Region One
490 North Meridian Road
Kalispell, MT 59901

DECISION NOTICE
and
Finding of No Significant Impact
for the

Lost Trail Conservation Easement

November 19, 2020

Description of Proposed Project

Montana Fish, Wildlife and Parks (FWP) proposes the purchase of a conservation easement to protect approximately 7,256 acres of important timberland and wildlife habitat in northwestern Montana near Marion. This single block of land shares nearly seven miles of border with the 7,876-acre U.S. Fish and Wildlife Service (USFWS) Lost Trail National Wildlife Refuge (NWR) and 4,093 acres of Wetland Reserve Program easements held by the Natural Resources Conservation Service. It is also within the newly proposed USFWS Lost Trail Conservation Area. The proposed conservation area would authorize the USFWS to acquire up to 100,000 acres of conservation easements from willing sellers within the designated boundary. This project consists of the ridgetop and lands sloping down to Dahl Lake and the sensitive wetland areas of the refuge, so conservation of these lands would help protect the water quality so important to the migratory birds and other wildlife species using the Lost Trail NWR.

The property is part of the approximately 630,000 acres purchased by SPP Montana, LLC (SPP) from Weyerhaeuser in December 2019. The proposed conservation easement would preclude development, protect important wildlife habitat and key landscape connectivity, and provide permanent public access and associated recreational opportunities.

The proposed project would protect habitat for two large elk herds. One of these elk herds is highly migratory moving north from the Flathead Indian Reservation to this property and eventually to an area on the Flathead National Forest just west of Whitefish. The project area includes the north slope of Dredger Ridge, a favorite walk-in elk hunting area which currently provides over 400 days of public hunting access. This property is also habitat for grizzly bear and Canada lynx, species listed as threatened under the Endangered Species Act. These species, as well as other highly mobile species, use this area as a movement corridor linking Glacier National Park to the Cabinet Mountains Wilderness.

Montana Environmental Policy Act (MEPA) Process and Public Involvement

FWP released a draft environmental assessment (EA) for public review on October 9, 2020, and asked for public comment through November 8, 2020. FWP held a public hearing on October 28, 2020, at 7:00 p.m. FWP ran legal ads describing the proposed project, the availability of the draft EA, and the public hearing information in the *Flathead Beacon, Daily Inter Lake, The Western News,* and *Helena Independent Record*. FWP also mailed postcards to neighboring landowners. The draft EA was posted on FWP's official website and was also available at the Region One headquarters in Kalispell and online for people with internet access or through internet service at public libraries.

During this public review period, Green Diamond Resource Company contacted FWP to inform us they would be purchasing 291,000 acres from SPP, including the 7,256 acres that is the subject of this proposed conservation easement. FWP will still be closing this conservation easement with SPP as proposed in the draft EA, and the pending transfer of ownership does not change any aspect of the environmental assessment other than the eventual owner of this property.

The EA evaluated the potential impacts of the following alternatives:

1. Alternative A: Proposed Action

FWP would acquire a conservation easement on approximately 7,256 acres of forestland near Marion, Montana owned by SPP Montana, LLC. SPP would continue to own and manage the land using sustainable forest practices while protecting the valuable fish and wildlife habitat found on the property and continuing to allow compatible public recreation opportunities.

2. Alternative B: No Action

If the project is not completed as proposed, SPP would continue to own the property without any of the restrictions of the proposed conservation easement. They may, at some future time, change their public access policies or decide to sell some or all of this land depending on company priorities and market conditions.

Summary of Public Comment

FWP received 15 public comments with 14 of those in support of the acquisition of a conservation easement on the property. Below is a summary of issues and concerns raised by commenters and FWP's response to each:

- One comment letter raised the following concerns/issues: 1) that there be no additional open driving roads and that "the loggers will not take advantage and let themselves and vehicles in during hunting season to 'work' and either scare game off from hunters or hunt the intended game with the ease of a vehicle to get it out" and 2) that it would be good to have a few other access points for those hunting predators since the Lost Trail southern road cannot be used to take predators out on.

  FWP Response:
  Regarding concern #1, the proposed Multi-Resource Management Plan assures that only non-motorized recreational use of the conservation easement property is allowed. The conservation easement allows the owner to conduct forest management activities during hunting season so there may be people and equipment on the property with the potential to displace game animals. However, the conservation easement reserves all hunting rights for the benefit of the

public so loggers or other private interests will not be allowed to access the property for hunting by driving behind gates that are closed to the public.

For concern #2, it is true that the USFWS does not allow predator hunting on their property or transport of these animals legally taken elsewhere across their property. This conservation easement will not change the current access for removing any legally hunted animal on neighboring properties, only the specific 7,256 acres that would be subject to this proposed conservation easement. There is currently county road access on the west side and logging road access on the south side of Dredger Ridge, as well as Bear Springs Road off of Lost Prairie Road, that can be accessed for removing legally hunted animals.

- A thirteen-page comment letter was received from WRH Nevada Properties, LLC, ("WRH") from Rexburg, Idaho, a company which owns mineral rights underlying approximately 95% the area proposed for the conservation easement. FWP will reply directly to WRH in more detail. For purposes of this EA, however, FWP will generally respond to what it considers the essential issues raised in WRH's comments. Those issues fall broadly into three categories: 1) the impact of the conservation easement on WRH's subsurface mineral rights; 2) the impact of WRH's "buyback" surface rights; and 3) the determination by HydroSolutions that the likelihood of mineral development on the property is "so remote as to be negligible."

  FWP Response: With respect to the first issue – the impact of the conservation easement on WRH's subsurface mineral rights – FWP has previously indicated that it agrees with WRH's characterization that the mineral estate is the dominant estate under Montana law. FWP's position has not changed. In its comments WRH has generally characterized Montana law regarding mineral rights development accurately. Likewise, as WRH correctly notes "(Southern Pine Plantations) has the right to sell or grant SPP's surface estate to whomever SPP chooses...." By granting a conservation easement to FWP, SPP is granting some of its rights (principally the right to develop the property) to FWP – exactly what WRH concedes SPP can do.

  Elsewhere, however, WRH alleges that the conservation easement would be "directly adverse" to their mineral rights. WRH goes on to state that the conservation easement "would place negative restrictions or prohibitions on the type and magnitude of development and will impact the value of WRH's mineral estate." This characterization of the conservation easement's impact on WRH's mineral rights seems at odds with WRH's other characterizations of their mineral rights as "dominant." As WRH has stated – and FWP concurs – Montana law guarantees a mineral owner the right to occupy the surface estate in order to access and develop their minerals. As grantee of the conservation easement, FWP only acquires rights that otherwise belong to SPP. If SPP cannot prevent WRH from accessing their rights to any underlying minerals – and all parties agree they cannot – neither can FWP as holder of the conservation easement. A conservation easement on the surface estate is not only within SPP's right to grant as WRH notes, it also cannot prevent the owner of the mineral estate from developing their mineral rights.

  WRH's second primary issue is its "buyback" rights, which allow WRH to buy back surface rights on approximately 3,500 acres currently proposed for the conservation easement. To the degree

WRH is seeking to reserve those rights and put FWP on notice of them, FWP recognizes and acknowledges those rights.

Finally, WRH asserts that it has proprietary information showing that mineral development is likely under the property. Accordingly, they disagree with the conclusion of our contractor, HydroSolutions, that the potential for development of the mineral estate underlying the proposed conservation easement is "so remote as to be negligible." FWP has not seen this proprietary information. In any event, the conclusion of HydroSolutions was based on standard industry practice using recognized techniques and was consistent with FWP's practice in all its conservation easement projects around the state. FWP is entitled to rely on such standard research and conclusions of its contracted experts. That conclusion was accepted by the U.S. Department of Agriculture's Forest Legacy Program, which is funding the conservation easement.

FWP Recommended Alternative and Final Decision

In reviewing all the public comment and other relevant information, and evaluating the environmental effects, I recommend that the Fish and Wildlife Commission approve the purchase of a conservation easement for Lost Trail as proposed in Alternative A, the Proposed Action.

Through the public review process described above, the public raised some issues/concerns with the project, but all have been addressed in this decision document. FWP found no significant impacts on the human or physical environments associated with this proposal; therefore, the EA is the appropriate level of analysis and an environmental impact statement is not required.

Noting and including the responses to public comments, the draft EA will become the final EA and together with this decision notice will serve as the final documents for this proposal.

Jim Williams
Region One Supervisor

11/19/2020
Date