall pasture, where they remain through the winter months until calving begins (in one of the husbandry pastures). Feeding hay during winter is permitted in these pastures. Flexibility is key in any grazing plan; dates of use are approximate as annual conditions on the ground may vary.

Bulls and Horses:

About fifteen bulls will be run with the cow/calf pairs once they move into the summer grazing system and will remain with the cow/calf pairs until pre-conditioning. At pre-conditioning, bulls will be moved to one of the husbandry pastures until the next season. Horses reside year-round in the South Strip husbandry pasture but may be moved to any of the other husbandry pastures at any time. Any other class of livestock will require Department approval per CE terms.

Table 1 details the grazing schedule for each pasture or pasture set for one complete cycle, from 2021-22 through 2026-27 (the cycle starts over again in 2027-28). Figures 5, 6, 7, 8, and 9 illustrate the grazing schedule for a complete rotation through all three summer treatments and both fall through spring treatments. Upon completion of year 2026-27, the grazing rotation schedule starts over for year 2027-28.

Table 1. Whiskey Ridge CE grazing system schedule 2021-2027.

Year*	Summer Pastures			Fall through Spring Pastures		Husbandry
	Road, Katzman (1)	#1, #2, #3A, State #5A, State 40, Whiskey Ridge Yard, Dog Creek (2)	Mitchell #3B, Baker/Barker, #3A Custodial (3)	Taffy Ck (1)	Nygren, Blind Canyon N & S (2)	Sheep, House/Buildings, South Strip, Misc
2021-22	Early	Late	Rest	Use	Rest	Year-round
2022-23	Late	Rest	Early	Rest	Use	Year-round
2023-24	Rest	Early	Late	Use	Rest	Year-round
2024-25	Early	Late	Rest	Rest	Use	Year-round
2025-26	Late	Rest	Early	Use	Rest	Year-round
2026-27	Rest	Early	Late	Rest	Use	Year-round

Early = Livestock grazing from May 15 – seed ripe (growing season).
Late = Livestock grazing from post-seed ripe to – September 15 (after seed ripe).
Fall through Spring = Livestock grazing/feeding from October 1 – May 15 during "Use" years.
Rest = Rest from all livestock grazing entire calendar year.
*Year starts with entry into the summer grazing system, ~May 15, and goes through Spring the following year (e.g., the following May 15).

Figure 5. Map of the Whiskey Ridge CE grazing system for 2021-22, 2027-28, 2033-34, etc.

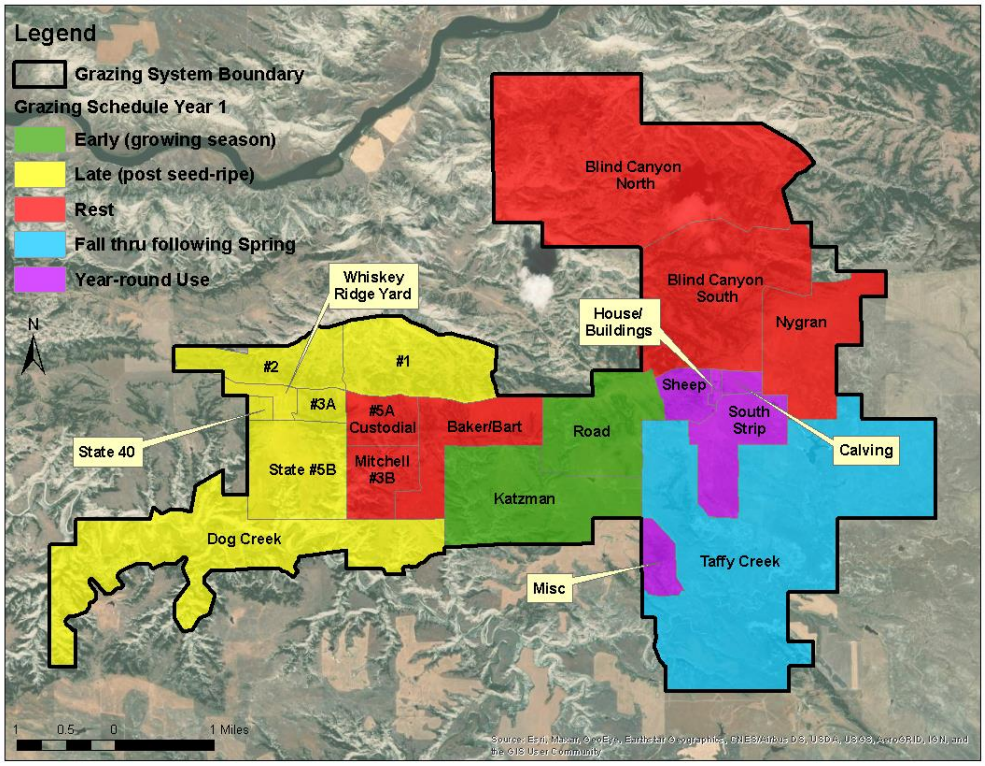


Figure 6. Map of the Whiskey Ridge CE grazing system for 2022-23, 2028-29, 2034-35, etc.

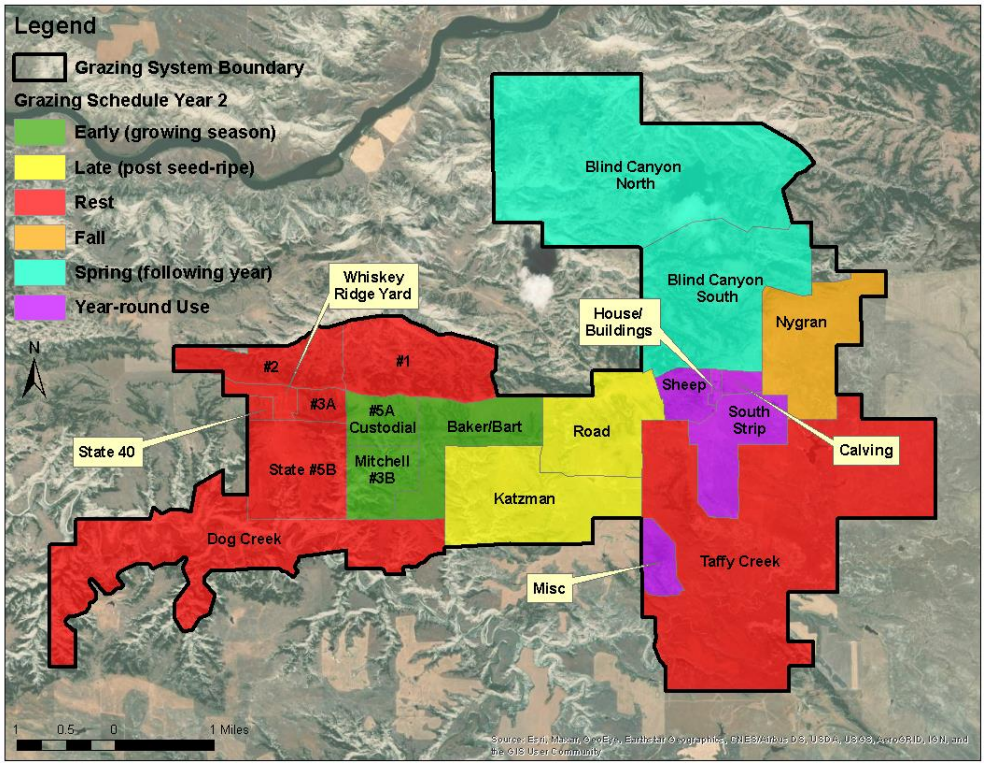


Figure 7. Map of the Whiskey Ridge CE grazing system for 2023-24, 2029-30, 2035-36, etc.

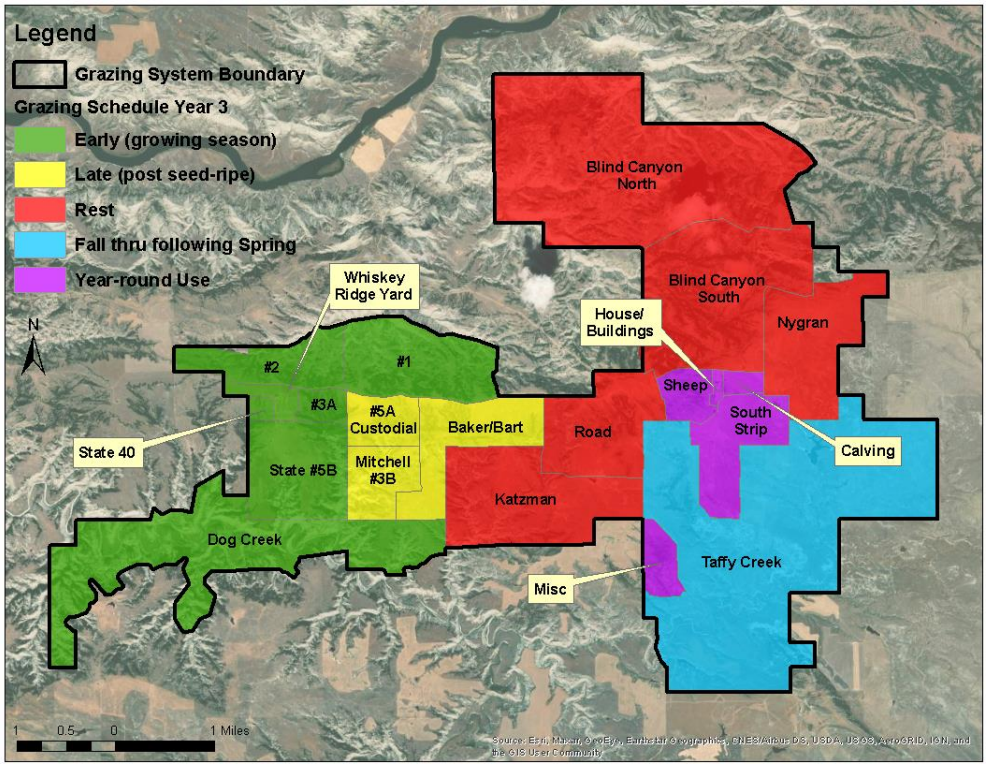


Figure 8. Map of the Whiskey Ridge CE grazing system for 2024-25, 2030-31, 2036-37, etc.

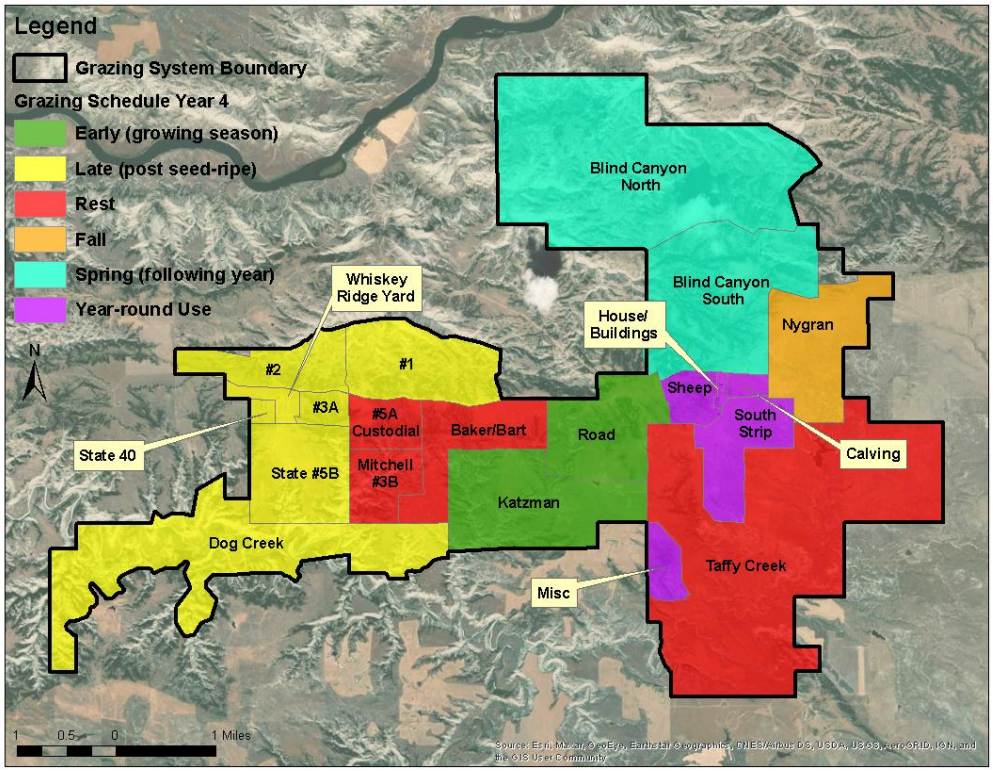


Figure 9. Map of the Whiskey Ridge CE grazing system for 2025-26, 2031-32, 2037-38, etc.

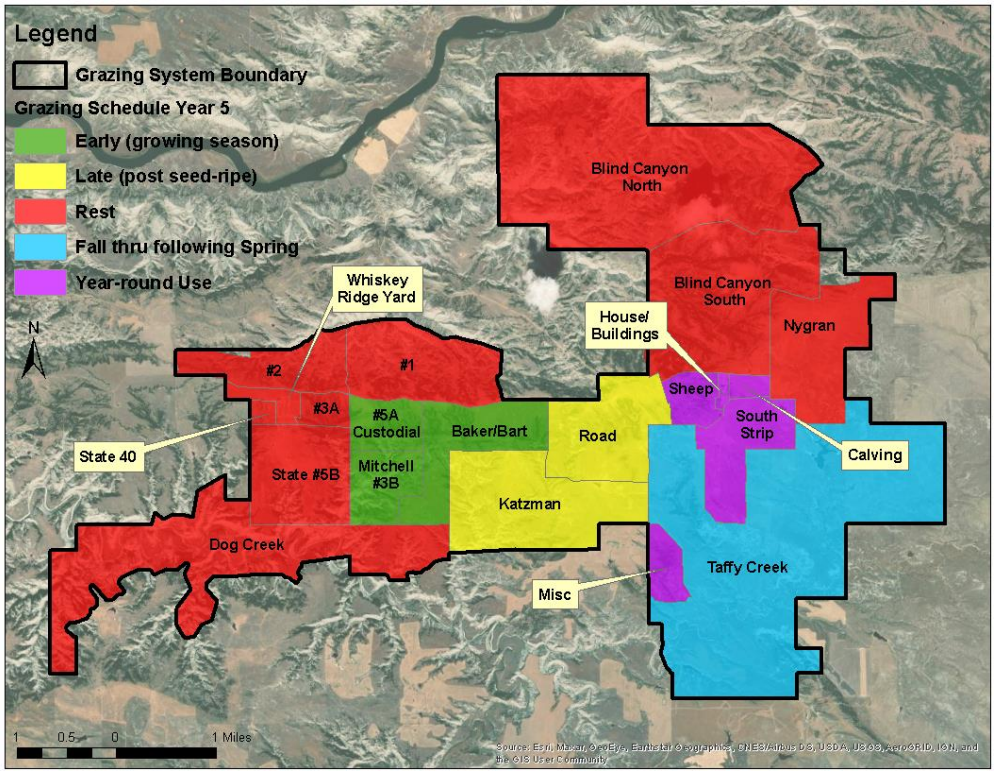
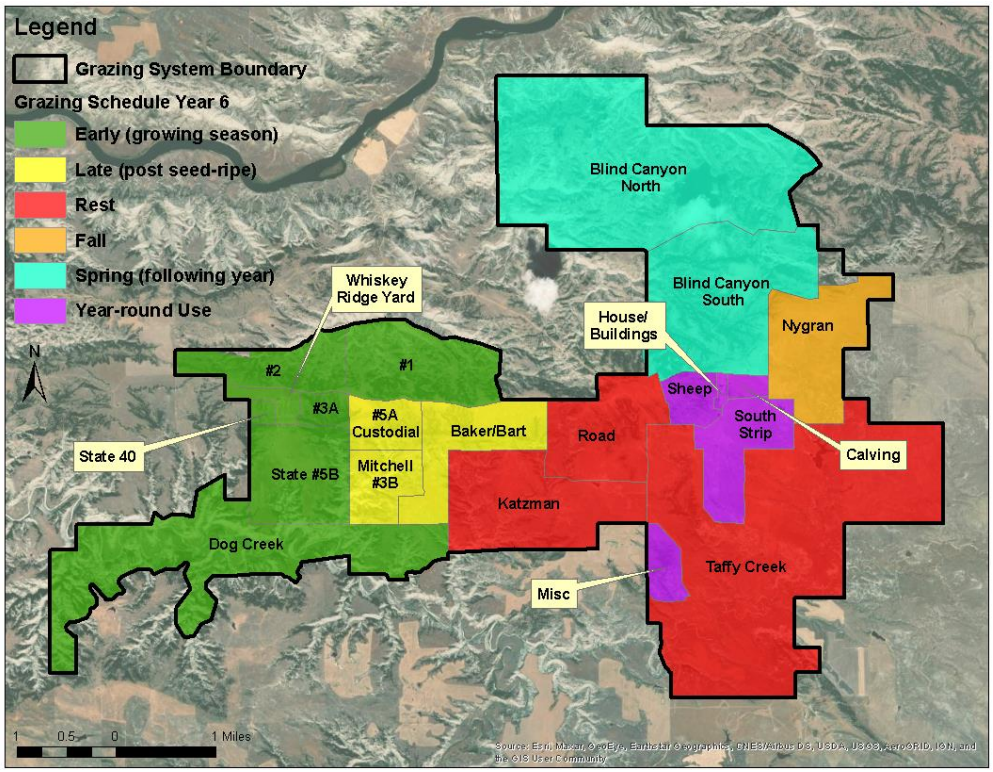


Figure 10. Map of the Whiskey Ridge CE grazing system for 2026-27, 2032-33, 2038-39, etc.



4) Stocking Rate

This grazing plan does not directly address stocking rate. Instead, the maximum stocking rate will be based on compliance with the grazing system, i.e., Landowner 1 will determine stocking rate based upon ability to comply with grazing system pastures and timing sequence—the land and grass availability will dictate livestock use and distribution in pastures. Stocking rates on leased BLM and DNRC lands will abide by those agencies' grazing leases.

5) Salt and Mineral Management

When salt and mineral supplements are used, they will be located away from riparian and wetland zones in a manner that will minimize impacts to these areas.

6) Range Improvements

To ensure maintaining and/or enhancing long-term range and wildlife habitat conditions and to implement the grazing system as described, some pastures require range infrastructure improvements, including fencing, pipelines, and tanks. Adequate water is an important component of any grazing system, and sufficient sources of water distribute cows in an effective manner, reducing over-use of some areas and under-use of others.

Table 5. Itemized rangeland improvements to implement the grazing system on the Whiskey Ridge CE.

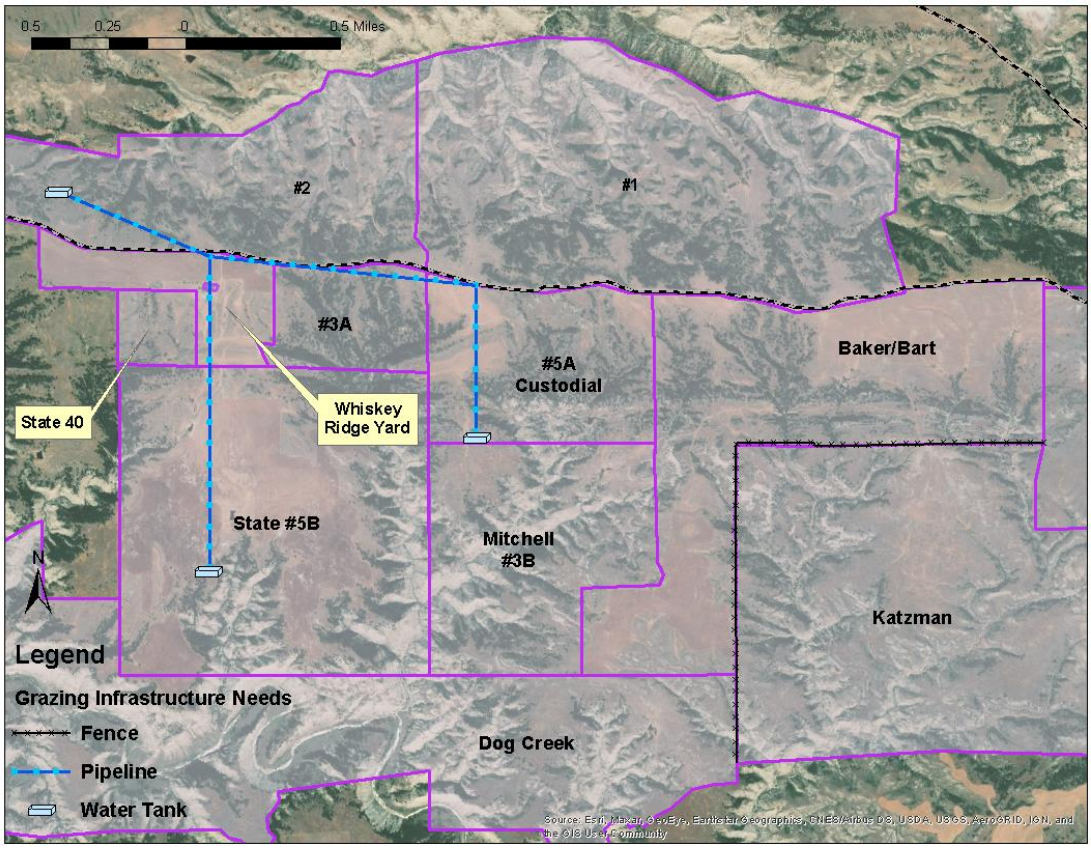
Grazing System Range Improvements				Estimated Costs and Responsibilities			
Project Type	Component Description	Installation Date (Year)	Unit	Cost*	FWP	Landowner 1	Total Cost
Tank (permanent)	#2 Pasture	2021	1000 gal	$3.04/gal[1]	50%	50%	$3,040
Tank (permanent)	State Pasture	2021	1000 gal	$3.04/gal[1]	50%	50%	$3,040
Tank (permanent)	Mitchell Pasture	2022	1000 gal	$3.04/gal[1]	50%	50%	$3,040
Pipeline (30" deep)	Mitchell pasture – county road to tank	2022	2,597 ft	$2.00/ln-ft[2]	50%	50%	$5,194
Pipeline	County Road – connect end of pipeline at Mitchell pasture to pipeline in State pasture	2021	4,571 ft	$2.00/ln-ft[2]	50%	50%	$9,142
Pipeline	State pasture – county road to tank	2021	5,381 ft	$2.00/ln-ft[2]	50%	50%	$10,762
Pipeline	#2 pasture – county road to tank	2021	2,786 ft	$2.00/ln-ft[2]	50%	50%	$5,572
Fence	Rebuild Baker/Bart & Katzman boundary	2023	10,799 ft.	$2.50/ft.[3]	50%	50%	$26,997.50
Total Cost Estimate Rangeland Infrastructure:					$33,393.25	$33,393.25	$66.787.50

* Cost estimates based on 2018 NRCS cost-list, FWP Design and Construction Unit (2012-2017 bids), and the Rancher's Stewardship Alliance (RSA) 2017 cost-list.

[1] Includes installation and materials. Installation includes tank, earthwork, sub-grade prep, hydrant, overflow, gravel base and apron, all valving, and all other appurtenances from inlet to outlet.

[2] PVC/IPS/HDPE/PE buried 30" deep, includes labor and materials, such as typical appurtenances (fittings, anchors, thrust blocks, gate valves, air release valves, drain valve, pressure relief valve, pressure reducer, flow control valves).
[3] 3-to-5-strand barbed or smooth wire is $2.00/ln-ft, and $3.00/ln-ft. in "rough terrain." Includes labor and material, installed with wildlife-friendly considerations. Includes posts, wire, fasteners, gates.

Figure 6. Rangeland improvements proposed to implement the Whiskey Ridge CE grazing system.



To establish and implement the grazing plan, Landowner 1 and MFWP will cost-share 50:50 for new fence construction and pipeline/water tank installation as identified in Table 5 through the CE Buy-Sell Agreement. Rangeland infrastructure installations on leased lands (BLM, DNRC) will be subject to the NEPA/MEPA process by those respective agencies. Montana Fish, Wildlife, and Parks will cost-share rangeland infrastructure, including a total of 1.7 miles of new fence construction, 2.9 miles of pipeline installation, and addition of three new water tanks. Based on NRCS, MFWP, and Rancher Stewardship Alliance cost estimates, MFWP's contribution will not exceed $33,400. Federal Farm Bill, NRCS, or other program funding may also be used as a substitute to reduce costs, which would reduce the costs for Landowner 1 and MFWP evenly. Additional funding may be available via cost-share with the BLM or DNRC on public land leases. After installation of the infrastructure identified in Table 5 is completed to implement the grazing system, maintenance of the grazing system infrastructure shall be the responsibility of Landowner 1 as defined in the terms of the CE.

7) How the grazing plan addresses Fish and Wildlife Objectives

The overall objective of this grazing system is to maintain and enhance the vigor of native vegetation on deeded lands as well as associated leased public lands.

Providing season-long and year-long rest from grazing for two consecutive growing seasons via deferred (post seed-ripe) and year-long rest treatments, respectively, follows the basic principles of rangeland management, allowing plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the "late summer" pasture following seed-ripe, hoof action tramples mature seeds into the soil, thereby facilitating seed planting. The following year's rest treatment allows these seedlings to establish root systems and grow before growing-season livestock grazing commences again the following spring. This rest-rotation approach enables plants to maintain maximum vigor and thus recover more rapidly following grazing activity. The early spring grazing in the Taffy Creek pasture will ensure livestock benefit from the relatively high protein levels found in crested wheatgrass, prior to its maturity. This treatment will prevent further spread and may even reduce the levels of this non-native species over time.

This three-treatment, rest-rotation grazing system will support and enhance forage availability and palatability for wildlife and cattle, and provide other important habitat components (i.e., cover) for numerous big game, upland game bird, and nongame species inhabiting and breeding in the area. The grazing system also ensures that the primary land use remains as livestock grazing, which depends on maintaining productive vegetation and soils. It will also help maintain aesthetic and recreational values for the public.

The grazing system helps establish adequate quantity and quality of forage and cover for a variety of wildlife species using upland and riparian habitats. For instance, high quality, early spring forage will be available for wild ungulates the spring following the post seed-ripe treatment. These rested pastures will become critical for deer, elk, antelope, and bighorn sheep coming out of a negative energy balance from winter, as they prepare to fawn, calve, or lamb. Standing residual herbaceous cover in pastures subject to deferred and rest treatments provide valuable cover for ground nesting and ground brooding birds, primarily sage and sharp-tailed Grouse, as well as cover for small mammals and other wildlife. Critical food items such as seeds and insects also tend to be more abundant in these rested pastures. Periodic rest in upland pastures also helps maintain shrub (i.e., sagebrush) cover, important for browse as well as hiding and thermal cover for neonate ungulates and a variety of birds and other wildlife. Increased residual vegetation across the area will improve soil fertility, quality, stability, and moisture content which in turn will improve overall vegetation and habitat quality. Because of these values, season-long and yearlong-rested pastures remain unavailable from any type of agricultural harvest outside of scheduled grazing (i.e., haying, seed harvest).

8) Summary and Contingency Plan

The grazing system herein provides a flexible link between habitat protection and enhancement on the ground and terms of the Whiskey Ridge Deed of CE recorded with Fergus County. The

summer grazing system meets MFWP's Minimum Standard for Grazing Livestock such that every year, more than two-thirds of the pastures receive growing season rest.

In MFWP CE grazing systems, flexibility is important. For this grazing system, one complete rotational cycle occurs every six years; the summer pasture sets will cycle every three years. If after one summer cycle the grazing system is deemed not workable, upon mutual agreement Landowner 1 and MFWP can reassess pasture layout and timing, so long as a revised grazing system will continue to meet MFWP's grazing standards.

Additionally, environmental analysis needs to occur for the grazing system to be applied to associated BLM and DNRC lands; until the relevant NEPA/MEPA processes are complete (and changes are approved), the grazing system cannot be fully functional on this CE. Until such a time, Landowner 1 will continue to abide by those agencies' leases, and phase into this grazing system as he is able.

WHISKEY RIDGE CONSERVATION EASEMENT

APPENDIX C – HUNTING/PUBLIC ACCESS RULES & MAP

The Whiskey Ridge Conservation Easement (hereafter, Whiskey Ridge CE) is located within FWP Deer/Elk Hunting Districts 417 and 426, and Antelope Hunting District 480.

1) The Whiskey Ridge CE is open to public hunting of all legally available game and fish species during Fish and Wildlife Commission-established upland game bird, waterfowl, and big game hunting seasons. Recreational access for wildlife viewing, hiking, and birding is also allowed year-round.

2) For lands west of Stafford Ferry Road, and contained within sections 19, 20, 29, and 30 east of Stafford Ferry Road, no reservations or written permissions are required provided all other access terms are met (Area A on map). For lands east of Stafford Ferry Road and north of the above-mentioned sections, reservations are required (Area B on map).

a) During hunting seasons, reservations may be obtained by calling 406-791-8240 from 9:00 am to 9:00 pm at least 48-hours in advance until reservation periods are full.
b) Outside of hunting seasons, reservations may be obtained by calling 406- 462-5693 from 9:00 am to 9:00 pm at least 48-hours in advance until reservation periods are full.
c) Reservations are limited to 3 parties of 1-3 members per day.
d) Hunters and recreationists are limited to reserving up to three consecutive days per reservation and must complete their reserved period prior to making another.
e) Please call to cancel reservations if you do not intend to use all your reserved days.

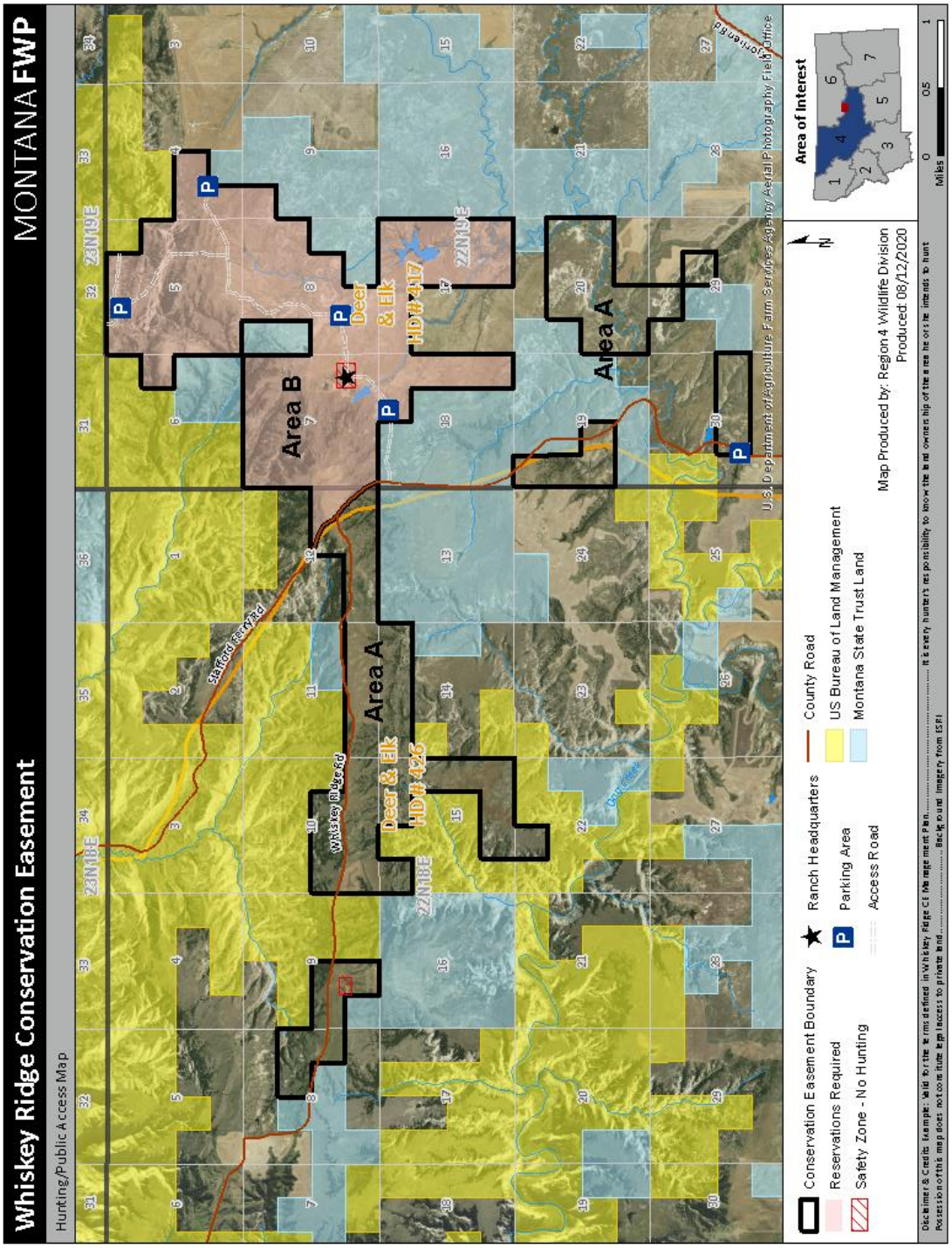
3) Hunting and other recreational activity is permitted by **non-motorized only** access from public roads, authorized/designated trails, parking areas, and any other adjoining public land. Hunters must come prepared to retrieve harvested game (i.e., game cart, backpack, etc.). Users are encouraged to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

4) No hunting is permitted in the vicinity of buildings or residences as marked on the map (see safety zones), or around livestock.

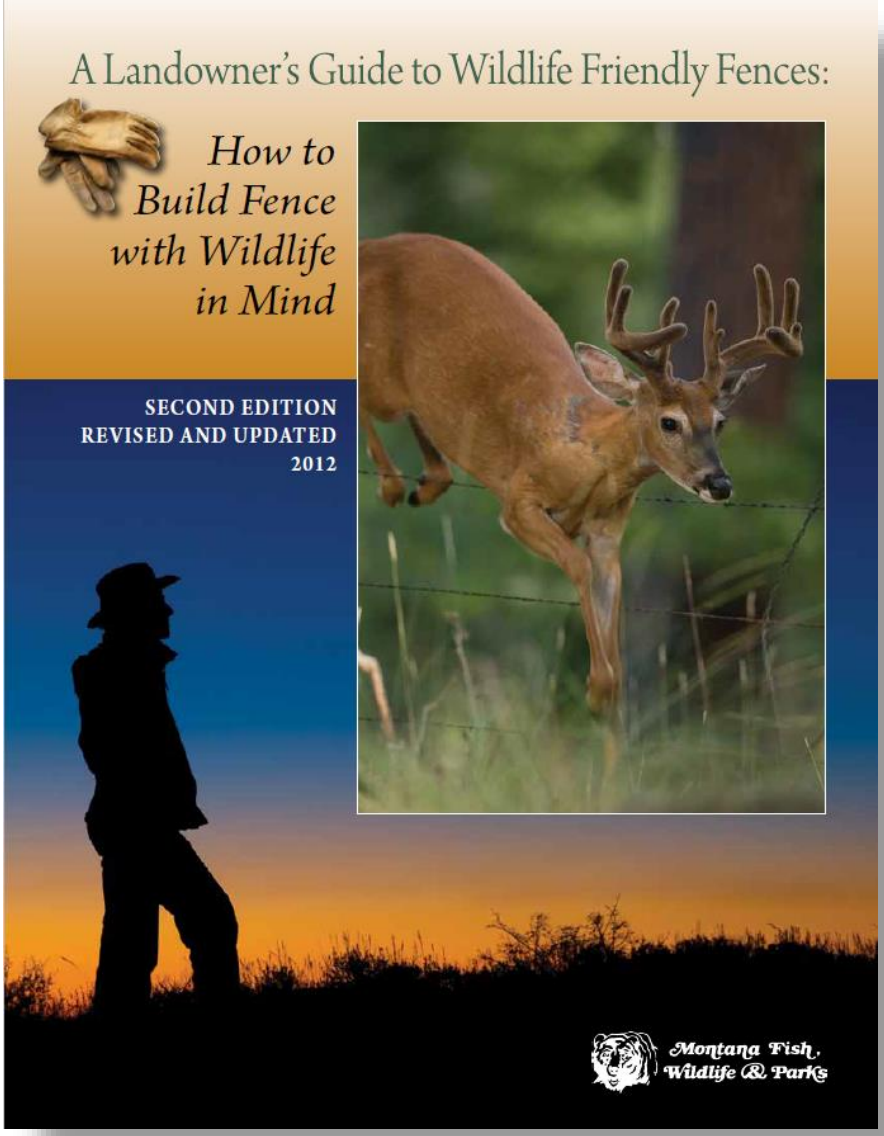
5) No overnight camping on the Whiskey Ridge CE. If camping on adjacent public lands, users must follow those respective agencies' camping regulations. No open fires are permitted on the Whiskey Ridge CE deeded lands.

6) The Landowners 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.

7) Violation of any Whiskey Ridge 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**.


Whiskey Ridge Conservation Easement
Hunting/Public Access Map
MONTANA FWP
23N18E
23N19E
22N18E
22N19E
Stafford Farm Rd
Whiskey Ridge Rd
Area A
Area B
Deer & Elk
HD # 426
HD # 417
Conservation Easement Boundary
Reservations Required
Safety Zone - No Hunting
Ranch Headquarters
Parking Area
Access Road
County Road
US Bureau of Land Management
Montana State Trust Land
Map Produced by: Region 4 Wildlife Division
Produced: 08/12/2020
U.S. Department of Agriculture Farm Services Agency Aerial Photography Field Office
Area of Interest
Miles
0
0.5
1

WHISKEY RIDGE CONSERVATION EASEMENT

APPENDIX D – WILDLIFE-FRIENDLY FENCE GUIDELINES

The complete guidelines will be published in the final Whiskey Ridge Conservation Easement 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/