

**Montana Fish, Wildlife and Parks
Wildlife Division**

DRAFT ENVIRONMENTAL ASSESSMENT (EA)

ASH COULEE CONSERVATION EASEMENT PROPOSAL

I. INTRODUCTION

Montana Fish, Wildlife & Parks (FWP) proposes to purchase a conservation easement on the Ash Coulee Project property, consisting of approximately 3,400 acres of private land in Valley County northwest of Glasgow and near Vandalia. This property is composed of native shrub and prairie grasslands habitat that has been found to be critically important to wintering migratory antelope and serves as a key linkage between summer and winter ranges for migrating sage grouse. This conservation project reflects the desire of all parties to continue the landowner's agricultural operation, while maintaining and enhancing wildlife habitats. This easement would keep the property in private ownership and operation, preserve important wildlife habitats, and guarantee managed public access for hunting and other recreational pursuits.

II. AUTHORITY AND DIRECTION

Montana FWP has the authority under State law (87-1-201, Montana Code Annotated) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. FWP also has the authority to acquire land or interests in land for these purposes (87-1-209, MCA). As with other FWP property acquisition proposals, the Fish and Wildlife Commission must approve any easement proposal by the agency. This Environmental Assessment (EA) is part of that decision-making process.

III. LOCATION OF PROJECT

The Ash Coulee Project is located approximately 5 miles southeast of Hinsdale, MT. It consists of 3,400 total contiguous acres, lying on the south side of the Burlington Northern Railroad. A map of the property is included as Appendix I in this document.

IV. PURPOSE AND NEED FOR THE PROPOSED ACTION

The primary purpose of this action is to preserve the integrity of the native habitats and their traditional agricultural use and ownership. The primary habitats represented on the Ash Coulee Project property include riparian corridors, sagebrush and shrub grasslands, and plains grasslands. Critical winter range for mule deer and migrating antelope, and habitat that serves as migratory linkage for migrating sage-grouse, would be perpetuated by maintaining and improving existing habitat. In addition, wildlife use, including sharp-tailed grouse, mule deer,

white-tailed deer, mourning doves, several species of ducks, and a wide variety of native species of migratory birds, songbirds, small mammals, and bats, would be perpetuated.

A change in ownership of this property would likely result in the loss of FWP's ability to positively impact the habitat on this property. Numerous properties along the Milk River and associated uplands in Valley County have undergone both habitat and landownership changes. Only a small percentage of native habitats are left within the Milk River Valley including Cottonwoods and associated uplands and hardwood brushy cover.

A secondary result of this project is guaranteed public access to this land for hunting and wildlife viewing pursuits. Currently, free public hunting access is allowed by the landowner on the Ash Coulee Project property. Acquisition of this easement would ensure and promote public hunting and wildlife viewing on this property and provide additional access to the uplands associated directly with the Milk River.

V. DESCRIPTION OF PROPOSED ACTION

The proposed action is for FWP to purchase, hold and monitor a conservation easement on the Ash Coulee Project property. This easement would include 3,400 acres of the ranch. The total purchase price for the proposed easement would be \$772,000, which is based on a professional appraisal of the fair market value. FWP would also cost share fencing and water development materials required to implement the grazing system, and would pursue partnerships with other agencies and entities to help defray such costs. FWP's Habitat Montana would be the primary funding source for this project.

Specific terms of the easement in their entirety are contained in a separate legal document (Appendix II of this EA), which is the proposed "Deed of Conservation Easement". The document lists FWP and landowner rights under the terms of the easement, as well as restrictions on landowner activities. The rights of both parties and restrictions on landowner activities were negotiated with and agreed to by FWP and the landowner.

To summarize the terms of the easement, FWP's rights include the right to:

- (1) identify, preserve and enhance native habitats;
- (2) monitor and enforce restrictions;
- (3) prevent activities inconsistent with the land's conservation values;
- (4) ensure public access for the purpose of recreational hunting and wildlife viewing. Hunting access for all sex and age classes of game animals and game birds during all established seasons would be provided for a minimum of 350 hunter days each fall, and a minimum of 50 wildlife viewer days annually.

The landowner would retain all of the rights in the property that are not specifically restricted and that are not inconsistent with the conservation purposes of the proposed easement, including the right to:

- (1) pasture and graze this land in accordance with the grazing system described in the Management Plan (See Appendix III);
- (2) maintain water resources;

- (3) construct, remove, maintain, renovate, repair, or replace fences, roads and other non-residential improvements necessary for accepted land management practices; and
- (4) control noxious weeds.

The proposed easement would restrict uses that are inconsistent with the conservation purposes of the easement, including the following uses of the property:

- (1) control or manipulation of existing native vegetation, including cottonwood and green ash trees;
- (2) draining of wetland or riparian areas;
- (3) any subdivision;
- (4) cultivation or farming of existing native habitats;
- (5) outfitting or fee hunting;
- (6) mineral exploration, development, and extraction by surface mining techniques;
- (7) construction of permanent structures except as described above;
- (8) commercial feed lots;
- (9) establishment or operation of a game farm, game bird farm, shooting preserve, fur farm, menagerie or zoo;
- (10) commercial or industrial use, except traditional agricultural use;
- (11) refuse dumping

VI. DESCRIPTION OF REASONABLE ALTERNATIVES TO THE PROPOSED ACTION

The intent of this action on the Ash Coulee Project is to maintain this land as a traditional Montana working ranch, consistent with the landowner's intent to continue to own, operate and maintain the property. The landowner does not desire to sell the property to FWP. The only viable alternative reviewed in this EA is the "No Action Alternative".

1. No Action Alternative

If the FWP does not purchase a conservation easement to protect the Ash Coulee Project lands, the subject lands are expected for the time being to remain under current management practices. Currently, the land is managed as a working ranch and recreational access is managed through the Block Management Program. In the future, the current or subsequent landowners may choose to convert native rangeland to cropland, rural subdivision, or other forms of development. Also, current or future owners may not provide public access for hunting or wildlife viewing. Such changes would negatively impact the habitat and public recreation values of the land.

VII. EVALUATION OF IMPACTS ON THE PHYSICAL ENVIRONMENT

1. Land Resources

Impact of Proposed Action: No negative environmental impacts would occur as a result of this proposal. The terms of the proposed easement are structured to prevent adverse impacts on soils and vegetation. A grazing plan has been developed and would be implemented intended to enhance soil maintenance and productivity (Management Plan, Appendix III). Under the terms of the conservation easement, subdivision and development of the land, as well as cultivation would not be allowed. The proposed easement would ensure that the land's conservation resources are maintained.

No Action Alternative: Without terms of the proposed easement being structured to prevent adverse impacts on soils and vegetation, there would likely be no change in the short-term. However, if the land was developed or sold, disturbance of soils from more intense agricultural practices, residential development, and other commercial uses could occur.

2. Air Resources

Impact of Proposed Action: There would be no impact.

No Action Alternative: There would be no immediate impact.

3. Water Resources

Impact of Proposed Action: Current agricultural uses on the property have proven to be compatible with maintenance of water quality. However, positive impacts should be realized in surface and ground water as a result of improvements in soil condition and reduction of erosion by developing and improving rest rotation grazing systems and protecting riparian areas. Additional water improvements would be developed in order to improve livestock distribution, range conditions, and riparian vigor throughout the ranch. There would be no negative impact over what is currently associated with a working ranch operation.

No Action Alternative: There would likely be no impact in the short-term. However, if the land was developed or sold without conservation protection, there would be no assurances that over time the use of this property wouldn't change from ranching to some other use.

4. Vegetation Resources

Impact of Proposed Action: This action would result in a positive impact. The terms of the easement protect the quantity, quality and character of the native plant communities found on the property. The prescribed grazing program would

enhance and maintain the vigor and productivity of vegetation on the Ash Coulee Project. The proposed action also ensures the land's primary use in the future would be livestock grazing, which depend on maintaining a productive vegetative resource. Noxious weed management would be an important component of a successful ranch operation.

No Action Alternative: Without protections 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. However, if the land was developed or sold, there would be no conservation measures in place to maintain the productivity of the land. Future impacts to native vegetation and overall productivity of the land could be significant. In addition, there would be no long-term protection of existing native plant communities.

5. Fish/Wildlife Resources

Impact of Proposed Action: This action would benefit a variety of wildlife. The terms of the easement conserve the land as agricultural and open space to provide year-round habitat for many of Montana's native wildlife species. Wildlife and agriculture can coexist well together as demonstrated in Montana today. Conserving native plant communities is important for most of Montana's indigenous wildlife species. Implementation of a rest-rotation grazing system would ensure adequate quantity and quality of forage and cover for a variety of wildlife species. No adverse effects are expected on the diversity or abundance of game species, non-game species or unique, rare, threatened or endangered species. There would be no barriers erected which would limit wildlife migration or daily movements. There would be no introduction of non-native species into the area.

No Action Alternative: Without terms to conserve the land as agricultural and open space to provide year-round habitat for many of Montana's native wildlife species, there would likely be no change in the short-term. However, there would be no provisions preventing development for recreational purposes. If this occurs, open space would diminish over time resulting in significant long-term negative effects to most species of wildlife. There would be no provisions preventing activities such as the construction of fences or other barriers that could inhibit wildlife movement. Wildlife species would be negatively impacted by the conversion of existing native vegetation to other uses.

6. Adjacent Land

Impact of Proposed Action: No negative impact is expected. Existing fences would be maintained along the perimeter of the Ash Coulee Project. Public hunting access would help in managing wildlife populations to lessen agricultural damage to this and adjacent ranches. FWP would work with any adjacent landowners that perceive possible impacts.

No Action Alternative: There would not be a change in the short-term, but if the land was developed or sold, it could result in severely limited wildlife management practices (hunting) resulting in higher instance of wildlife caused agricultural damage to adjacent private lands.

VII. EVALUATION OF IMPACTS ON THE HUMAN ENVIRONMENT

1. Noise/Electrical Effects

Impact of Proposed Action: No impact would occur over existing conditions.

No Action Alternative: There would be no immediate impact.

2. Land Use

Impact of Proposed Action: There would be no impact with the productivity or profitability of the ranch, or conflicts with existing land uses in the area. The traditional uses of the land would be maintained under the Proposed Action.

No Action Alternative: If the land was developed or sold, it could affect habitat quality, current wildlife numbers, and public recreational opportunity

3. Risk/Health Hazards

Impact of Proposed Action: No impact would occur.

No Action Alternative: No impact would occur.

4. Community Impacts

Impact of Proposed Action: There would be no anticipated negative impacts to the community. The scenic values and open character of this property would be maintained and enjoyed by the community in perpetuity. Employment opportunities within the counties would not be affected by this project. Local schools would not be affected by this project. Private businesses supplying goods and services to the community would not be affected by this project.

No Action Alternative: Without protection of the scenic values and open character of this property being maintained for enjoyment by the public in perpetuity, hunting access and public access on this ranch would likely be restricted in the future, negatively affecting traditional recreational opportunities in the area.

5. Public Services/Taxes/Utilities

Impact of Proposed Action: There would be no effect on local or state tax bases or revenues, no alterations of existing utility systems or tax bases of revenues, nor increased uses of energy sources. As an agricultural property, the land would continue to be taxed as it has before. Tax revenue available for operation of tax jurisdictions within the county would not be impacted by this project. Services required to be provided by local governments would be unaffected by this project.

No Action Alternative: No immediate impact would occur. If rural subdivision did occur in this area in the future, greater demands would be placed on county resources, but could also increase local tax revenues.

6. Aesthetics/Recreation

Impact of Proposed Action: There would be no impact. The easement would maintain in perpetuity the quality and quantity of recreational opportunities to include hunting and wildlife viewing, and scenic vistas and would not affect the character of the neighborhood.

No Action Alternative: There would be no guarantee of continued public access to the land or across the land for recreational purposes. If rural subdivision and/or other developments occur it would reduce the aesthetic and recreational quality of the area. Future landowners would not be required to maintain public recreational access.

7. Cultural/Historic Resources

Impact of Proposed Action: No impacts are anticipated. However, any surface disturbance associated with grazing improvements to be placed on state and federal land would be subject to any legally required cultural review.

No Action Alternative:

No impacts are anticipated. However, any surface disturbance associated with grazing improvements to be placed on state and federal land would be subject to any legally required cultural review.

IX. SUMMARY EVALUATION OF SIGNIFICANCE

The proposed action should have no negative cumulative effect. However, when considered on a larger scale, this action poses a substantial positive cumulative effect on wildlife, range

management, riparian habitats and open space. The ranch would remain in private ownership, continue to contribute to agricultural production and thus contribute to the local economy. The "No Action Alternative" would not preserve the diversity of wildlife habitats in perpetuity. Without the income from the proposed conservation easement, the current landowner or any successor owners might consider other income options, potentially including either selling the property or subdividing parts of it or breaking native prairie for farming. Such land uses could directly replace wildlife habitat and negatively impact important public access to the ranch.

X. EVALUATION OF NEED FOR AN EIS

Based on the above assessment, which has not identified any significant negative impacts from the proposed action, an EIS is not required and an EA is the appropriate level of review. The overall impact from the successful completion of the proposed action would provide substantial long-term benefits to both the physical and human environment.

XI. PUBLIC INVOLVEMENT

The public comment period will begin on Monday June 10, 2020 and run through Friday July 10, 2020. Written comments may be submitted to:

Montana Fish, Wildlife and Parks
Attn: Ash Coulee Conservation Easement
1 Airport Road
Glasgow, MT 59230

Or comments can be emailed to dhenry@mt.gov.

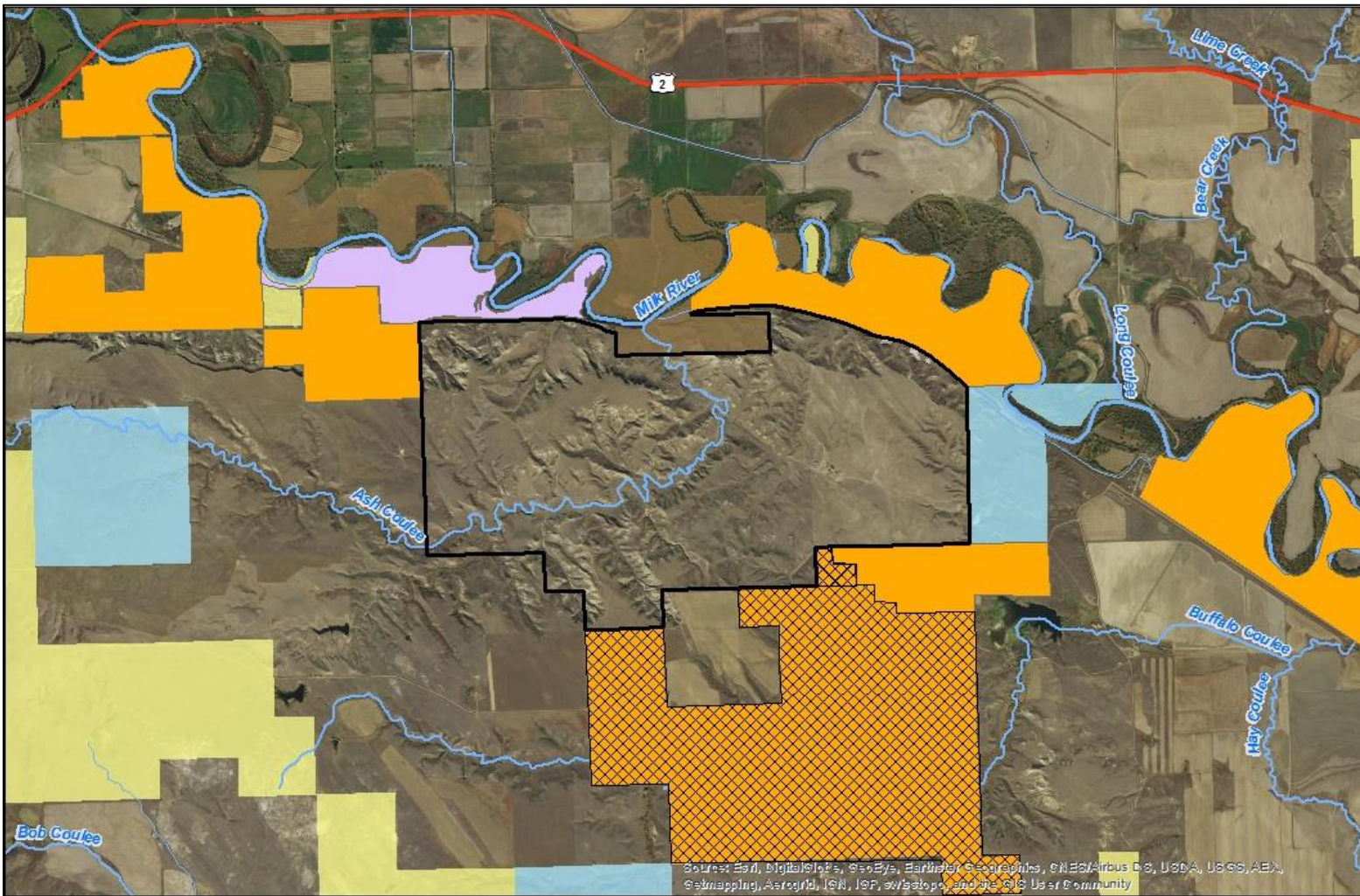
In addition, there will be a public hearing in Glasgow on June 29 at the Cottonwood Inn at 6:30 p.m..

XII. NAME, TITLE AND PHONE NUMBER OF PERSON RESPONSIBLE FOR PREPARING THIS EA

Kelvin Johnson, Wildlife Habitat Biologist, and Drew Henry, Wildlife Biologist
Montana Fish, Wildlife, and Parks
1 Airport Road
Glasgow, MT 59230
406-228-3700.

APPENDIX I

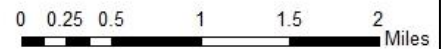
Ash Coulee



Legend

- Ash Coulee Boundary
- Buffalo Coulee Conservation Easement
- Vandalia WMA
- Block Management

Ash Coulee Conservation Easement Proposal



APPENDIX II

ASH COULEE

DRAFT DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this _____ day of _____, 2020, by Carroll Companies, Inc., and Carroll Family Limited Partnership (“Landowners”), both North Carolina entities in good standing and registered to do business in Montana, whose mailing address is P.O. Box 1549, Boone, NC 28607, 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 D - Map Identifying Designated Routes and Parking Areas

Exhibit E – Water Rights

I. RECITALS

- A. The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat and wildlife corridors 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. Landowners are the owners of certain real property in Valley County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Land consists of one parcel, depicted in Exhibit B.
- C. The Land possesses significant land values, native plants, fish and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.
- 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 viewing. Landowners and the Department specifically intend that this Easement afford public recreation and wildlife management.
- G.** The Department recognizes that the Land contains important wildlife habitat, including wildlife corridors and connectivity areas, native shrub and mixed grassland habitats and winter range for pronghorn antelope and mule deer, that is worthy of perpetual conservation and has contributed the funds necessary to acquire this Easement through its Habitat Montana Program with contribution from other partners such as the Montana Fish and Wildlife Conservation Trust.
- H.** 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, 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 restore upon mutual agreement with Landowners, in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of wildlife, fish and plant species, and to prevent any use that will interfere with the Conservation Values of the Land. 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 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 Landowners may result in an evolution of agricultural, 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 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 Landowners, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, fisheries, fish and wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects, 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 Landowners. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and 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 recreational access for hunting, trapping, fishing, hiking and wildlife viewing on the Land and across the Land to adjacent public land and to adjacent land open to the public 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. When demand exists and upon request by members of the public, subject to regulations set by the State of Montana, Landowners must permit a minimum of 50 non-

hunting recreationists on the Land per year (“recreation days”) on a non-preferential basis.

c. When demand exists and upon request by members of the public during the general hunting seasons set by the State of Montana, Landowners must permit a minimum of 350 hunters on the Land per year (“hunter days”) on a non-preferential basis.

1. A “hunter day” is defined as one hunter hunting on the Land for one day, or any part of one day, measured from Midnight to Midnight.
2. Landowners, Landowners’ immediate family, Landowners’ shareholders, partners, employees, and immediate family, partners, and employees of 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.
3. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
4. 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.
5. Recreational access will be detailed in a mutually agreed-upon manner defined in the Management Plan.

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

e. The grant of hunting and recreation 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.

f. 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 Designated Routes and shall park in those designated areas referred to as Parking Areas 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 Routes for any purpose, except with the express permission of Landowners or Landowners’ agent. Upon agreement with Landowners, the Department may open additional designated routes and parking areas, as allowed for in the Management Plan. The public may travel from the Parking Areas or from other publicly accessible areas to recreate 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 from the Parking Areas to access adjacent publicly accessible lands. Upon agreement with Landowners, the Department may relocate, or substitute Designated Routes or Parking Areas identified in Exhibit D.

- 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, Conservation Values or 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. All public access will be directed by the Management Plan. Those members of the public not participating in hunting, such as hiking and wildlife viewing, will not count toward the minimum hunter numbers outlined in subparagraph 5.c, above.
- i. Except as specifically set forth in this Paragraph II.B.5, this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.
- j. 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 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 themselves and to their heirs, successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this 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 schematic diagrams of the pasture systems to be used through the years. Any changes in the Management Plan must be adopted in a manner consistent with Paragraph

II.E in this Easement, and any grazing management so adopted or revised must continue to conform to the minimum grazing system as described in Exhibit C. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other class of livestock may substitute for or supplement cattle with **Prior Approval** of the Department. Landowner retains the right to graze no more than six horses without **Prior Approval**.

2. **Agricultural Activities.** The right to use the Land and to use equipment on the Land for agricultural purposes and to manage habitat for wildlife, all in a manner consistent with the following provisions:
 - a. The areas cultivated at the time the Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan. If the cultivated land is used for grazing, livestock grazing will comply with the terms of this Easement and the Management Plan.
 - b. Areas designated in the Baseline Report as “rangeland” and may be used for livestock grazing, consistent with the provisions of Paragraph II.C.1.
3. **Leasing the Land.** The right to lease the Land to another agricultural operator for agricultural purposes, provided that (i) a written lease must be entered into by Landowners and the lessee(s); (ii) the lease must require the lessee to follow the terms of this 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 its terms and the Management Plan by lessee(s). Landowners must give **Prior Notice** of any proposed lease of the Land or of a portion of the Land, 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, 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 retain the following rights pertaining to human-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 wildlife 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.

7. **Roads.** To construct new and maintain existing roads and bridges or waterway crossings in connection with farming, ranching or timber management as herein permitted, and for residential access. Any road, bridge or waterway crossings constructed for one or more of such purposes shall be sited and maintained so as to minimize adverse impact on the Conservation Values. Any new road construction that requires importing surface materials or grading (but not including maintenance of existing roads) shall be subject to the written **Prior Notice** to and **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department's approval shall be contingent on confirmation that (a) the road's intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values. The Landowners' written notice and 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 and control of noxious weeds on exposed cuts, fills and banks is required on any new construction.

8. **Noncommercial Recreational Use.** Landowners reserve to themselves and to their immediate family and shareholders 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.** The right to maintain, repair, replace or 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**, the right to 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**, the right to construct new Utilities and to grant any associated Utility right-of-way easement serving adjacent properties. The line must follow a route from existing utility services and/or existing roads that will minimize impact to the Conservation Values. Prior to the construction of new Utilities, Landowners shall submit to the Department a Utility Plan as provided in Paragraph II.C.8.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 or expanded Utility and associated right-of-way easement must be memorialized in a written agreement that is recorded in the public records of affected county, signed by Landowners, the Department and the utility service provider prior to construction.

10. Renewable Energy Generation for Use on the Land. With the Department’s **Prior Approval**, the right to construct wind, solar, hydropower and other types of renewable energy generation facilities (“renewable energy production”) solely for uses on the Land, except that any incidental surplus energy may be sold commercially for use off the Land or credited to Landowners’ utility service. Design and location of facilities and fixtures associated with renewable energy generation are subject to **Prior Approval**. In particular, proposed hydropower generation may not occur if riparian or wetland habitats are impaired.

11. 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.

12. 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. Landowners may temporarily close a private Designated Route to vehicular use if it becomes impassible to vehicles or if continued public motorized use threatens the Conservation Values.

13. Oil and Gas Exploration, Extraction, and Development.

a. **Third Party Mineral Rights.**

- i. Landowners and the Department acknowledge that, at the time this Easement is executed, third parties own or lease all, or a portion of, the oil, natural gas, or any other mineral substances under the Land (“Third Party Mineral Rights”). Nothing contained in this Easement shall limit, modify or otherwise affect the Third Party Mineral Rights, or the rights of the third parties, their agents or assigns, from selling (all or a portion), accessing or utilizing the Third Party Mineral Rights. Nothing contained in this Easement shall be deemed to be a conveyance of any Third Party Mineral Rights or any rights to access or utilize the Third Party Mineral Rights. Landowners and the Department recognize that the owners of the Third Party Mineral Rights have the right to enter upon the Land as allowed by law.
 - ii. Landowners must notify the Department as soon as practical after Landowners become aware of any proposed exploration or extraction activity of a Third Party Mineral Rights owner. Landowners and the Department shall work together to develop a plan to discuss with the owner of a Third Party Mineral Right about how to best mitigate any potential impact on the Land and to the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowners and the Department shall subsequently cooperate in an effort to encourage the Third Party Mineral Right owner to adopt recommended mitigating measures in its exploration and development activities. Nothing herein shall require Landowners to indemnify the Department for exploration or extraction activity by any owner of a Third Party Mineral Right.
 - iii. In the event a proposed amendment to this Easement would impact Third Party Mineral Right owners, the Department agrees to make a reasonable effort to notify the majority owners of Third Party Mineral Rights and provide said owners the opportunity to comment on the amendment.
- b. **Landowners’ Mineral Rights.** 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 or dredging method, from the Land is prohibited. Landowners shall notify the Department if any subsurface mining or exploration is proposed. Landowners and the Department shall mutually prepare a plan that will minimize the impacts to the Land.

14. Subdivision and Conveyance of Land Ownership.

- a. For the purposes of this Easement, the Land shall be considered to be comprised of one unit, as described in Exhibit A and shown in Exhibit B. Landowners and the Department mutually intend that the Land shall be maintained in unified title as a single unit. Further, for the purposes of this Easement, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the 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 consistency with the provisions of this Paragraph II.C.14.

d. With **Prior Approval**, the restrictions contained in this Paragraph 14 do not prohibit Landowners from entering into a *de minimus* boundary line adjustment with a neighboring landowner to address encroachments.

15. Industrial and Commercial Uses. The right to:

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

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

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. 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 the agricultural activities and other land uses specifically allowed by this Easement or as specifically provided for in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, Landowners do not require Prior Approval to remove trees and other woody vegetation that pose a threat to human safety, travelways or structures.

2. Wetland and Riparian Areas.

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 human-made 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.

3. **Subdivision.** The legal or *de facto* division or subdivision of the Land is prohibited. For the purposes of this Easement the legal or *de facto* division or subdivision of Land shall include, but shall not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. 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 in unified title as a single unit. 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.

4. **Water Rights.** Landowners will not transfer, encumber, sell, lease or otherwise separate water rights from the Land, including any water rights existing at the time of execution of this Easement as shown in Exhibit E, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by Landowners after execution of this Easement. If Landowners receive notice or becomes 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.
5. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as allowed in Paragraph II.C.10 is prohibited.
6. **Roads.** The construction of roads in a manner other than as allowed in Paragraph II.C.7 is prohibited.
7. **Land Cultivation.** The cultivation or farming of any portion of the Land is prohibited, except as provided in Paragraph II.C.2 and except for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
8. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, wildlife viewing or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting, fishing, wildlife viewing operation or other recreational purpose, or charging fees (sometimes

known as trespass fees) for the same on the Land or for access across the Land to reach public land or other private land, is prohibited.

9. **Mineral 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 allowed in Paragraph II.C.13. Any other mineral exploration, development, or extraction is prohibited.
10. **Buildings and Structures.** The construction or placement of any structure or building on the Land is prohibited, other than as expressly allowed in Paragraphs II.C.4, II.C.5, II.C.8 and II.C.12.
11. **Residential Use.** Residential use of the Land or any portion thereof is prohibited other than as allowed in Section II.C.
12. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent 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.
13. **Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited; however, 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.
14. **Commercial and Industrial Use.** Except as allowed in Section II.C, the establishment or operation of any commercial or industrial uses of or activities on the Land, including but not limited to, guest ranching, outfitting, any small business, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product other than products to be grown or produced on the Land in connection with agricultural purposes expressly permitted under Section II.C of this Easement, is prohibited.
15. **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 allowed in Paragraph II.C.5, are not considered waste disposal.

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

E. MANAGEMENT PLAN

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

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

F. EASEMENT BASELINE REPORT

The parties agree that an Easement Baseline Report (“Baseline Report”), including photographs, maps, surveys, studies, reports, and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowners, and acknowledged by them 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 Landowners intend to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowners 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 60 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.
- 3.** If the Department fails to respond to Landowners' notice of Prior Approval within 60 days of its receipt of the notice, the proposed activity shall be deemed to be consistent with the terms of this Easement.
- 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 virtue of 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 Landowners: Carroll Family Limited Partnership
P.O. Box 1549
Boone, NC 28607

With a copy to: Paul Miller pmiller@clgco.com

To Department:
Montana 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 6 Supervisor
Montana Fish, Wildlife, & Parks
1 Airport Road
Glasgow, MT 59230

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

H. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Department determines that Landowners or either Landowner have or has violated the terms of this Easement, or if Landowners or either Landowner undertake(s) any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the applicable 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 Landowners or either Landowner:

1. Fail(s) to cure the violation within 30 days after receipt of notice from the Department, or
2. Under circumstances where the violation cannot reasonably be cured within a 30 day period, fail(s) to begin curing the violation within the 30 day period (or, within 30 days of Landowner's receipt of notice from the Department, if Landowners fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin), or

3. Fail(s) to continue diligently to cure such violation until finally corrected,

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

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

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. 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.

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.

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 Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of

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

Costs of restoration of the Conservation Values that are attributable to Landowners' or either Landowner's violation or breach of the terms of this Easement shall be borne by the Landowners jointly and severally, unless a court orders otherwise or unless the parties mutually agree to share such costs. Attorneys' fees and reasonable costs of suit that are incurred by a prevailing party in enforcing the terms of this Easement against the other party, including recovery of costs and

damages if authorized under Montana law for temporary or preliminary injunctive relief that is improvidently granted, shall be borne by the non-prevailing party if so ordered by a court.

If a dispute arises between Landowners or either Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowners or either Landowner agree(s) in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner(s) or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 business days of receipt of such referral, Landowner(s) 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 either Landowner, or their agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors.

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

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the 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 50 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 50 percent of the unencumbered value of the real property and the Department shall be entitled to receive 50 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 Purposes of this Easement.

K. SUBORDINATION

If at the time of conveyance of this Easement, the Land is subject to two mortgages or other security interests, in favor of Independence Bank – Glasgow, PO Box 552, Glasgow, MT 59230, recorded on Dec. 28, 2001, in Book 196, Page 556, Public Records of Valley County, Montana; and in favor of Independence Bank – Glasgow, PO Box 552, Glasgow, MT 59230 (“Lienholder”), recorded on Sept. 30, 2003, in Book 665, Page 10, Public Records of Valley County, Montana (collectively, “Mortgages” and “Lienholder”). 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 mortgages or other security interests 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 heirs, 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 Valley County.

N. RECORDING

The Department shall record this instrument in a timely fashion in the official records of Valley 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, and each Landowner, represent(s) and warrant(s) that, after reasonable investigation and to the best of their knowledge:

1. Each Landowner has clear title to its portion of 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. No pending or threatened litigation exists 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 this Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M above.

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

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

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

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

8. Subordination. No provision of this Easement shall 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 Landowners 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: LANDOWNERS

Carroll Companies, Inc.

By: _____
Sterling Carroll
President

Date

Carroll Family Limited Partnership

By: _____
Sterling Carroll
President of Carroll Trading
Co., General Partner

Date

EXHIBIT A – LEGAL DESCRIPTION

Property owned by Carroll Companies, Inc.:

Township 30 North, Range 37 East, M.P.M., Valley County, Montana

Section 7: Lots 6 and 9 and SW $\frac{1}{4}$ NE $\frac{1}{4}$, all lying south of Railroad right of way.

Property owned by Carroll Family Limited Partnership:

Township 30 North, Range 36 East, M.P.M., Valley County, Montana

Section 11: Lots 9, 10, N $\frac{1}{2}$ SE $\frac{1}{4}$

Section 12: Lots 13, 14, 15, 16, 17, N $\frac{1}{2}$ SW $\frac{1}{4}$, excepting therefrom all Railroad rights of way

Section 13: All

Section 14: E $\frac{1}{2}$

Section 24: NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$

Township 30 North, Range 37 East, M.P.M., Valley County, Montana

Section 7: Lots 10, 14, 15, 16, 17

Section 8: All that part of NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ SW $\frac{1}{4}$ lying south of Northern Railroad right-of-way; S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 17: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$

Section 18: Lots 1, 2, 3, 4, 5, 6, 7, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$

Section 19: Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$

-- END OF LEGAL DESCRIPTION --

EXHIBIT B – CONSERVATION EASEMENT BOUNDARY

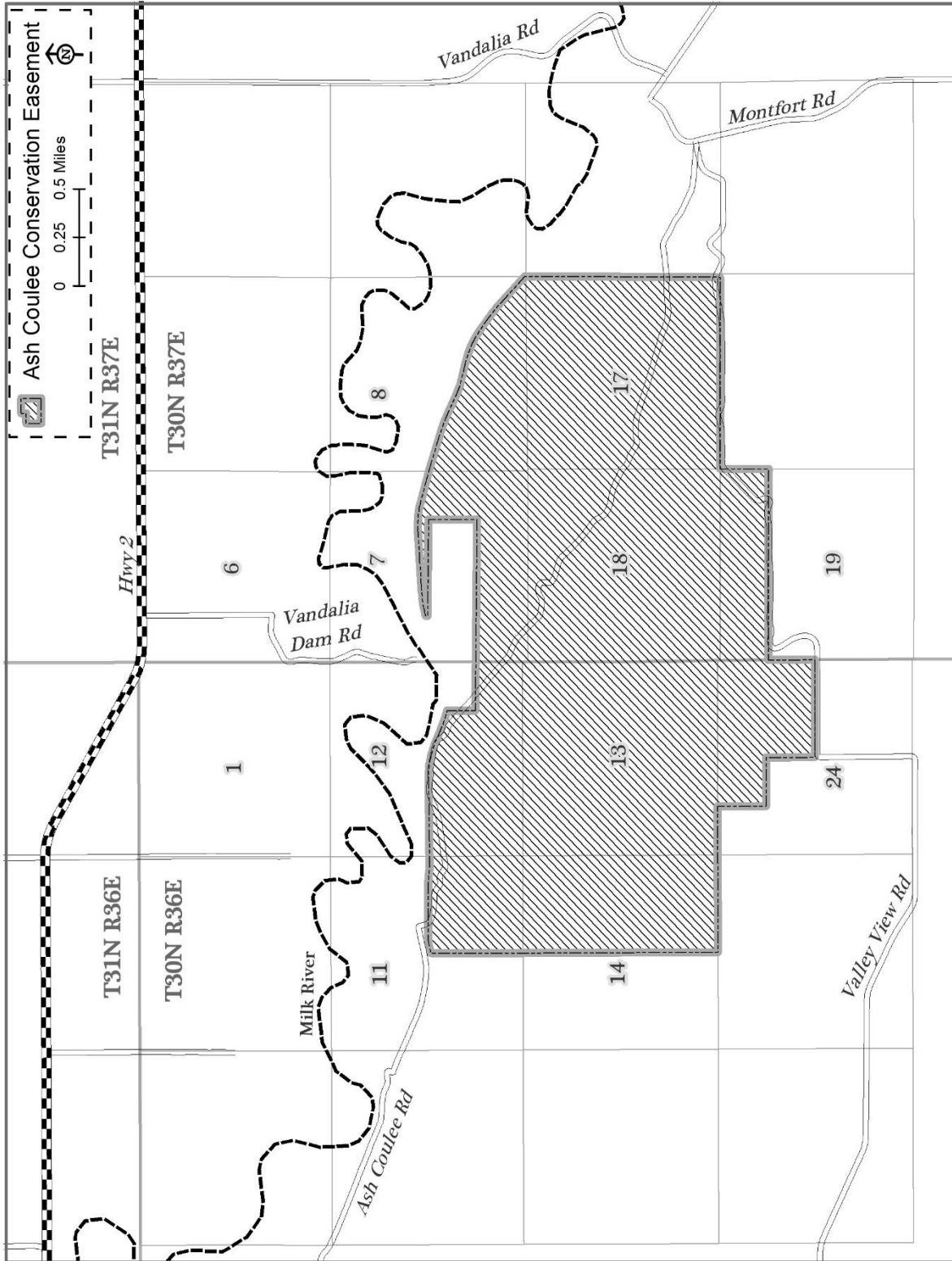


EXHIBIT B

EXHIBIT C

FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

The following grazing standards represent the minimum required by FWP of a Landowners 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 Landowners might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, Landowners 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 Landowners'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. Landowners'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 Landowners'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 Landowners'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 Landowners 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 Landowners 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 Landowners is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and Landowners will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.

EXHIBIT D

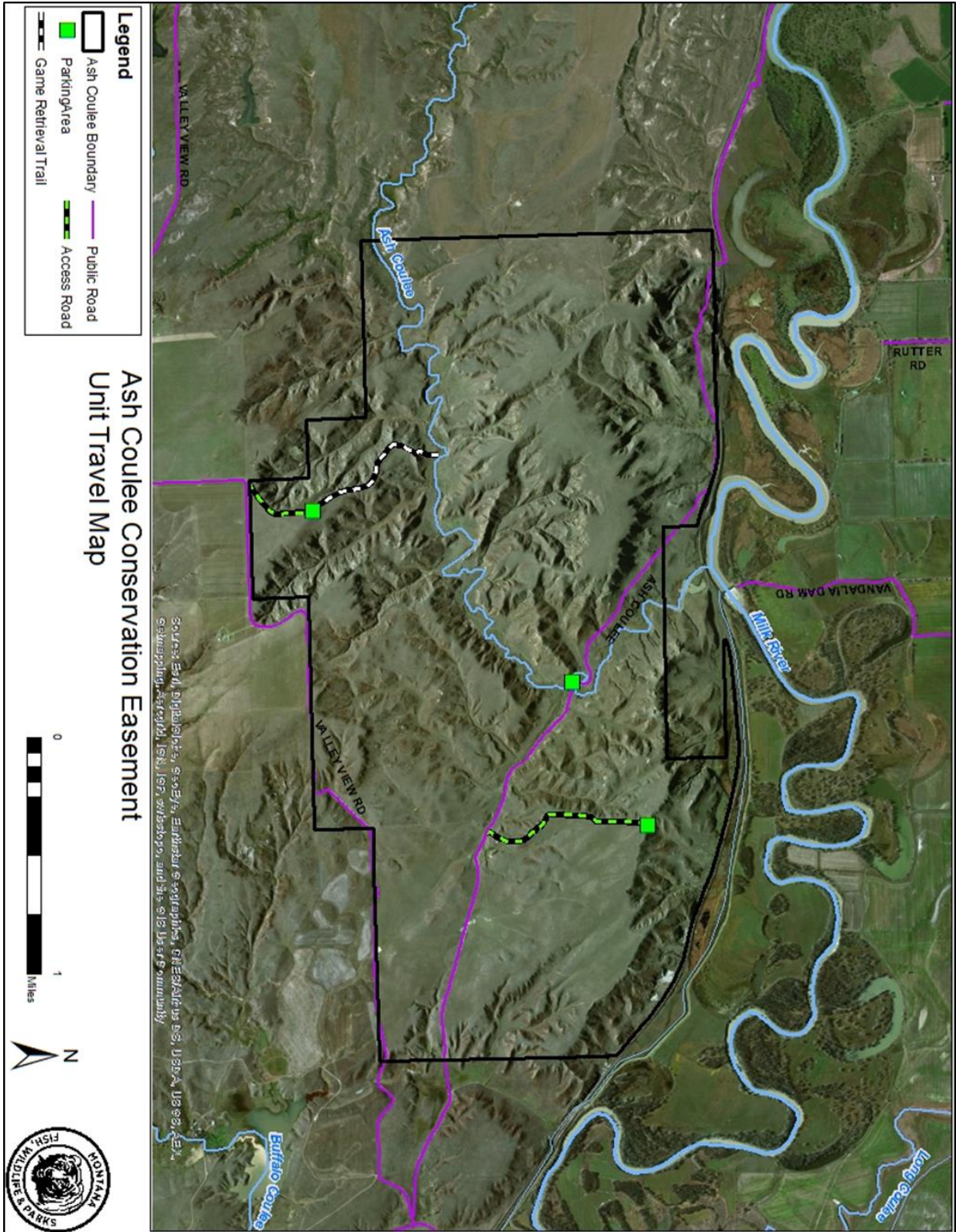


EXHIBIT E

TBD

APPENDIX III

Ash Coulee Conservation Easement Draft Management Plan

A. INTRODUCTION

This Management Plan, dated as of _____, 2020, is entered into by the legal landowners as identified in the Deed of Conservation Easement; whom shall hereafter be referred to as the “Landowner”. This management plan provides terms of agreement between the Landowner and Montana Fish, Wildlife and Parks, hereafter referred to as “FWP” for implementing the Ash Coulee Conservation Easement. The conservation easement (CE) is a legal framework established to conserve approximately 3,400 acres of deeded land. The ranch boundary also includes 160 acres of Bureau of Reclamation (BOR) property. All 3,400 acres of the deeded land is native shrub and prairie grassland habitat. The private lands include 4 miles of Ash Creek, that bisects this project. The resource values of this property are considerable, including productive riparian communities, grassland complexes, sagebrush communities, and prairie streams. These habitats are recognized as Focal Priorities for conservation in “*Montana’s State Wildlife Action Plan, 2015.*” The “Plan” is available from Montana Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, MT 59620, or by internet at: <http://fwp.mt.gov/fishAndWildlife/conservationInAction/swap2015Plan.html>.

Primary objectives of the CE include: protection and enhancement of the upland and riparian habitat associated prairie streams that run through Ash Coulee; conserve the grassland and sagebrush communities; continue to provide public access, to include the use of a defined travel plan; and maintain desired wildlife populations.

Because hunters are funding this CE, land management and conservation will emphasize habitat for game species, based on habitat availability and potential. In the riparian community the primary game species include: whitetail deer, ring-necked pheasants, mourning doves, and waterfowl. In the grassland complexes and sagebrush communities, game species include: mule deer, antelope, sage grouse, and sharp-tailed grouse.

The Landowner and FWP intend to phase-in the grazing portion of this management plan to allow time for installation of the necessary range improvements. After the CE closes, the landowner can continue historic grazing systems for a period of 3 years. During this 3-year period, installation of the necessary range improvements as detailed in Table 3 will be completed. After this 3-year period, the grazing plan detailed in Exhibit A will be implemented.

This Management Plan details how CE terms will be applied on the ranch under current circumstances. Whereas CE terms endure in perpetuity, the annual operation details of the Management Plan can be adjusted through amendment or revision as conditions or situations on the land change. Therefore, the Management Plan is a living document, to be reviewed periodically by FWP and the Landowner, and to be amended as needed, upon written agreement of both parties. Its function is to detail strategies for land management, primarily conducted by the Landowner, to ensure consistency with the terms and intent of the CE. A principal strategy is annual or more frequent meetings between both parties and field monitoring by FWP to check on compliance with both the CE terms and the operation details of this Management Plan. Finally, if

details in this or future management plans are found to conflict with the CE, the CE terms prevail.

B. GOAL, OBJECTIVES, PROBLEMS, AND STRATEGIES

GOAL: The goal of this management plan is to define and implement specific management actions that support the Ash Coulee CE. The CE is intended to conserve and enhance riparian habitat and associated uplands, sagebrush and grassland complexes, conserving the overall integrity of these lands in perpetuity. Through implementation of CE terms, the quality and amounts of native habitats, and wildlife potential shall be maintained while allowing compatible agricultural land uses. Further, the CE provides for defined hunter, and wildlife viewing recreation.

Objective 1. Maintain and improve grassland, shrubland and riparian vegetation habitats for the benefit of wildlife and livestock, while positively impacting the traditional land uses.

Strategy 1a. The Landowner will implement the 3-pasture rest-rotation grazing plan for the Ash Coulee Unit as described in Exhibit A.

Strategy 1b. The Landowner 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.

Strategy 1c. The Landowner will implement and maintain the range improvements as described in Exhibit A.

Objective 2. When demand exists, provide a minimum of 300 hunter days and 50 wildlife viewing days.

Strategy 2. As per CE terms, the Landowner shall allow reasonable non-motorized public access for hunting, fishing, trapping, wildlife viewing, and other forms of non-motorized recreation. The Landowner may not charge fees, lease, or commercially outfit fishing, hunting, trapping, or charge trespass fees on deeded land or to adjoining public lands.

The Landowner may apply for enrollment in, and the Department may make available to the Landowner, 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 CE'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 as compared to other land enrollment applications. At the time of this CE's establishment, the CE lands were enrolled in the Block Management

Program. However, as stated, there is no long-term commitment for extended enrollment beyond the current Block Management contract.

Should the Landowner or FWP decide not to continue to enroll CE lands in Block Management or similar program, the Landowner and FWP must develop an equally effective and transparent system for handling public hunting access within the FWP CE terms.

Public Access roads and parking areas are identified in Exhibit C, Travel Plan. Vehicle access will be allowed on all public roads and all roads identified in the Travel Plan Map (Exhibit C) as Access Trails, beyond which walk-in only recreation is allowed. By minimizing vehicular traffic, more secure areas for game species are provided during the hunting season.

Objective 3. Provide non-hunting recreational and educational opportunities to the public through the viewing of wildlife, fishing, trapping and various educational uses. This CE will demonstrate how traditional land uses can be implemented in a manner that benefits wildlife and the public, while maintaining a successful agricultural operation.

Strategy 3a. Public opportunity for wildlife viewing will be enhanced through the Strategies found in Objective 1.

Strategy 3b. Trapping opportunities exist along Ash Creek and in the associated uplands. Trapping opportunities for the public will continue to be available through permission, as granted by the Landowner.

EXHIBIT A – GRAZING AND HABITAT

Ash Coulee Grazing Management and Habitat Improvement Plan

1) Land Unit Description

The Ash Coulee Conservation Easement (CE) is a legal framework established to conserve approximately 3,400 acres of deeded land. The ranch boundary also includes 160 acres of Bureau of Reclamation property. All 3,400 acres of the deeded land are native shrub and prairie grassland habitat. The private lands include approximately 4 miles of Ash Creek, that bisects this project.

This plan for livestock grazing on the Ash Coulee CE applies to lands lying in the Ash Coulee Unit. This unit will consist of 3 pastures, to be managed as a rest rotation grazing system during late spring, summer, and early fall. This grazing strategy is consistent with FWP's grazing standards for summer grazing.

2) Current Management Narrative

The ranch is currently managed as a cow-calf livestock operation. The Ash Coulee Unit is currently used for late spring and summer grazing from mid-May through October.

3) Planned Management Narrative with tables and maps

Ash Coulee Unit

Livestock will be managed using a 3-pasture rest-rotation grazing system between the dates of May 15 through October 31. The 3 pastures for this system are designated on maps as **AC1**, **AC2**, and **AC3** (Table 1). Two of these pastures, AC1 and AC2 will be cross fenced to allow the Landowner any needed grazing flexibility and discretion while grazing these pastures during their designated time frames (Table 2). Each year, one pasture is grazed during the growing season, one pasture is grazed after seed-ripe of the latest maturing native grass, and one pasture is rested yearlong.

Each year grazing rotation dates are: One pasture available to graze from May 15 to August 1; 1 pasture available to graze from August 1 to October 31; and 1 pasture rested from livestock grazing for the entire year.

Refer to Table 2 for summer grazing rotation details during the 21-year period from 2019 to 2040. Pasture designations AC1, AC2, and AC3 are illustrated in the grazing plan map (Figures 1, 2, 3). The rest rotation grazing system will begin the year following the completion of the range infrastructure improvements, using the timeline identified in Table 3.

Table 1: Ash Coulee Unit pasture numbers, names and grazing seasons

Pasture Number	Pasture Name	Pasture Use
AC1	Ash Coulee 1	Summer Grazing System
AC2	Ash Coulee 2	Summer Grazing System
AC3	Ash Coulee 3	Summer Grazing System

Table 2: Ash Coulee Project summer grazing system rotation

Year	Ash Coulee 1 (AC1)	Ash Coulee 2 (AC2)	Ash Coulee 3 (AC3)
2019	C	A	B
2020	A	B	C
2021	B	C	A
2022	C	A	B
2023	A	B	C
2024	B	C	A
2025	C	A	B
2026	A	B	C
2027	B	C	A
2028	C	A	B
2029	A	B	C
2030	B	C	A
2031	C	A	B
2032	A	B	C
2033	B	C	A
2034	C	A	B
2035	A	B	C
2036	B	C	A
2037	C	A	B
2038	A	B	C
2039	B	C	A
2040	C	A	B

A = Livestock grazing from May 15 – August 1 (period of rapid growth).

B = Livestock grazing from August 1 – October 31 (after seed ripe).

C = Rest from all livestock grazing for the year.

Figure 1: Map 1 of 3 of the summer grazing system for the Ash Coulee Unit.

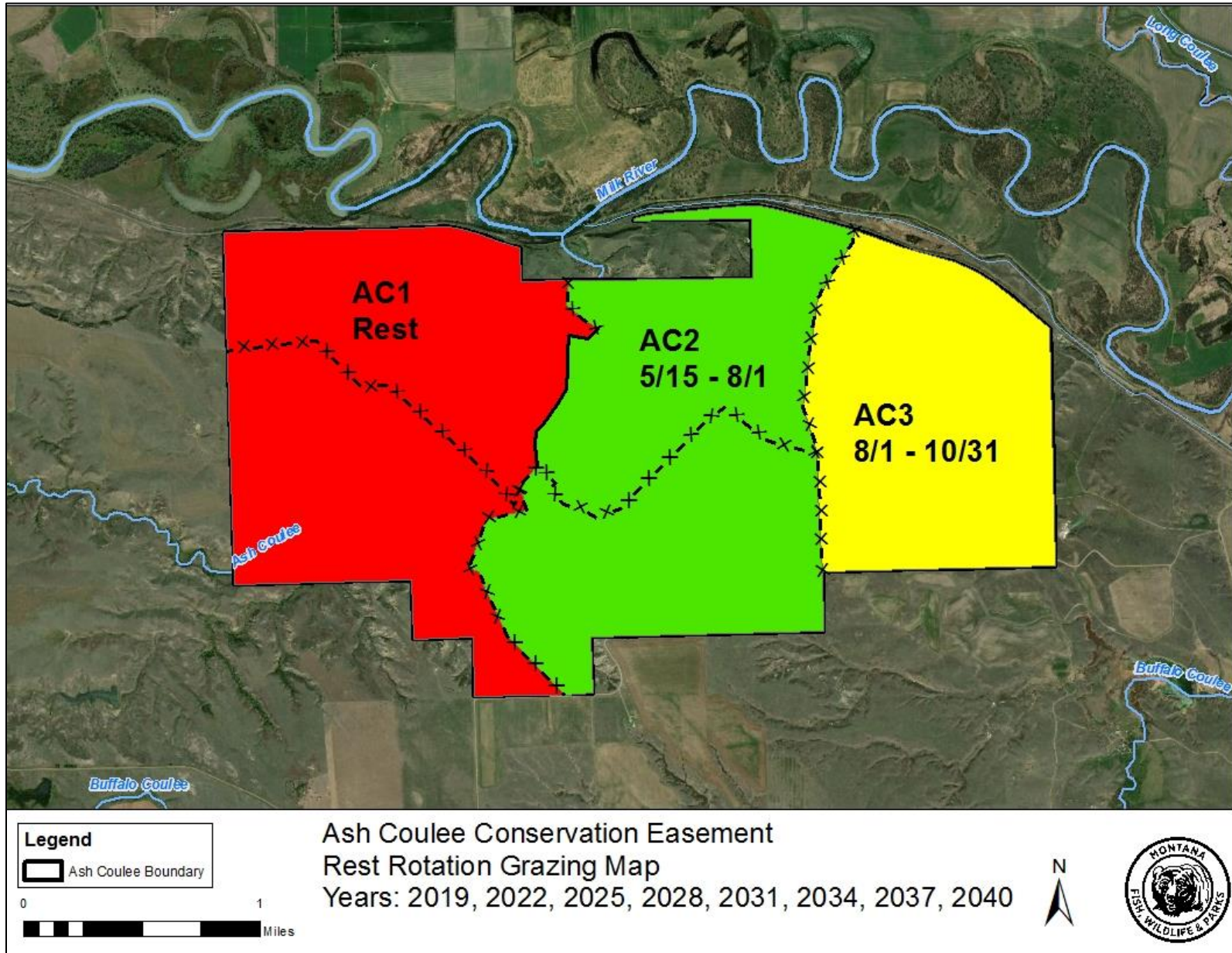


Figure 2: Map 2 of 3 of the summer grazing system for the Ash Coulee Unit.

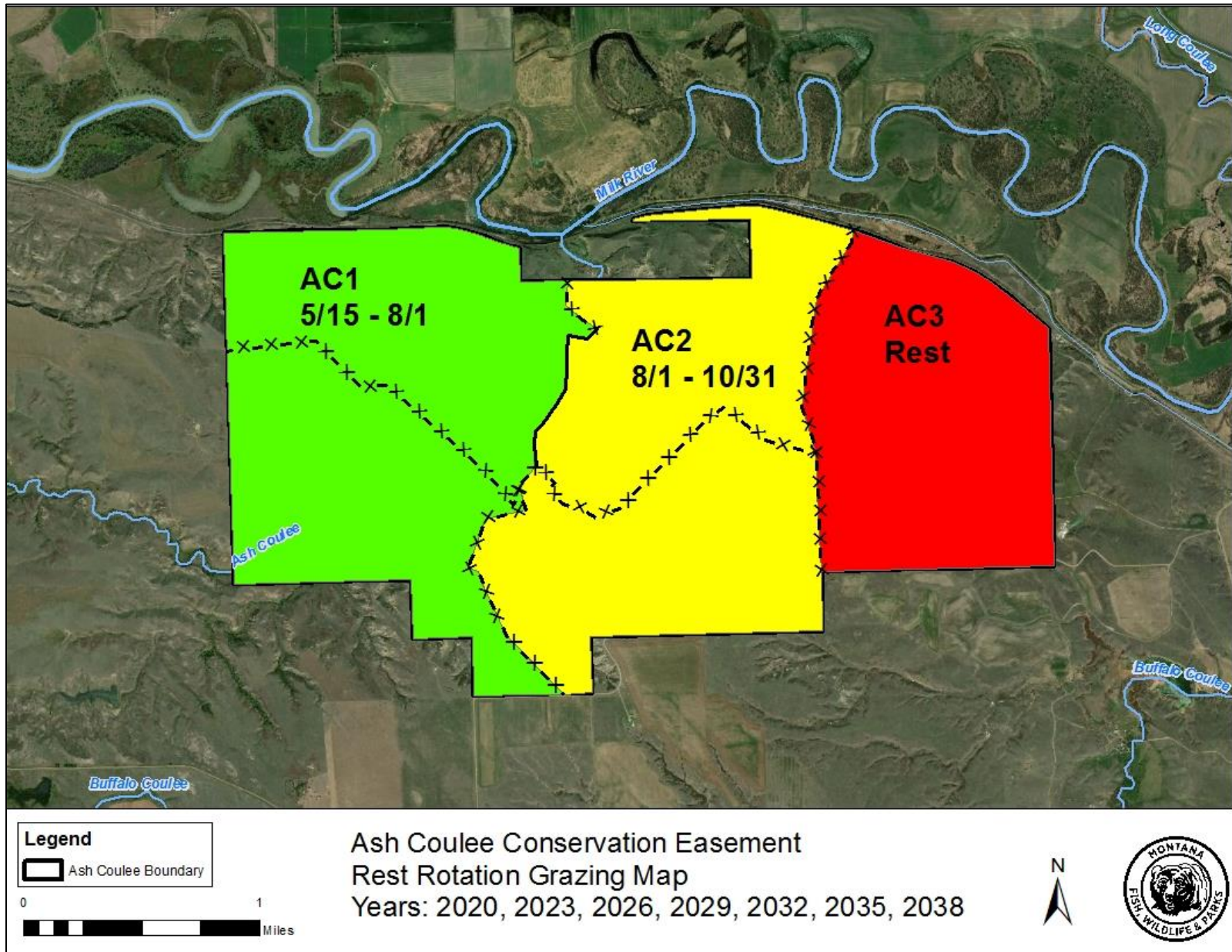
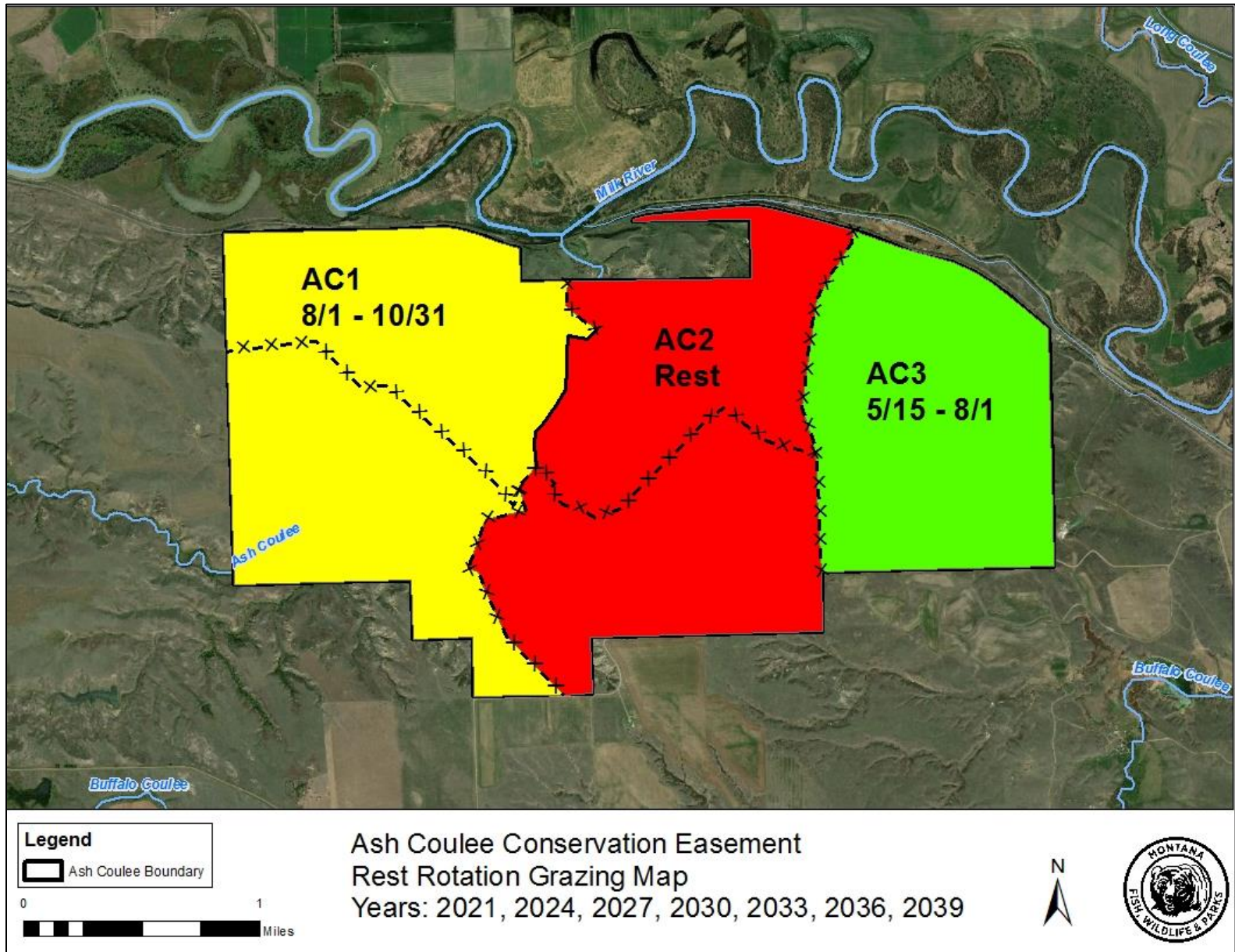


Figure 3: Map 3 of 3 of the summer grazing system for the Ash Coulee Unit.



4) Stocking Rate

This grazing plan does not set a specific stocking rate. On deeded lands covered by the CE, the maximum stocking rate will be based on compliance with the grazing system. If the Landowner can graze livestock and remain in compliance with the grazing system, FWP will not be concerned about the stocking rate. The CE restrictions do not apply to BOR lands and stocking rate on these lands will ultimately be determined by the responsible agency.

5) Salt and Mineral Management

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

6) Range Infrastructure Improvements

For the grazing system to operate, the range infrastructure improvements described below are essential. Grazing system improvement needs are summarized in Table 5.

Table 3. Improvements needed for grazing system development on the Ash Coulee Project. Landowner/FWP cost share will involve two options: Option 1, FWP pays for materials through reimbursement to the Landowner and the Landowner completes the installation as in-kind cost share. Option 2, the Landowner hires contracted services and all work and materials are split 50/50 through reimbursement to the Landowner.

Improvement Type	Quantity	Cost of Materials (\$)	Cost of Improvement (\$)	Cost to Landowner	Cost to FWP	Cost Share Option	Timeline to completion
New Interior Pasture Fence	3,890 feet		11,670	5,835	5,835	Option 2	3 years post closing date
Well	2 wells @ 150 feet		15,000	7,500	7,500	Option 2	3 years post closing date
Pipeline	19,717 feet		59,151	29,575.50	29,575.50	Option 2	3 years post closing date
Water Tanks	9	10,800		INSTALL	10,800	Option 1	3 years post closing date
Storage Tanks	2		34,000	17,000	17,000	Option 2	3 years post closing date
Subtotal				59,910.50	70,710.50		
Mule Deer Foundation Funding				\$25,000			
National Wild Turkey Federation Funding				\$2,000			
Total Cost Commitments for Landowner and FWP				\$46,410.50	\$57,210.50		
Total				\$103,621			

**Awarded grant funding, which can be used towards the infrastructure needs on Ash Coulee. should be dedicated for use no later than the estimated timeline of completion above.*

The Landowner and FWP will incorporate a cost-share agreement as part of the CE Purchase Agreement for the improvements identified in Table 3. The arrangements for cost share will involve two options, as specified (Table 3). As improvements are completed, FWP will reimburse the Landowner based on original or copies of original receipts for materials and services upon FWP inspection of completed work. Range infrastructure improvements are shown in the maps found in Exhibit B.

The Ash Coulee Unit grazing system will require new internal fence construction, as well as improvements and replacements to existing fence to meet FWP's wildlife friendly fence standard recommendations, and ultimately make the grazing system functional. The total feet of new internal fence to be constructed is 3,890 feet and is estimated to cost \$11,670. Fence cost estimates were created using the FWP Habitat Bureau 2018-2019 cost list. Any new or repaired exterior fence should meet FWP's wildlife friendly fence standards.

There will need to be water development projects in the Ash Coulee Unit to provide a consistent water supply and in a manner that encourages grazing use of the uplands and reduces pressure on riparian habitats. Some older water infrastructure system is available on the property, which contains two established water well locations. These locations, one on the north end of AC1 and one in the center of AC3 will be utilized to the greatest extent possible to save on infrastructure cost. However, it is assumed here for cost estimation purposes that new wells may need to be drilled. The well depths are approximately 150 feet. Cost to drill and case two 150-foot-deep wells at \$50.00 per foot equates to \$15,000. An estimated 33,215 feet of pipeline and up to 12 tanks will need to be installed to provide an even distribution of water in all three pastures. Cost estimation for 33,215 feet of pipeline with appurtenances is \$99,645, and 12 tanks is \$14,400. To best ensure a high standard of design and construction of the new water developments, the Landowner will utilize professional services for guidance or hire professional contractors to complete these water development tasks. As stated in the Purchase Agreement, the Landowner will provide documentation of these professional services to FWP, as part of their in-kind service.

7) How the grazing plan addresses Fish and Wildlife Objectives

The overall objective of this grazing plan is to enhance and maintain the vigor, productivity, and ecological integrity of soils and vegetation of the lands incorporated into the Ash Coulee CE. The scheduled grazed and rest treatments will improve forage quality and palatability for wildlife and cattle, and will provide other important habitat components, such as cover, for numerous wildlife species. The grazing system also ensures that the primary land use, livestock grazing, will be sustainable, operating on productive vegetation and soils. The grazing plan will also maintain aesthetic and recreation values for the public.

Specific to vegetation, providing season-long and year-long rest from grazing for two consecutive growing years via “B” and “C” treatments, respectively, allows plants to replenish energy reserves and restore vigor lost through grazing during the growing season. When livestock are permitted into the “B” pasture following seed-ripe, hoof action tramples mature seeds into the soil, thereby facilitating seed planting. The following year’s “C” treatment of complete rest 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 achieve potential vigor and thus recover more rapidly following grazing disturbance.

Specific to wildlife, this system provides an annual array of plant cover and forage conditions, corresponding to grazing treatment, which benefits a variety of wildlife species that use the upland and riparian habitats. For instance, high quality, early spring forage will be available for wild ungulates the spring following the “A” and “B” treatments. These pastures generally green up earlier and support deer and antelope coming out of a negative energy balance from winter, as they get ready to fawn. Standing herbaceous cover in deferred and rested pastures (“B” and “C” treatments) provide valuable cover for ground nesting and ground brooding birds, including 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. Scheduled rest in upland pastures also helps to maintain shrub (sagebrush) cover, important for browse, hiding and thermal cover for fawns, as well as a critical food source and nesting cover for sage-grouse. Increased plant residue will improve soil fertility, quality, stability, and moisture content which in turn will improve overall vegetation and habitat quality. Finally, rest also provides opportunity to promote restoration and maintenance of the riparian vegetation.

Exhibit B – Grazing System Infrastructure Map

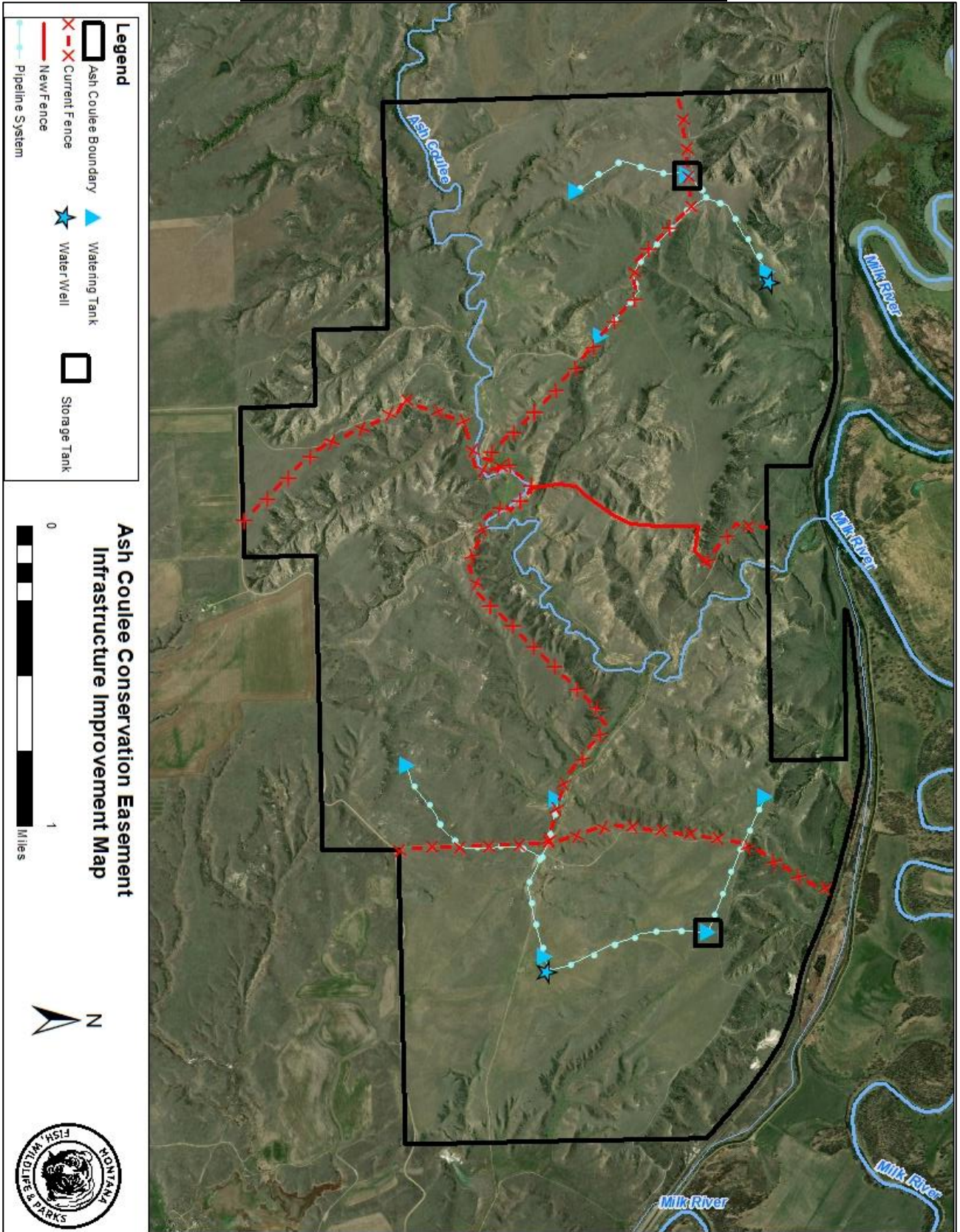


Exhibit C –Travel Map

