



# Draft Environmental Assessment Bear Creek Angus Conservation Easement Restatement

October 17, 2022

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## MEPA, NEPA, MCA 23-1-110 CHECKLIST

### PART I. PROPOSED ACTION DESCRIPTION

#### **Proposed state action**

The proposed action is for the Montana Department of Fish, Wildlife and Parks (FWP) to restate the Bear Creek Angus Conservation Easement in the Madison Valley to reduce by one developed acre the Conservation Easement (CE) footprint in exchange for the following net benefits:

- a) Reduce acreage of current building envelopes from 40 acres to 16.5 acres; providing protections to 23.5 acres of wildlife habitat. This includes reducing the footprint of three existing build sites and removing one building envelope completely.
- b) Removing agricultural subdivision language from the CE, which would require the CE to be sold as one full property into the future.
- c) Updating CE legal language including updated exhibits related to cultivation and native vegetation to meet current FWP standards.

The proposed restatement appears in Appendix 1.

#### **Agency authority for the proposed action**

Montana Fish, Wildlife and Parks has the authority under state law to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future, (§ 87-1- 201, Montana Code Annotated (MCA)) and to acquire land for this purpose ((§ 87-1-209 MCA).

#### **Anticipated Schedule**

The target release date is Monday October 17 for a public comment period of 21 days, with public comment ending Monday, November 7. The goal is to have the Decision Notice for the February 2023 Commission Meeting Review.

#### **Location affected by proposed action**

The 768-acre CE to be restated exists in Madison County approximately 4 miles east of Cameron, MT and immediately west of the Bear Creek Wildlife Management Area (Figure 1). The full Legal Description appears in Appendix A, Exhibit A.

#### **Project size**

The total acreage of the current CE is 768 acres. The current CE allows for 40 acres of residential or agricultural building envelopes at sites A, B, C, and D (Figure 2). The proposed restatement would:

- 1) Remove the 1-acre home site from the CE (Figure 2 and Figure 3).
- 2) Reduce the size of building envelopes A and B from 15 acres each (30 acres total) to 7.5 acres each (15 acres total)
- 3) Reduce the size of the building envelope at site C from 5 acres to 1.5 acres for agricultural structures
- 4) Remove the 5-acre building envelope at site D completely.

Appendix A, Exhibit B shows the map of the future building sites.

**Permits, Funding, and Overlapping Jurisdiction**

**Permits:** Not applicable for this proposed project.

**Funding:** Habitat Montana. The only cost of this proposal would be staff time allocated to the project.

**Other Overlapping or Additional Jurisdictional Responsibilities:** The Fish and Wildlife Commission must review this proposal and will be responsible for approving or denying the restatement.

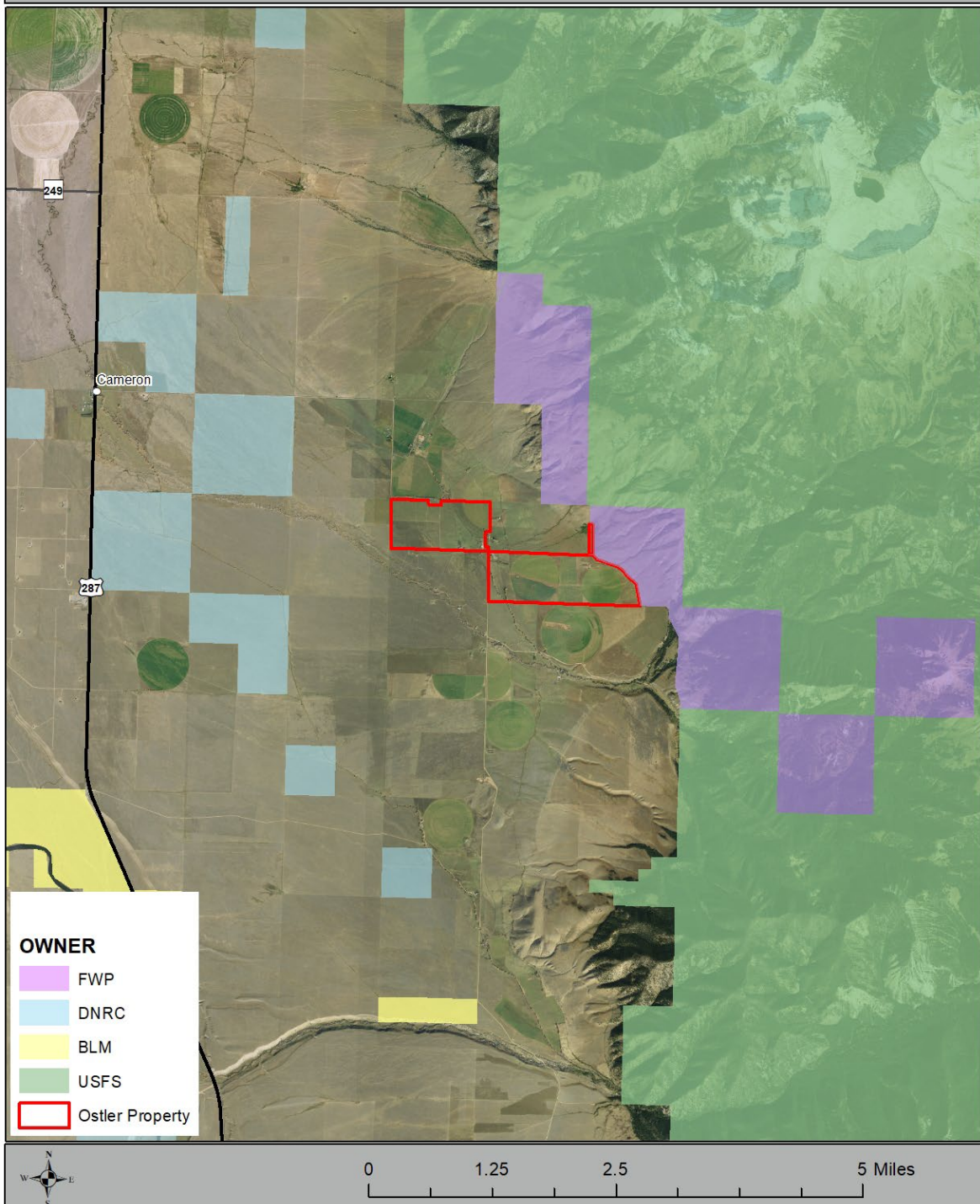


Figure 1: Ostler CE (outlined in red) and surrounding lands.

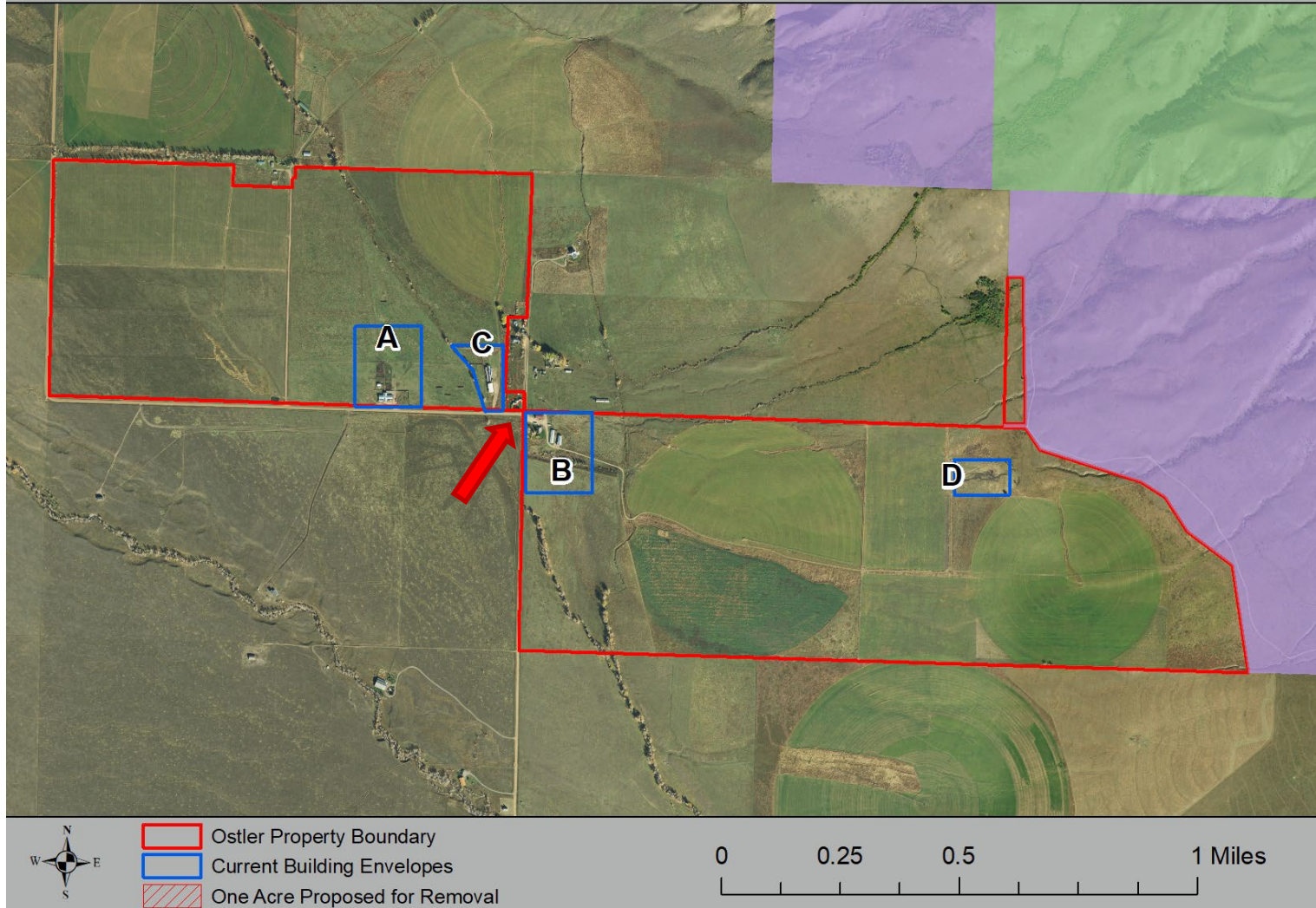


Figure 2: Bear Creek Ostler Portion CE restatement proposal showing current property boundary (red), current building envelopes (blue), and the 1-acre portion proposed to be removed from the CE (red hashed lines, arrow pointing to it).



Figure 3: The one-acre home site (red) proposed to be removed from the Conservation Easement

## **Alternatives**

### **Alternative A: No Action**

Under the No Action alternative, the CE would not be restated. The current landowner would not be able to sell the one-acre homesite. Future owners would be able to develop a home site on the 5-acre building site adjacent to Bear Creek WMA as well as pursue residential and agricultural development on 40 of the 768 acres. The property could be divided into smaller agricultural parcels and sold.

### **Alternative B: Proposed Action**

FWP proposes to restate this CE to allow the landowner to sell the one acre. In return, FWP would see additional protections on 23.5 acres of wildlife habitat that could potentially be developed, including 5 acres adjacent to Bear Creek WMA. The ranch would also remain intact as one unit, no longer subject to splitting into smaller agricultural parcels.

## **Narrative Summary of Proposed Action**

In 1994, Bear Creek Angus Ranch conveyed a Deed of Conservation Easement to FWP. At the time, this single CE included approximately 5,278 acres. This original CE was restated in 2000 and 2001, which allowed transfer of portions of this original property to four separate landowners. From this restatement, the current Ostler portion was developed. The original CE and subsequent restatement contained outdated language and terms. The proposed 2022-2023 restatement would have several real benefits to wildlife, to public hunting, and to the landowner.

The one-acre homesite has little wildlife value or value for public hunters. It lies at the junction of Bear Loop Road, a highly travelled county road, and the Bear Creek WMA access road. It exists proximate to the Ostler's other homesite, neighboring homes, a stackyard, and a calving barn. The landowners desire to separate this one-acre parcel to sell to another party. The sale of this homesite should not alter the wildlife value of the remaining CE, and the restatement they offer in exchange would bring additional protections in perpetuity to wildlife winter range, public hunting access, and protection of native range. The proposed restatement includes reduction of building envelopes from 40 acres to 16.5 acres, providing additional protections on 23.5 acres of key winter range grassland habitat along the western border of Bear Creek WMA in the Madison Valley. Removing the five-acre building envelope at site D is particularly important to prevent disturbance to the wintering elk on the Bear Creek WMA. Bear Creek WMA, and the lands immediately surrounding it, provide important wintering habitat for about 1,000 wintering elk and 200 wintering mule deer. Notably, this small area of public and private lands represents about 20% of the east-side Madison Valley's wintering mule deer population. Other species that may use this area includes pronghorn, white-tailed deer, moose, black and grizzly bears, wolves, and a variety of non-game species. If the area were to be fully developed and built out as current CE terms allow, the wildlife habitat and security would be reduced. Further, the public hunting opportunity would also be reduced as landowners often require no-hunting safety zones around their homes and structures. Currently, this area is a prime hunting zone adjacent to the WMA and an alfalfa pivot.

In addition to the proposed reductions in building envelopes, this restatement would allow updating other CE management needs. The current CE allows for agricultural subdivisions. This restatement would remove future division of the land, improve consistency in land management, and remove any subdivision option from the CE, requiring the property to remain as one parcel under one ownership. Further, the restatement would allow updated exhibits related to cultivation and native vegetation. The current CE does not contain an exhibit describing current vegetation types. Such an exhibit is key for regulating activities such as cultivation, to prevent native grasslands from being cultivated.



## **PART II. ENVIRONMENTAL REVIEW CHECKLIST**

### **Physical Environment**

#### **1) Land Resources**

Will the proposed action result in:

- a) Soil instability or changes in geologic substructure?
- b) Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?
- c) Destruction, covering, or modification of any unique geologic or physical features?
- d) Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?
- e) Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?

Given the proposed action is to simply reduce future building envelopes, there would be no changes to the physical land resources. The proposed action would clarify native versus cultivated lands which would prevent disruption of soils on native lands.

#### **2) Air**

Will the proposed action result in:

- a) Emission of air pollutants or deterioration of ambient air quality? (Also see 13 (c).)
- b) Creation of objectionable odors?
- c) Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?
- d) Adverse effects on vegetation, including crops, due to increased emissions of pollutants?
- e) For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regulations? (Also see 2a.)

The proposed action involves no physical change to the land and thus would not change air quality.

#### **3) Water**

Will the proposed action result in:

- a) Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?
- b) Changes in drainage patterns or the rate and amount of surface runoff?
- c) Alteration of the course or magnitude of floodwater or other flows?
- d) Changes in the amount of surface water in any water body or creation of a new water body?
- e) Exposure of people or property to water related hazards such as flooding?
- f) Changes in the quality of groundwater?
- g) Changes in the quantity of groundwater?
- h) Increase in risk of contamination of surface or groundwater?

- i) Effects on any existing water right or reservation?
- j) Effects on other water users as a result of any alteration in surface or groundwater quality?
- k) Effects on other users as a result of any alteration in surface or groundwater quantity?
- l) For P-R/D-J, will the project affect a designated floodplain? (Also see 3c.)
- m) For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a.)

The proposed restatement involves no physical change to the land and thus would not influence water.

#### **4) Vegetation**

Will the proposed action result in:

- a) Changes in the diversity, productivity, or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?
- b) Alteration of a plant community?
- c) Adverse effects on any unique, rare, threatened, or endangered species?
- d) Reduction in acreage or productivity of any agricultural land?
- e) Establishment or spread of noxious weeds?
- f) For P-R/D-J, will the project affect wetlands, or prime and unique farmland?

The vegetative quality and condition of the land is expected to improve under the proposed action, as it would protect native rangeland vegetation and prevent development on 23.5 acres. This CE is agricultural, and the restatement would not result in a reduction in acreage or productivity of agricultural lands.

#### **5) Fish and Wildlife**

Will the proposed action result in:

- a) Deterioration of critical fish or wildlife habitat?
- b) Changes in the diversity or abundance of game animals or bird species?
- c) Changes in the diversity or abundance of nongame species?
- d) Introduction of new species into an area?
- e) Creation of a barrier to the migration or movement of animals?
- f) Adverse effects on any unique, rare, threatened, or endangered species?
- g) Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?
- h) For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f.)
- i) For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d.)
- j) Other:

The proposed acquisition would increase lands available for wildlife into the future. Wildlife in this area include elk, mule deer, pronghorn, Hungarian partridge, and other species. The restatement is expected to improve the ability of wildlife to move/migrate across the landscape through increased security, protection of native vegetation, and prevention of subdivision and development.

## **Human Environment**

### **6) Noise/Electrical Effects**

Will the proposed action result in:

- a) Increases in existing noise levels?
- b) Exposure of people to serve or nuisance noise levels?
- c) Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?
- d) Interference with radio or television reception and operation?

The restatement prevents additional development so would not increase noise levels. There are currently two home sites on the CE property, one is lived in by the owners, the other is rented to a lessee. Instead of being rented, the home would be sold to an independent owner.

### **7) Land Use**

Will the proposed action result in:

- a) Alteration of or interference with the productivity or profitability of the existing land use of an area?
- b) Conflict with a designated natural area or area of unusual scientific or educational importance?
- c) Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?
- d) Adverse effects on or relocation of residences?

The proposed action would not change the land in agricultural development but would bring clarity to definitions of native versus cultivated lands on the property. The proposed action would not change the number of or location of residential developments currently in the area but would prevent additional developments from occurring. The proposed action would not conflict with a designated natural area (adjacent Bear Creek Wildlife Management Area) but would enhance its effectiveness as wildlife winter range.

### **8) Risk/Health Hazards**

Will the proposed action result in:

- a) Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?
- b) Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?
- c) Creation of any human health hazard or potential hazard?

- d) For P-R/D-J, will any chemical toxicants be used? (Also see 8a)

The proposed action would not increase risks or health hazards in the area.

### **9) Community Impact**

Will the proposed action result in:

- a) Alteration of the location, distribution, density, or growth rate of the human population of an area?
- b) Alteration of the social structure of a community?
- c) Alteration of the level or distribution of employment or community or personal income?
- d) Changes in industrial or commercial activity?
- e) Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?

The proposed action would not change the number of residences in the area but would allow for the sale of a one-acre homesite. The sale of this one-acre homesite would provide personal income to the family ranch that owns this property.

### **10) Public Service/Taxes/Utilities**

Will the proposed action result in:

- a) An effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services?
- b) An effect upon the local or state tax base and revenues?
- c) A need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?
- d) Increased use of any energy source?
- e) Define projected revenue sources
- f) Define projected maintenance costs

There is no net change from current public service conditions on the landscape. Local tax base revenues would not change. The sale of the one-acre homesite would change the tax burden from being on the current landowner to being on whomever purchases this property. FWP would not be encumbered with any costs or revenue beyond the cost of personnel hours for completing the restatement.

### **11) Aesthetics/Recreation**

Will the proposed action result in:

- a) Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?
- b) Alteration of the aesthetic character of a community or neighborhood?
- c) Alteration of the quality or quantity of recreational/tourism opportunities and settings?  
(Attach Tourism Report.)

- d) For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c.)

The proposed action would protect the current natural scenic vista, aesthetic character, recreational, and tourism qualities of the area by preventing development adjacent to the Bear Creek WMA, and by continued public hunting on this CE. The property does not include any designated or proposed wild or scenic rivers, trails, or wilderness areas.

## **12) Cultural/Historical Resources**

Will the proposed action result in:

- a) Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?
- b) Physical change that would affect unique cultural values?
- c) Effects on existing religious or sacred uses of a site or area?
- d) For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a.)

The proposed restatement would not involve any physical change to any potential historic or cultural resources.

## **13) Significance Criteria**

Will the proposed action, considered as a whole:

- a) Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total).
- b) Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?
- c) Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?
- d) Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?
- e) Generate substantial debate or controversy about the nature of the impacts that would be created?
- f) For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e.)

The restatement could establish a precedent to other area CE holders to similarly pursue restatements. However, if conservation gains (such as reductions in building envelopes or additional protections on native range) are to be had while maintaining the requisite hunting access and conservation values, then such a precedent would be beneficial to wildlife resources, the public, to FWP, and to the private landowner. This restatement was proposed by the private landowner with gains for FWP and wildlife habitat and at little to no cost to FWP. The proposal is not expected to have substantial opposition, controversy, potential risks, or adverse effects.

### **PART III. NARRATIVE EVALUATION AND COMMENT**

The proposed restatement would meet several goals and objectives for the private landowner and for FWP as the state's trustee for the wildlife. The landowner wishes to sell the acre and home to gain revenue for their family ranch operation. In exchange, FWP desires to maintain habitat intact for wildlife and for the public hunting opportunities. In this win-win arrangement, the landowner is willing to surrender a building envelope that would likely negatively impact wildlife and hunting. This restatement would not cost either party anything more substantial than time working through changes to the current legal arrangement. With the restatement, the public would not notice any physical change on this landscape, which would represent the success of this restatement. Without the restatement, future owners of the land could develop, divide, and change the landscape noticeably, affecting wildlife and hunters. Air, water, wildlife, and vegetation resources are expected to remain the same through the proposed restatement.

## **PART IV. PUBLIC PARTICIPATION**

### **Level of Public Involvement**

The public will be notified in the following manners to comment on this current EA, the proposed action and alternatives:

Public notices in the Bozeman Chronicle, Helena Independent Record, and the Madisonian. Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>. Contact letter to the Madison County commissioners.

Copies of this environmental assessment will be distributed to interested parties, including adjacent landowners, to ensure their knowledge of the proposed project.

This level of public notice and participation is appropriate for a project of this limited scope.

### **Duration of Comment Period**

The public comment period will extend for 21 days following the publication of the legal notice in area newspapers. Written comments will be accepted November 7 and can be mailed to the address below (Part V)

## **PART V. EA PREPARATION**

Based on the significance criteria evaluated in this EA, an EIS is not required. The proposed action is expected to be a benefit to the physical and human environment. The restatement will not result in any new structure or development on the site.

### **Person responsible for preparing the EA:**

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