



## DECISION NOTICE

### UPPER THOMPSON CONSERVATION EASEMENT – PHASE 1

April 21, 2026

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#### **Action: Decision Notice**

Montana Fish, Wildlife & Parks (FWP) shall prepare a Decision Notice (DN) for the proposed action. The DN must identify the agency decision, the reasons for the decision, and any special conditions surrounding the decision or its implementation.

With this action, FWP hereby adopts the Draft Environmental Assessment (Draft EA) for the Upper Thompson Conservation Easement, Phase 1, as final, without modification, and approves Alternative 2, the Proposed Action.

#### **Authority: Montana Environmental Policy Act**

According to the applicable requirements of the Montana Environmental Policy Act (MEPA) and its implementing rules and regulations, before a proposed action may be approved, environmental review must be conducted to identify, consider, and disclose potential impacts of the proposed action on the affected human environment. The level of environmental review for a proposed action will vary. FWP is responsible for conducting environmental review at a level that accounts for such variable factors as the complexity and seriousness of environmental issues involved and the level of public interest. Title 75, Chapter 1, Parts 1-3, Montana Code Annotated.

Based on these factors, FWP determined that the appropriate level of review for the Proposed Action is a Standard EA (Draft EA). Therefore, to assess and disclose potential impacts of the proposed action, FWP prepared a Draft EA for public review and comment. See *Public Participation Process* below.

Further, FWP must consider any substantive comments received in response to an EA and proceed in accordance with one of the following steps:

- determine the EA did not adequately reflect the issues raised by the proposed action and issue an Environmental Impact Statement (EIS);

- determine the EA did not adequately reflect the issues raised by the proposed action and issue a supplemental EA; or,
- determine the Draft EA adequately addressed the issues raised by the proposed action and – with appropriate modification resulting from the analysis provided in the Draft EA and the analysis of any substantive public comments received – issue a final decision.

See *Public Comment and FWP Response* below.

## **Description Of Proposed Action**

FWP's Proposed Action is the purchase of a 34,610-acre conservation easement: the Upper Thompson Conservation Easement – Phase 1 (CE). The Proposed Action is the first phase of a potential two-phased project totaling 47,907 acres of important timberland and fish and wildlife habitat owned by Green Diamond Montana Timberlands LLC (Green Diamond) in northwest Montana. The proposed CE would prevent development, protect important wildlife habitat, maintain key landscape connectivity, and provide permanent free public recreation access to the affected lands. Forest management and sustainable timber harvest would continue and is a value recognized by the CE.

## **Purpose And Need**

The purposes of this CE include ensuring the opportunity for continued sustainable timber harvest, protecting fish and wildlife habitat, and acquiring permanent free access to the property on behalf of the public. Without a CE, current or future landowners could develop the property or prohibit public access to the property.

## **Alternatives Analyzed**

### **Alternative 1: No-Action**

In addition to the proposed action, and as required by MEPA, FWP analyzed the "No-Action" alternative in the Draft EA. Under the No-Action alternative, the Proposed Action (purchase of the CE) would not occur. The No-Action alternative forms the baseline from which the potential impacts of the proposed action may be measured.

Under the No-Action alternative, the proposed project would not occur. Green Diamond would continue to own the property without the restrictions of the proposed CE. Green Diamond may, at some future time, change their public access policies or decide to develop or sell some or all the affected property. Associated wildlife habitats, public recreation, and working timber lands could shift to other land uses, including subdivision development or other forms of land conversion.

### **Alternative 2: Proposed Action**

Under the Proposed Action, Alternative 2, FWP would purchase a 34,610-acre CE on Green Diamond lands in northwest Montana. This would prevent current or future landowners from developing the

property, thereby protecting fish and wildlife habitat and the potential for future sustainable timber harvest. The Proposed Action alternative would also maintain free recreational public access in perpetuity.

## **Public Participation Process**

The Draft EA was put forth for public review and comment from March 13 through April 11, 2026. A public hearing was held in Thompson Falls on March 24, 2026. The Draft EA was posted on FWP's Public Notice webpage: <https://fwp.mt.gov/news/public-notice>. The Draft EA was also made available for public review on the Environmental Quality Council website: <https://leg.mt.gov/mepa/search>, by individual request, and through notice to identified interested parties. FWP received 17 comments during the public comment period.

## **Public Comment and FWP Responses**

FWP received substantive public comment on the Draft EA. A substantive public comment is defined as a comment that identifies a specific issue or impact. The following constitutes a synopsis of public input received and FWP's response to those comments. In some cases, multiple individuals provided the same or similar comment. Such comments have been categorized and summarized, and a single FWP response has been provided for each category.

### **1. Trapping Regulations**

A commenter requested that FWP and Green Diamond consider changing Green Diamond's trapping regulations to remove the 150-foot wolf trap setback to maintain consistency with FWP trapping regulations. The commenter stated that the trapping regulations are difficult to interpret and need improvement.

#### **FWP Response**

Thank you for bringing this issue to our attention. FWP and Green Diamond agree that it is important that trapping regulations are clear and easy to interpret. Per FWP's 2025 wolf trapping regulations, a 50-foot trap setback from roads and hiking trails is required. Green Diamond's Open Lands Policy, included as an Exhibit in the Multi-Resource Management Plan (MRMP) (Appendix B of the Draft EA, page 86), requires a larger 150-foot setback from roads and trails as well as a 1,000-foot setback from residences and trailheads. Green Diamond intends to retain the larger setbacks and will work with FWP to clarify the language in the Open Lands Policy.

### **2. Including Additional Lands**

A commenter asked if lands in T21N, R26W Sections 30 and 31 were included in the Upper Thompson Phase 2 conservation easement proposal. If the lands are not included in the project, the commenter requested that FWP and Green Diamond consider adding them in the conservation easement considering their importance for public access.

### **FWP Response**

Thank you for your comment. The lands in T21N, R26W Sections 30 and 31 are owned by Green Diamond but are not included in the proposed project. These lands cannot be added to the Upper Thompson Project at this juncture because they were not included in the federal funding proposal, but FWP will consider these lands for a future project.

### **3. Public Records Request**

A commenter asserts that public record requests for information submitted to FWP on January 9, 2025, have not been fulfilled. They assert that they were not contacted by any person associated with the project.

### **FWP Response**

Thank you for your comment. The requested information related to FWP's application for FLP funding and compliance with program requirements. Scrutiny of the decision by the USFS to award such funding to FWP is beyond the scope of this EA. The commenter was contacted by FWP on May 5, 2023. FWP received a response to the Scoping Notice from the commenter for the Proposed Action June 2, 2023.

### **4. Forest Legacy Program Implementation**

The Forest Legacy Program (FLP) is a USFS Program that would provide \$13,000,000.00 in funding for the proposed Upper Thompson Conservation Easement – Phase 1. An institutional mineral rights holder asserts that FWP violated numerous 2017 FLP Guidelines.

- The commenter asserts that FWP's "failure to contact" the mineral rights holder violates the 2017 FLP Implementation Guidelines.
- The commenter asserts that the Montana Forest Action Plan and Assessment of Need do not meet FLP requirements.
- The commenter asserts that FWP has violated FLP requirements by failing to ensure that the subject property is free of encumbrances.
- The commenter also alleges that FWP violated FLP guidelines by failing to attempt to acquire their mineral holdings.

### **FWP Response**

Thank you for your comments. FWP respectfully notes that this project has been developed and advanced in consultation with FLP administrators from the USFS. The comments raised by the mineral rights holder as to FWP's compliance with the FLP are beyond the scope of the Draft EA.

## 5. **Private Property Assessment Act**

A commenter asserts that Draft EA incorrectly concludes there are no taking or damaging implications under the Private Property Assessment Act.

### **FWP Response**

Thank you for your comment. FWP disagrees that the conclusions of the Private Property Impact Analysis are incorrect. The Private Property Assessment Act (§§ 2-10-101, et seq., MCA) requires state agencies to evaluate their proposed projects to ensure that private property is not taken for public use without just compensation. Here, the only property rights affected are development rights owned by Green Diamond that are being voluntarily sold to FWP. The Private Property Assessment Act is not implicated by this proposed transaction.

## 6. **Mineral Holdings**

An institutional mineral rights holder commented, alleging that FWP's acquisition of this CE would have a material, adverse impact on the commenter's mineral holdings. The commenter further claims that the mineral determination is not credible. The commenter states that the Draft EA conflates FLP eligibility requirements with charitable contribution standards found in the Internal Revenue Code.

### **FWP Response**

Thank you for your comment. FWP notes that the CE terms explicitly state that the CE is subordinate to any mineral rights interests held by third parties. Furthermore, the proposed CE transaction is limited to development rights owned solely by Green Diamond. Therefore, third party mineral rights holders would not be precluded from accessing their mineral holdings by operation of the CE. Finally, and most notably, the Montana Nineteenth Judicial District Court, analyzing a challenge by a mineral rights holder to an almost identical conservation easement, found "[i]t is unreasonable to interpret the plain language of the Proposed Easement as interfering with [a mineral right holder]'s mineral rights." DV-27-2024-153-OC, Doc. 39, ¶ 27. This conclusion was not appealed and is now a matter of law.

The mineral remoteness report was prepared by a HydroSolutions Senior Hydrologist qualified to conduct mineral potential evaluations per USDA and IRS requirements. The report has been deemed credible and appropriate to FLP standards by FLP administrators.

## 7. **USFS Project Funding**

A commenter requested clarification regarding the source of USFS funding allocated to the project.

### **FWP Response**

Thank you for your comment. The total cost of the project is \$20,585,950 and includes \$13,000,000 of federal funding from the USFS Forest Legacy Program. The Forest Legacy Program has two funding mechanisms, traditional Land and Water Conservation Funds (LWCF) and Inflation Reduction Act Funds (IRA). The grant for this project is funded by LWCF.

## 8. Compliance with MEPA

A commenter alleges that an EIS is required for the Proposed Action and that a cumulative economic impact effect and cost benefit of dramatic development restrictions imposed by the largescale piecemeal state acquisition of multiple conservation easements has not been effectively analyzed. The commenter states, “Hundreds of thousands of mineralized acres have been effectively withdrawn by the state’s action at a time when the need for minerals known to be present is of growing strategic importance.”

### **FWP Response**

Thank you for your comment. FWP disagrees that an EIS is required to address concerns regarding the cumulative economic impacts of the Proposed Action on mineral rights. Section III of the Draft EA (page 10), “General Setting of the Affected Environment, Mining and Mineral Rights,” states, in relevant part “...Regardless of actual mineral potential, pursuant to Montana Law and the explicit language of Paragraph II.C.7 of the conservation easement, *the easement’s terms would apply only to the owner of the surface rights and would not impact third-party owners of mineral rights within the project area (unless the owners agree to subordinate those rights to the conservation easement). Should a third-party mineral right holder discover marketable mineral resources in the project area, the conservation easement would not preclude that entity from developing and extracting those resources.*” (emphasis added). The proposed action does not prevent any affected third-party mineral rights holder from accessing its privately held mineral resources located within the proposed CE. Indeed, in ruling on a nearly identical conservation easement the Montana Nineteenth Judicial District Court recently concluded that “[i]t is unreasonable to interpret the plain language of the Proposed Easement as interfering with [the mineral title owner]’s mineral rights.” Therefore, the anticipated adverse direct, secondary, or cumulative impacts to the economy associated with mineral resources would be negligible.

Concerning the appropriate level of environmental review (EA or EIS): if FWP’s action has a potential impact on the affected human environment (adverse, beneficial, or both) and if the action is neither categorically excluded nor otherwise exempt from MEPA review (by statute, rule, other), then some form of environmental review is required. According to ARM 12.2.431(2), “[a]n impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, an EIS is not required...” Because the Draft EA prepared for the proposed action did not identify any significant adverse impacts, the proposed action *does not* constitute a “...major action of state government significantly [and adversely] affecting the quality of the human environment.” Therefore, EIS-level environmental review is not required for the proposed action and FWP properly determined the appropriate level of environmental review for the proposed

action is a Standard EA and associated public process. Additional details regarding compliance with the Montana Environmental Policy Act are available on pages 4-5 of the Draft EA.

## **DECISION**

Based on the environmental review provided in the Draft EA, and in accordance with all applicable laws, rules, regulations, and policies, FWP determined the Proposed Action (i.e., Alternative 2) would not have significant adverse impacts on the human environment and constitutes a reasonable and appropriate strategy to achieve identified objectives. Therefore, preparation of an EIS is unnecessary.

FWP hereby approves Alternative 2, the Proposed Action (purchase of the Upper Thompson Conservation Easement – Phase 1 (FWP-SEA-WLD-R1-26-002) and adopts the Draft EA as final.

Sincerely,

A handwritten signature in black ink that reads "Amber Steed". The signature is written in a cursive, flowing style.

Amber Steed  
Region 1 Supervisor  
Montana Fish, Wildlife & Parks