

**After Recording, please return to:**  
Department of Fish, Wildlife & Parks  
Land Unit  
P.O. Box 200701  
Helena, MT 59620-0701

## **SWEATHOUSE CREEK DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Molly D. Hackett, Benjamin P. Hackett, Scott T. Hackett, and Diane Bessler-Hackett (“Landowners”), whose mailing address is 1720 Nighthawk Trail Victor, MT 59875-0476, 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 and Development Area

**Exhibit C** - FWP Minimum Standards for Grazing Livestock

**Exhibit D** – 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.** Landowner is the owner of certain real property in Ravalli County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein by this reference. The Land is depicted in Exhibit B.
- C.** The Land possesses significant 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 Landowner and the Department through the grant of a conservation easement to the Department with Landowner retaining fee title to the Land and overall management of the Land consistent with the terms and conditions of this Easement.
- E.** Landowner and Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.
- F.** The Land provides important opportunities for public recreational hunting, fishing, hiking, trapping, and wildlife viewing. Landowner and the Department specifically intend that this Easement afford public recreation and wildlife management.
- G.** The Department recognizes that the Land contains important fish and wildlife habitat, including riparian areas, wildlife corridors and connectivity areas, and/or fish spawning and rearing habitats, that are worthy of perpetual conservation and has contributed the funds necessary to acquire this Easement through its Habitat Montana Program and with partners including Bitter Root Land Trust, and Ravalli County.
- H.** Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

## **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, Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

## **A. PURPOSES**

1. The purpose of this Easement is to preserve, protect, and restore upon mutual agreement with Landowner, 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. Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of the Easement.
2. An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses, in accordance with the terms and conditions set forth in Section II.B.5 below.
3. If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions; in agricultural technologies; in accepted farm, ranch and forest management practices; and in the situation of Landowners may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.
4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

## **B. RIGHTS CONVEYED TO THE DEPARTMENT**

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

1. **Identification and Protection.** To identify, preserve, protect, and enhance by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon reasonable **Prior Notice** to Landowner, 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 Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II. B. 5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.
3. **Injunction and Restoration.** 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. Landowner shall not remove such markers without **Prior Notice** to the Department and without the Department's consent, which will not be unreasonably denied, as provided in Section II. G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of recreational access for hunting, fishing, trapping, hiking and wildlife

viewing on the Land and across the Land to adjacent public land in accordance with the following terms and conditions; **Hunting Access and Recreational Access.**

**a. Hunting Access:**

1. The public may hunt game animals and game birds of all sex and age classes during all legal hunting seasons and in accordance with hunting regulations adopted by the State of Montana.

2. When demand exists and upon request by members of the public during the general hunting season set by the State of Montana, Landowner must permit a minimum of 400 hunter days on the Land per year on a non-preferential basis.

- i. 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.
- ii. Landowner, Landowner’s immediate family, Landowner’s shareholders, partners, employees, and immediate family of shareholders, partners, and employees of Landowner are not defined as members of the general public by this Easement for the purpose of calculating “hunter days.” The term “immediate family” is defined to include spouses, children, in-laws, and parents.
- iii. Public access for hunting must be managed on a non-preferential and nondiscriminatory basis.
- iv. Landowner has the right to manage the distribution of hunters on the Land to address reasonable concerns for the safety of persons and property, including livestock.
- v. Trapping will be detailed in a mutually agreed-upon manner defined in the Management Plan. Due to the Land’s high recreational use and relatively small size, trapping may be restricted by the Management Plan to specific areas or periods designed to minimize conflict among users.

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

**b. Recreational Access**

1. The public may recreate on and across the land for the purposes of walking, hiking, and wildlife viewing yearlong. Due to the Land's high recreational use and relatively small size, walking, hiking, and wildlife viewing may be restricted by the Management Plan to specific areas or periods to protect resources.
  - a. The grant of access rights by Landowner to the Department contained in this Paragraph II.B.5. shall be deemed exclusive to the Department for the benefit of the public and are specifically conveyed pursuant to: (i) § 70-17-102(1), MCA, and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA, and thereby 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.
  - b. Those members of the public who have recreational access to the Land pursuant to this Paragraph II B.5. shall also have motor vehicle access over and across the Access Route to the Parking Area identified for that purpose in the Management Plan and the attached Exhibit B. The public shall also have motor vehicle access over and across a second Access Route referred to as the Gash Creek Road identified in the attached Exhibit B. The public may not drive off these designated areas or routes or park along this route for any purpose, except with the express permission of Landowner or Landowner's agent. The public may travel by foot from the Parking Area to recreate throughout the Land for the purposes and in the manner prescribed in this Paragraph II.B.5. of this Easement. Upon agreement with Landowners, the Department may relocate, or substitute Access Roads or Parking Area identified in the Management Plan.
  - c. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land under Paragraph II.B.5 (a) or (b) above as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public, or to accommodate agricultural operations.
  - d. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible, and safe manner and denial of access for this reason shall not be deemed preferential or discriminatory.

e. All public access will be directed by the Management Plan. Those members of the public not participating in hunting, such as those hiking, fishing, trapping and wildlife viewing, will not count toward the minimum hunter numbers outlined in subparagraph 5.b. above.

f. 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.

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

### C. LANDOWNER'S RIGHTS

Landowner reserves to itself, and to its 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 Landowner's activities in this Easement set forth in Paragraph II.D. hereof, Landowner expressly reserves the following rights:

1. **Livestock Grazing.** The right to raise, pasture and graze livestock, and the right to lease pasture to another agricultural operator to raise, pasture, and graze livestock; provided that any livestock grazing is consistent with 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.

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. Cultivation shall be restricted to the development area.
  - b. Haying shall be restricted to Hayland shown in the Baseline Survey. Hayland shall remain in permanent cover, except for periodic temporary cultivation to reseed or otherwise invigorate hay production.
  - c. Livestock grazing on the Land must be consistent with the provisions of Paragraph II.C.1.
3. **Leasing the Land.** The Land may be leased to another agricultural operator for agricultural purposes, provided that: (i) a written lease must be entered into by Landowner and the lessee(s); (ii) the lease must require the lessee to follow the terms of the Easement, as well as any applicable provisions of the Management Plan; and (iii) a copy of the executed lease must be provided to the Department. Landowner retains responsibility under this Easement for ensuring compliance with the terms of the Easement and Management Plan by lessee(s). Lease of the Land, or of a portion of the Land, are subject to **Prior Notice**, so the Department can evaluate and provide input for Landowner and lessee(s) to assist in compliance with the Easement, Management Plan and grazing system.
4. **Habitat Restoration and Enhancement.** The right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with



the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires **Prior Approval**.

5. **Water Resources and Facilities.** The right to use, develop, and maintain water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for grazing, wildlife, habitat restoration and improvement, domestic use, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetlands, or riparian vegetation is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water-resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water-resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations..
6. **Man-made Structures.** Landowner has the following rights pertaining to man-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4.):
  - a. **Development Area.** The purpose of the Development Area is to allow the Landowner flexibility in the use of the residences and outbuildings and to cluster the residential and agricultural structures on the Land. If necessary, wells and drain fields and buried propane tanks and associated buried pipelines may be located outside of the Development Area. This easement designates one Development Area comprised of the South ½ East ½ Southeast ¼ Northeast ¼ of Lot 4 in Section 28, Township 8 North Range 21 West.
  - b. **Access to the Development Area.** This easement specifically grants a 30' residential easement adjoining the west side of the section line between sections 27 and 28 from the intersection of Sweathouse Creek county road and the CE property and running north to the Development Area. The

Sweathouse Creek county road currently ends at the entrance to the CE property. As no survey has been made the exact relative positions of the Sweathouse Creek county road and the Development Area are not known. This easement is intended solely to ensure access from the Sweathouse Creek county road to the Development Area, and any inconsistency or ambiguity shall be construed to ensure that access.

**c. Residences.** The right to place or construct, alter, improve, remove, replace, and maintain one single-family residence, and associated non-residential improvements necessary for agricultural purposes and to be located within the Development Area

**d. Agricultural/Commercial Structures.** The right to construct, remove, maintain, renovate, repair or replace agricultural and commercial structures that are not used for human habitation, including, but not limited to barns, chicken houses, shelters, sheds, machine sheds, and barns. The right to place agricultural structures outside of the Development Area with **Prior Approval**. All existing structures identified at the time of the Baseline Survey are considered Agricultural/Commercial Structures and subject to this provision. No overnight occupancy of any structure is permitted outside the Development Area.

**e. Fences.**

i. The right to remove, maintain, or repair existing fences, corrals and other livestock containment structures.

ii. With **Prior Notice** the right to construct, renovate, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted agricultural land management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “**wildlife friendly**” as provided in the Management Plan. This does not apply to corrals, windbreaks, and other structures necessary to contain livestock, or protect stored feed.

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

maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department's approval shall be contingent on confirmation that (a) the road's intended purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values.

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

**9. Utilities.**

a. Existing Utilities. Landowner retains the right to maintain, repair, and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires, or pipelines ("Utilities").

b. New Utilities on the Land. Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, 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, Landowner shall submit to the Department a Utility Plan as provided in Paragraph II. C.9.d. ("Utility Plan") below.

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

d. Utility Plan. Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information for inclusion in the Utility Plan. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intent of this Easement prior to the Department's approval of the Utility Plan. Any new and expanded Utilities and associated right-of-way easements must be memorialized in a written agreement that is

recorded in the public records of affected counties, signed by Landowner, the Department, and the utility service provider prior to construction.

- 10. Renewable Energy Generation for Use On the Land.** With the **Prior Approval**, Landowner reserves 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 of the Land or credited to Landowner’s utility service. Design and location of facilities and fixtures associated with renewable energy generation is subject to **Prior Approval**. 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 and insects 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. Landowner shall have the right to use biological control agents for noxious weed control, provided that these biological agents have been approved for the specified use by appropriate governmental agencies; and further provided that livestock used for weed control shall comply with the grazing system in Exhibit C unless otherwise authorized by **Prior Approval**. The aerial application of herbicide to control noxious weeds is subject to **Prior Approval**, unless otherwise specified in the management plan.
- 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.
- 13. Gravel.** Landowner may conduct limited mining activity for materials (e.g., sand, gravel, rock) used for agricultural operations on the Land where the extraction of materials used for such agricultural operations is limited and localized. All material moved or mined may be used only on the land. The commercial gravel mining operation formerly operated on the land is considered reclaimed as of the date of this Easement, and no further commercial mining or blasting shall occur on the Land. Henceforth Landowner shall use or develop an area of no more than two acres total for gravel extraction. This extraction site must be located within the existing

gravel pit area. Extraction locations constructed by Landowner, or existing extraction locations must be reclaimed within one year of cessation of use. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds is required.

#### **14. Oil and Gas Exploration, Extraction, and Development.**

- a. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to the Easement, Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.
- b. This Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

#### **15. Subdivision and Conveyance of Land Ownership.**

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

- b. Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party.
- c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit Landowner to convey the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.14.

**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. Landowner may permit commercial non-motorized recreation through the Land only as specifically permitted in the Management Plan.

**16. Granting of Easements to Forest Service**

- a. Landowner reserves the right to grant to the United States Forest Service (USFS) a Temporary Road Use Permit (motorized and non-motorized) across the land for forest management and other administrative purposes on the existing Gash Creek Road. The location of the Gash Creek Road is identified on the attached Exhibit B.
- b. Landowner may grant a public easement for a parking area at the Sweathouse Creek trailhead and for a non-motorized public trail easement for the Sweathouse Creek trail that are identified in the attached Exhibit B.

**D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES**

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

- 1. **Timber.** Landowner shall not transfer, encumber, sell, lease, or otherwise sever any timber right from the Land; except, however, Landowner may sell

the rights to harvest timber for a specific forest management action authorized and approved under the provisions of II. D. 2.

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

- a. For firewood, fencing, corrals, protection and maintenance. Landowner is permitted to harvest timber for firewood, fencing, and corrals to be used on the Land as provided for in the Management Plan. Landowner is also permitted to harvest timber and other woody vegetation for the protection of persons and property; and for maintenance of roads and trails. All timber harvested pursuant to this paragraph by Landowner must be disposed of or used on the Land, or may be removed from the land for non-commercial firewood use.
- b. For the maintenance of ditches identified in the Baseline Survey.
- c. For habitat enhancement or disease control. Subject to **Prior Approval** by the Department, Landowner may conduct other forest management activities only for the primary purpose of restoring or enhancing wildlife habitat or for controlling forest disease. Any request to perform forest management activities must be accompanied by a timber management plan prepared by a qualified forester or other qualified natural resource professional. Landowner and the Department will mutually determine the completeness of the plan and its adherence to the general and specific intentions of this Easement prior to the approval of the plan and the initiation of any timber harvest.

**3. 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 manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such

area is prohibited. However, wetland areas may be restored, developed or enhanced, by either Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.3.

- c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining roads, fences, utility lines, and ditches identified in the Baseline Survey and allowed under this Easement or as may be allowed by the Department as part of an approved plan specifically directed to improve fish or wildlife habitat.
4. **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. Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders, or members of any legal entity (including a homeowners' association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition, or by any other means. Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this Paragraph to the contrary, however, Landowner may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E. of this Easement.

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

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



cooperatively to address the situation. This provision shall not apply to the allocation of water rights to instream flow for the protection and enhancement of aquatic resources as may be agreed to by Landowner and Montana Department of Fish, Wildlife, and Parks.

6. **Agricultural Chemicals.** The use of herbicides, biological control agents, and pesticides in a manner other than as provided for in Paragraph II.C.11. is prohibited. The use of chemical fertilizer or chemical soil enhancement is permitted according to the provisions of the Management Plan.
7. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.7. is prohibited.
8. **Surface Alteration.** The cultivation or farming of any portion of the Land is prohibited, except as allowed for in Paragraph II.C.2, or for habitat restoration or enhancement activities authorized pursuant to the terms of this Easement.
9. **Commercial Recreation.** The sale or lease of access to the Land for hunting or fishing or other recreational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting or fishing on the Land or for access across the Land to reach public land or other private land, is prohibited. Landowner may permit commercial non-motorized recreation through the Land only as specifically permitted in the Management Plan.
10. **Mineral Exploration and Development.** Landowner may not engage in, authorize, or contract for any exploration for or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, or similar materials, except as provided for in Paragraphs II.C.13. and II.C.14. Any other mineral exploration, development, or extraction is prohibited.
11. **Certain Livestock.** The raising, grazing, or presence on the Land of domestic sheep, goats and llamas is prohibited until such time effective management practices are developed and implemented to mitigate concerns of disease transmission between wild sheep and domestics.

- 12. Buildings and Structures.** The construction or placement of any structure or building on the Land is prohibited, other than as expressly allowed in Section II.C.
- 13. Residential Use.** Residential use of the Land or any portion thereof is prohibited other than as expressly allowed in Section II. C.
- 14. Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Easement shall be construed to prevent Landowner from seasonally confining livestock in areas for feeding, lambing, calving, or similar activities, and nothing herein shall prevent Landowner from leasing pasture, corrals and agricultural improvements to third parties, subject to the terms of this Easement.
- 15. 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, Landowner has 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 Landowner for any such introduction, transplantation or release on the Land.
- 16. Commercial and Industrial Use.** Except as permitted in Section II.C., the establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, guest ranching, outfitting, 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 except as permitted in Section II D.(9).

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

**18. 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 Landowner and the Department and represents a contractual agreement between the parties to abide by its specific requirements, management actions, and restrictions. However, if there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Plan must have the written consent of both parties.

In the event that the Land is to be conveyed or has been conveyed to a new owner ("Successor in Interest"), the Department agrees to enter into discussions with the Successor in Interest for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the terms of the Easement. 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 Landowner, and determined to be an accurate representation of the physical and biological condition of the Land and its nonresidential physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner’s compliance with the terms and conditions of this Easement. 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 Landowner, 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 Landowner 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, Landowner must notify the Department as provided for in this section in writing (email is acceptable) not less than 30 days prior to the date Landowner intends to undertake such activity, unless, for safety reasons, a shorter period is necessary in which case Landowner shall give Grantees as much notice as is possible under the circumstances. The purpose of requiring Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its Purposes.

2. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by courier, or personal delivery, or email, and must describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its Purposes. The Department has 45 days from its receipt of such notice to review the proposed activity and to notify Landowner 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 Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies Landowner's proposed activity, the Department must provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land.
3. If the Department fails to respond to Landowner's notice of Prior Approval within 45 days of their receipt of the notice, the proposed activity shall be deemed to be consistent with the terms of this Easement and thereby approved.
4. Landowner shall be under no liability or obligation for any failure to give Prior Notice or seek Prior Approval for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God, or other element, or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, if there is damage to the Conservation Values, Landowner shall notify the Department of any such damage as soon as practicable.
5. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email with confirmation, addressed as follows:

To Landowner: Scott Hackett and Diane Bessler-Hackett  
1720 Nighthawk Ln.  
Victor, MT 59875

Molly Hackett  
1384 Meridian Rd.  
Victor, MT 59875

Ben Hackett  
P.O. Box 476  
Victor, MT 59875

To Department: Department of Fish, Wildlife & Parks  
Attention: Administrator, Wildlife Division  
1420 E. Sixth Avenue  
P.O. Box 200701  
Helena, MT 59620-0701

With a copy to: Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
3201 Spurgin Rd.  
Missoula, MT 59804

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

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

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 Landowner or without waiting for the period provided for cure to expire.

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

resulting from causes beyond Landowner's 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 Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

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

If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 days of receipt of such referral, Landowner and the Department will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

## **I. HOLD HARMLESS AND INDEMNITY**



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

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

## **J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT**

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

If this Easement is extinguished by judicial proceedings or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by

purchase in lieu of condemnation with the **Prior Approval**, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is 56 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 Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party 44 percent of the unencumbered value of the real property and the Department shall be entitled to receive 56 percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the conservation purposes of this Easement.

#### **K. SUBORDINATION**

##### **(REMOVE IF MORTGAGE IS PAID AT TIME OF EASEMENT)**

If at the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of \_\_\_\_\_ [Bank], [address] (“Lienholder”). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on \_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, under Document No. \_\_\_\_\_, Records of \_\_\_\_\_ County, Montana (the “Mortgage”). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Department to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K., shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

## **L. ASSIGNMENT**

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

## **M. AMENDMENT**

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

## **N. RECORDING**

The Department shall record this instrument in a timely fashion in the official records of Ravalli 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**

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

1. Landowner has clear title to the Land; that Landowner has the right to convey this 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. Landowner and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.
5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

## **P. GENERAL PROVISIONS**

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

3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M. above.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. Successors. This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except **that liability for acts or omissions occurring prior to transfer survive transfer**.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.
8. Subordination. No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.
9. Subsequent Deeds and Instruments. Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).
10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.
11. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.
12. Section Headings. Section headings are for convenience only and will not

be given effect in interpretation of this Easement.

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

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

This easement was acquired in part with grant funds provided by the U.S. Department of the Interior, Fish & Wildlife Service, through the Wildlife Restoration Grant Program. The property rights conveyed to Montana Fish, Wildlife & Parks through execution of this easement may not be extinguished, diminished, or modified in any way without the prior, written approval of the Regional Director, U.S. Fish and Wildlife Service, Region 6, Denver, Colorado.

**GRANTED BY: LANDOWNERS**

**Hackett Ranch Landowners**

By: \_\_\_\_\_  
**Molly D. Hackett**

By: \_\_\_\_\_  
**Benjamin P. Hackett**

By: \_\_\_\_\_  
**Scott T. Hackett**

By: \_\_\_\_\_  
**Diane Bessler-Hackett**

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

\_\_\_\_\_  
**Hank Worsch, Director**

**ACKNOWLEDGEMENTS**

STATE OF MONTANA        )  
                                      : ss.  
COUNTY OF RAVALLI     )

This instrument was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF MONTANA        )  
                                      : ss.  
COUNTY OF RAVALLI     )

This instrument was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF MONTANA        )  
                                      : ss.  
COUNTY OF RAVALLI     )

This instrument was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

STATE OF MONTANA        )  
                                  : ss.  
COUNTY OF RAVALLI     )

This instrument was acknowledged before me on \_\_\_\_\_, 2023,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

DRAFT



# EXHIBIT A

## Legal Description

Lots One (1), Six (6), Seven, and Eight, located in Section 33, Township 8 North, Range 21 West, containing 160.12 acres; Northwest Quarter of the Northwest Quarter (NW1/4NW1/4) Section 34, Township 8 North, Range Twenty-one West, containing 40 acres;

The South half of the Southeast Quarter (S1/2SE1/4) Section 28, Township 8 North, Range 21 West, lying South of Sweathouse Creek, containing 50 acres; The Southwest Quarter of the Northwest Quarter (SW1/4NW1/4) Section 34, Township 8 North Range 21 West, saving and excepting therefrom all of the existing rights of way.

NORTHEAST Quarter of Northwest Quarter (NE1/4NW1/4), Section 28 Township 8 North, Range 21 West, P.M.M.

LOT 9 section 33, Township 33, Township 8 North, Range 21 West, P.M.M. The East half of the East half of the Southeast Quarter of the Southwest Quarter of Section 27, Township 8 North, range 21 West, P.M.M.

Lots 1,2,and 3, and the Northwest Quarter of the Southeast Quarter, and the Southwest Quarter of the Northeast Quarter, and the South half of the Southeast Quarter, being North portion thereof described as follows: commencing at the Northeast corner of the Southeast Quarter of the Southeast Quarter of Section 28, Township 8 North, Range 21 West, P.M.M. running thence South 40 rods, more or less to the North side of Sweathouse Creek; thence in a Westerly direction 160 rods, following the bed of Sweathouse Creek; thence North 25 rods more or less to the Northwest corner of the Southwest Quarter of the Southeast Quarter of said Section 28, thence due East 160 Rods the place of beginning, all lying and being in Section 28, Township 8 North, Range 21 West P.M.M., Ravalli County, Montana

Recording Reference Book 216 Deeds, Page 531.

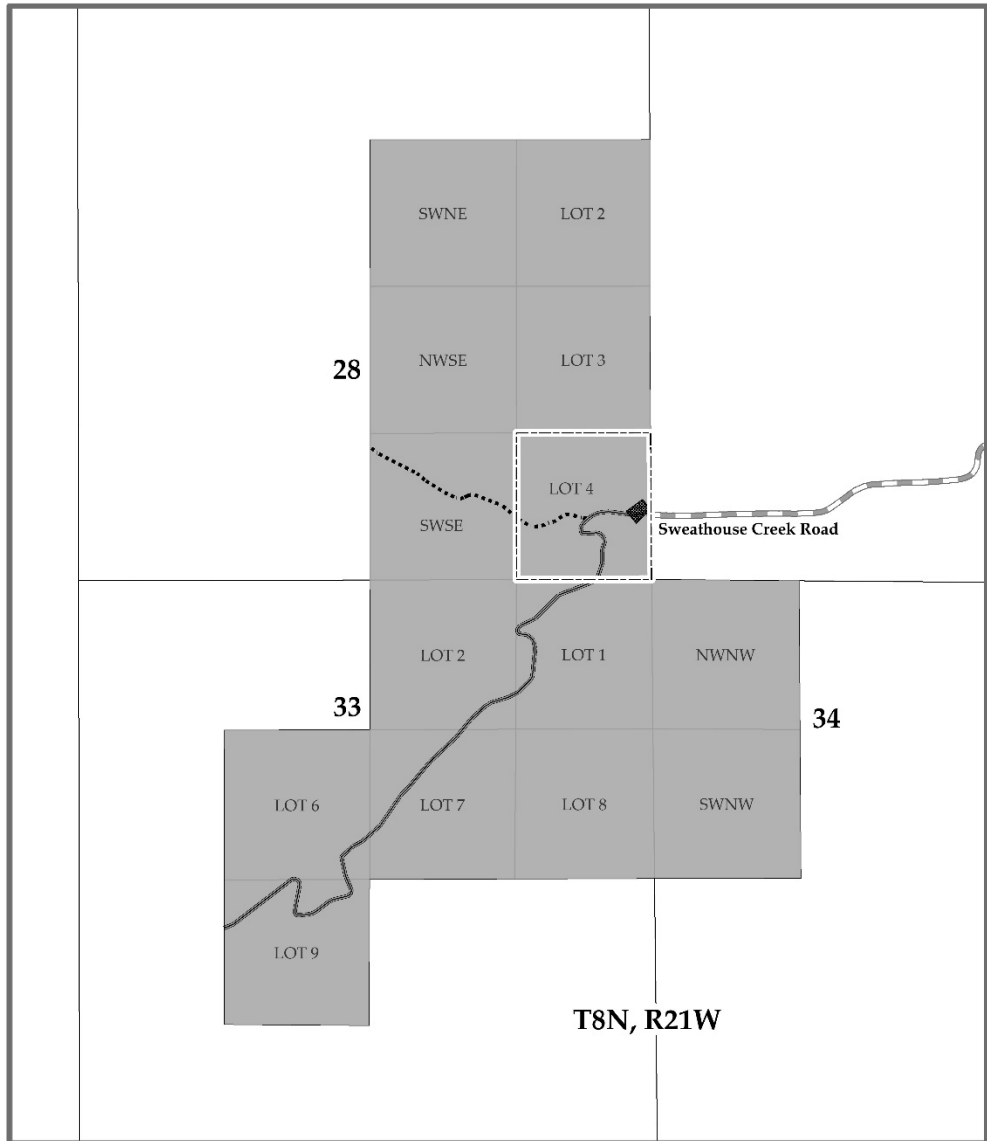
Excepting therefrom the following:






Those parcels described in Certificates of Survey No. 4238-A, 4812-R, 5171-R, 5362-R, and 595956-R.

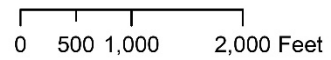
-- END OF LEGAL DESCRIPTION --

DRAFT

# EXHIBIT B



-  Sweathouse Creek Conservation Easement - Ravalli County
-  Parking Area
-  Road Easement
-  Trail Easement
-  Road



# EXHIBIT C

## FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

### Introduction

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

### Why a minimum standard?

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

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

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

### **Grazing plan**

Prior to grazing livestock, Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the management plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the 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 Landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, Landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

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

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

\*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.

A = livestock grazing allowed during the growing season

B = livestock grazing begins after seed-ripe time

C = rest from livestock grazing yearlong

### Winter and/or Early Spring Grazing

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

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

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

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

## **Scope**

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

## **Non-native Pasture**

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

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

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

## **Stocking Rate**

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

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

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

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

### **Mineral and Other Supplements**

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

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

### **Flexibility**

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

**END OF EXHIBIT C**



**EXHIBIT D**

**Water Rights with a Place of Use on the Land**

**76H 133463 00**

**76H 133464 00**

**76H 133465 00**

**76H 133466 00**

**76H 30137270**

**76H 30137278**

**76H 30137283**

**END OF EXHIBIT D**

DRAFT