

Draft Environmental Assessment for the Lost Trail Conservation Easement



Dahl Lake with the project land in the background (photo credit: Chris Boyer – kestralaerial.com)

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THE **OUTSIDE** IS IN US ALL.

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Abbreviations

BMP	Best Management Practices
DNRC	Department of Natural Resources and Conservation
ESA	Endangered Species Act
FLP	Forest Legacy Program
MCA	Montana Code Annotated
MEPA	Montana Environmental Policy Act
FWP	Montana Fish, Wildlife and Parks
MMBF	Million Board Feet
MRMP	Multi-Resource Management Plan
NWR	National Wildlife Refuge
SPP	SPP Montana, LLC
SMZ	Streamside Management Zone
SFI	Sustainable Forestry Initiative
TPL	The Trust for Public Land
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service

1.0 PURPOSE AND NEED FOR ACTION

1.1 PURPOSE AND NEED

Montana Fish, Wildlife and Parks (FWP) proposes the purchase of a conservation easement to protect approximately 7,256 acres of important timberland and wildlife habitat in northwestern Montana near the Marion, MT (Fig. 1). This single block of land shares nearly seven miles of border with the 7,876-acre U.S. Fish and Wildlife Service (USFWS) Lost Trail National Wildlife Refuge (NWR) and 4,093 acres of Wetland Reserve Program easements held by the Natural Resources Conservation Service. It is also within the newly proposed USFWS Lost Trail Conservation Area. The proposed conservation area would authorize the USFWS to acquire up to 100,000 acres of conservation easements from willing sellers within the designated boundary. This project consists of the ridgetop and lands sloping down to Dahl Lake and the sensitive wetland areas of the refuge, so conservation of these lands would help protect the water quality so important to the migratory birds and other wildlife species using the Lost Trail NWR.

The property is part of the approximately 630,000 acres purchased by SPP Montana, LLC (SPP) from Weyerhaeuser in December 2019. SPP plans to manage all of the recently purchased land in a manner similar to Weyerhaeuser. This proposed conservation project is a collaborative effort involving SPP, The Trust for Public Land (TPL), and FWP. The proposed conservation easement, to be held by FWP, would allow SPP to retain ownership of these timberlands, preclude development, protect important wildlife habitat and key landscape connectivity, and provide permanent public access and associated recreational opportunities.

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

FWP and TPL worked with the previous landowner, Weyerhaeuser, on this conservation project; SPP is willing to move forward with the conservation easement and management plan terms that we came to agreement on with Weyerhaeuser. If FWP does not move forward with this project, future management of the property as a working forest may change and continued public recreation access would not be guaranteed.

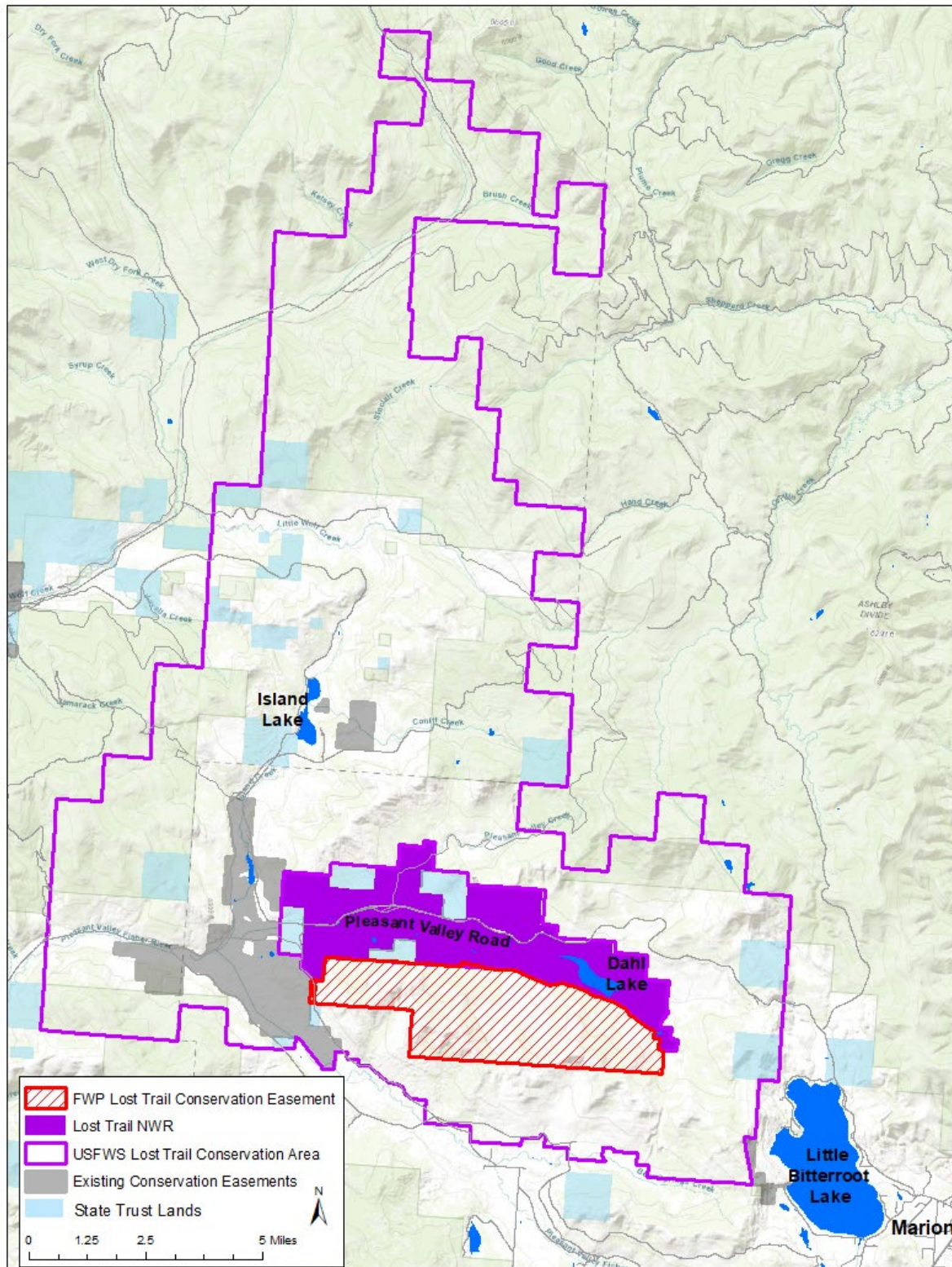


Figure 1. The location of the FWP proposed Lost Trail Conservation Easement (red hatching) adjacent to the USFWS Lost Trail National Wildlife Refuge (solid purple) and within the boundary of the USFWS proposed Lost Trail Conservation Area (purple outline).

The primary objectives of this project are to:

- Conserve important fish and wildlife habitat;
- Continue sustainable commercial forest management; and
- Maintain non-motorized public recreation access into the future.

Location:

The project consists of a solid block of land northwest of Marion, Montana which is directly adjacent to, and south of, the USFWS Lost Trail NWR (Fig. 1).

1.2 FUNDING

The appraised value of the proposed Lost Trail Conservation Easement is \$4,550,000, a 20% increase from the preliminary estimate in 2018. The purchase price for the conservation easement would not exceed \$4,362,000. Funding amounts and sources include: \$900,000 from Habitat Montana, \$50,000 from the Fish and Wildlife Conservation Trust, and up to \$3,412,000 from the U.S. Forest Service (USFS) Forest Legacy Program.

1.3 RELEVANT AUTHORITIES, RELEVANT DOCUMENTS, AND OVERLAPPING JURISDICTIONS

1.3.1 Authorities

Montana Department of Fish, Wildlife & Parks (FWP): FWP has the authority under state law (87-1-201 Montana Code Annotated [MCA]) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. In 1987, the Montana Legislature passed HB526 which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee-title acquisition (87-1-241 and 242 MCA). The Habitat Montana Program, developed as a result of that legislation, provides direction to the Fish and Wildlife Commission for all of FWP's wildlife habitat acquisition programs (12.9.511 ARM).

Montana State Statutes: Section 76-6-201 MCA authorizes the application of conservation easements to protect "significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest." Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance with local growth policies. The conservation easement document was submitted to Flathead County for review in accordance with this requirement on May 5, 2020.

1.3.2 Relevant Documents

1993 and 2018 Grizzly Bear Recovery Plan: The project area is identified as a core recovery area in the USFWS 1993 Grizzly Bear Recovery Plan (http://www.fws.gov/mountain-prairie/species/mammals/grizzly/Grizzly_bear_recovery_plan.pdf) and in the 2018 Recovery Plan Supplement: Habitat-based Recovery Criteria for the Northern Continental Divide Ecosystem

(https://www.fws.gov/mountain-prairie/es/species/mammals/grizzly/20180516_SignedFinal_HBRC_NCDE_Grizz.pdf).

FWP Grizzly Bear Management Plan for Western Montana 2006-2016: The project area is identified as core recovery area in this document (<http://fwp.mt.gov/fwpDoc.html?id=25772>) as well as in the Conservation Strategy for Grizzly Bear in the Northern Continental Divide Ecosystem, July 2018 (<http://igbconline.org/wp-content/uploads/2018/07/NCDEConservationStrategyJuly3DT.pdf>).

2003 Montana Gray Wolf Conservation and Management Plan: A wolf pack has been denning on the project area for over a decade. FWP obtained full authority to manage wolves in Montana upon the federal delisting of the Rocky Mountain gray wolf in May 2011. In preparation of assuming authority, Montana, Idaho, and Wyoming were required to develop conservation and management plans and adopt other consistent regulatory mechanisms in state law. The plan met that requirement and guides FWP management of the species.

<http://fwp.mt.gov/fishAndWildlife/management/wolf/management.html>

2015 State Wildlife Action Plan: The project area supports conservation priorities set forth in Montana's 2015 State Wildlife Action plan. It is one of only 14 geographic terrestrial focus areas identified in the plan as in greatest need of conservation.

<http://fwp.mt.gov/fishAndWildlife/conservationInAction>

2009 Revised Designation of Critical Habitat for Canada Lynx: Much of the project area is identified as a core recovery area in the USFWS's 2000 Canada Lynx Conservation Assessment and Strategy, the 2005 Lynx Conservation Agreement between the U.S. Forest Service (USFS) and the USFWS, and the Revised Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx. <http://www.fws.gov/mountain-prairie/species/mammals/lynx/criticalhabitat.htm>

2010 Montana State Assessment of Forest Resources: This assessment identified "critical landscapes" for identifying where federal funding for private forestry assistance would be most beneficial. It was based on an evaluation of eleven different criteria to identify "critical landscapes." The Project is located in an area that was rated as the highest priority for forestland protection in the 2010 Montana State Assessment of Forest Resources.

<http://dnrc.mt.gov/Forestry/Assistance/SARS.asp>

2012 Revised Flathead County Growth Policy: The Growth Policy helps the public and elected officials identify goals and objectives, set priorities, and seek solutions to long term issues. The Growth Policy addresses twelve elements (e.g. Land Uses, Demographics & Housing, Economy, etc.) and proposes an implementation strategy and action plan.

https://flathead.mt.gov/planning_zoning/growth_resolution2015a.php

1.3.3 Overlapping Jurisdictions

Forest Legacy Program: The USFS Forest Legacy Program (FLP) is one of several national programs established to promote the long-term integrity of forest lands. Specifically, the intent of the FLP is to identify and protect environmentally important private forest lands that are threatened by conversion to non-forest uses. The overall goal of the Montana FLP is to conserve and enhance land, water, wildlife, and timber resources while providing for the preservation of Montana's working forest land. The Forest Legacy Program requires acknowledgement of the funding source in the conservation easement and development of a multi-resource management plan (MRMP) that ensures sustainable forest management into the future.

1.4 DECISION TO BE MADE

The decision that must be made is whether FWP ***should move forward with the purchase of the proposed Lost Trail Conservation Easement on approximately 7,256 acres of SPP Montana, LLC land near Marion, Montana.*** Following completion of the draft EA and review of the public comments received, the FWP Region One Supervisor will issue a decision notice that makes a recommendation to the FWP Fish and Wildlife Commission on a course of action. The Commission will make the final decision on which course of action, the Proposed Action or the No Action Alternative as described in Section 2.0 (Alternatives), will be followed.

1.5 EARLY PUBLIC INVOLVEMENT

FWP participated in a tour of the property with the Forest Legacy Program Subcommittee, part of DNRC's State Forest Stewardship Steering Committee, on August 14, 2018. The project received support from the subcommittee and the full Steering Committee during their annual meeting on August 15, 2018.

FWP released a 30-day scoping notice on April 6, 2020 to solicit public input on the proposed project and requested the public's help in identifying any issues, concerns, or other information that FWP should consider when evaluating the opportunity to conserve this property.

1.6 ISSUES RAISED DURING PUBLIC SCOPING

FWP received 40 comments through the public scoping process with the public expressing overwhelmingly support for this project. The comments that require further response from FWP are as follows:

1. Some comments expressed the desire for the state to buy the land or wished we had bought the land before it sold from Weyerhaeuser to SPP. Along these lines, some comments were confused that this project is an acquisition of land by FWP.
FWP response: Weyerhaeuser was not willing to sell this land when FWP and TPL were engaged in our preliminary discussions and applying for federal grant funding. To be clear, the current proposal for public review is for the FWP to purchase a conservation easement

on the property with SPP retaining the right to manage the land under the conservation easement and management plan terms.

2. Some comments expressed the desire to see more land go under conservation easement.

FWP response: When FWP and TPL started discussions with Weyerhaeuser about a conservation project around the Lost Trail NWR, the company was unwilling to pursue a larger conservation project. They were only interested in placing these 7,256 acres under easement.

3. One comment expressed support of this project as long as the price paid for the conservation easement would not be too high.

FWP response: The value of the conservation easement is based on a federal standard appraisal as required by federal funding.

4. Many comments were supportive of this project because it would protect hunting access. Some mentioned the importance of protecting a walk-in hunting experience.

FWP response: The proposed conservation easement would guarantee the public's right to access this land for hunting and other recreation opportunities in perpetuity. The management plan would assure only non-motorized use is allowed.

5. One comment was that the conservation easement should be perpetual.

FWP response: The proposed conservation easement would be a perpetual easement.

6. Some comments mentioned the importance of ensuring sustainable timber harvest on the project area in the future. One comment in particular wanted a further definition of "sustainable" forest management and expressed that conservation easement should provide for the following objectives: 1) an appropriate range of forest age structures in appropriate juxtaposition and responsive to naturally occurring patch sizes, 2) retention of existing old growth components for ecological values if the existing old growth component is considerably less than needed for ecological values, and 3) recognition of and control of invasive plant species.

FWP response: The terms of the proposed conservation easement would allow for continued, sustainable harvest of timber on the property in perpetuity. As far as the desire for more detailed forest management restrictions with the conservation easement, the terms of the easement would require the landowner to harvest timber and manage the land in accordance with Sustainable Forestry Initiative (SFI) Standards (https://www.sfiprogram.org/wp-content/uploads/2015_2019StandardsandRules_Section2_June2019.pdf) and under applicable law such as the Montana Streamside Management Zone (SMZ) Law which include Best Management Practices (BMPs) (<http://dnrc.mt.gov/divisions/forestry/docs/assistance/practices/mt-forestry-management-best-practices-guide.pdf>) for forestry in Montana. The county jurisdiction requires that landowners control noxious weeds on their property. The proposed management plan would require that the landowner manage noxious weeds in compliance with state law and

best management practices, implementing an integrated pest management philosophy to meet weed control goals. Neither the conservation easement nor the management plan requires the retention of existing old growth on the property. Given the uncertainty around climate change and how it may affect the vegetation communities in the future, the landowner was not willing to specifically commit to retaining this vegetation community type.

7. One comment expressed the desire for the conservation easement to include assured public access to the private land within the CE as well as all the intermingled public land parcels.

FWP response: There is no private land within the boundary of the proposed project; it is all owned by SPP and would be subject to the terms of the proposed conservation easement. The terms of the proposed conservation easement would allow for public access of the land within the CE in perpetuity. The USFWS and DNRC land adjacent to this property are accessible either directly via county roads or are adjacent to open public land. A conservation easement cannot secure rights on other property not covered by the easement, although the public would have access to the easement property and therefore the adjacent public land.

8. One comment expressed the desire for motorized public access to be clearly defined by specifying open road densities and providing seasonal restrictions to maintain wildlife habitat and hunting opportunities and also to define how restrictions would be enforced.

FWP response: The terms of the proposed conservation easement would not specifically limit motorized use of the property's road network; however, the management plan would require only non-motorized use of this property which would be enforced by the landowner with assistance from FWP. The proposed management plan would limit public use to walk-in, non-motorized bike, or horseback access only. Under the terms of the management plan, road access for public use may be limited for a variety of reasons such as the protection of wildlife, security, prevention of sedimentation from logging roads, public safety and reducing the spread of noxious weeds.

9. One comment stated that partial sale or any potential subdividing of the property must be discouraged.

FWP response: The terms of the proposed conservation easement would allow only one division of the property to be no less than 3,500 acres and the property must never be owned by more than two landowners and the terms of the conservation easement would continue regardless of ownership.

10. One comment was concerned with controlling or prohibiting any public or landowner uses that conflict with ecological values or degrade big game habitat.

FWP response: The proposed conservation easement states that one of the purposes of the easement is to provide habitat for a variety of wildlife species and to prevent uses that will interfere with the conservation values defined in the conservation easement. The proposed easement also states that the landowner and FWP intend this easement to limit the uses of

the property to those activities that are consistent with the conservation values and the purposes of the easement. The terms of the conservation easement and proposed management plan outline specific details on what uses and restrictions apply to the property to protect those conservation values. The proposed management plan states that an objective of the SFI Standard is to ensure that forest management practices will “manage the quality and distribution of wildlife habitats and contribute to the conservation of biological diversity by developing and implementing stand- and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals.” The SFI Standard provides general performance measures and indicators to meet this objective. As required by the management plan, the landowner would manage the property consistent with the SFI objective, performance measures, and indicators. The proposed management plan also requires that the landowner manage the property while considering wildlife through judicious control of road access, timber harvest management, and in cooperation with state and federal fish and wildlife agencies.

11. One comment stated the roles and responsibilities of both the landowner and administering agency need to be clearly articulated and that a resolution process of potential disputes needs to be defined.

FWP response: Like all FWP conservation easements, the proposed conservation easement for this property defines the roles and responsibilities of the landowner and FWP in great detail. It also has a whole section on “Remedies of Unauthorized Uses and Practices” which describes how easement term violations will be dealt with and how resolution of disputes will be resolved.

12. A law firm, on behalf of the owner of the mineral estate under the proposed project area submitted a comment letter to document that 95% of the mineral rights under the proposed conservation easement are not owned by SPP. The letter stated that the mineral right owner will not allow a conservation easement to be placed on the property that would in any way undermine their existing mineral or surface entry rights.

FWP response: FWP acknowledges that conservation easements cannot restrict the existing rights of third-party owners of subsurface mineral rights underlying the property. In recognition of Montana law on this point, the proposed conservation easement under landowner rights provides: “[t]his 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. While the conservation easement may not restrict a third-party mineral rights owner from developing the minerals underlying the property, the proposed easement does contain language providing, “Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. 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.”

13. The comment letter from the law firm included an attachment written by a geologist representing the mineral owner which states the geologist's opinion that the project area possesses significant potential for discovery of a wide array of metallic and industrial mineral deposits. According to the geologist, his opinion is based on information currently not available in the public domain.

FWP response: In May 2020, TPL and FWP had a consultant, HydroSolutions, conduct a minerals potential evaluation for the Lost Trail Conservation Easement area. That evaluation determined the "probability of extraction from the property, by surface or subsurface mining methods, of metallic and industrial minerals, construction materials, abrasives, petroleum products (oil and gas), coal resources, geothermal resources, and sand and gravel is so remote as to be negligible, within the meaning of section 170(h)(5)(B)(ii) of the Internal Revenue Code and its applicable regulations." Unless the mineral owner would like to share the information not publicly available, FWP has to assume that the consultant's minerals potential report is correct.

2.0 ALTERNATIVES

2.1 ALTERNATIVE A: PROPOSED ACTION

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

The proposed Lost Trail Conservation Easement document addresses the rights each party would retain or receive under this proposal (Appendix C).

Multi-Resource Management Plan (MRMP)

SPP and FWP have also developed a Multi-Resource Management Plan (MRMP) (Appendix D), which describes those steps that SPP must take to conserve environmentally important fish and wildlife habitat including such matters as managing temporary and permanent roads, restrictions on sand and gravel extraction, managing seasonal public use and preserving special habitat features - all while allowing for continued compatible timber and other resource management activities. The MRMP is not incorporated into the conservation easement, but is a separate agreement, required by the conservation easement, which would be signed and acknowledged by SPP and FWP.

The specific provisions in the MRMP are designed to be more flexible than the binding terms of the conservation easement. As science or management approaches change or if new landowners acquire the land, the MRMP language may also change. However, any changes to the plan must have the mutual consent of SPP (or subsequent landowners) and FWP.

2.2 ALTERNATIVE B: NO ACTION

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

2.3 ALTERNATIVE CONSIDERED AND DISMISSED

FWP considered the option of fee ownership of the property but when FWP and TPL were discussing conservation options with Weyerhaeuser, the company was unwilling to consider this approach. As a result, the funding proposal to the USFS Forest Legacy Program and the proposal for preliminary approval to the FWP Fish and Wildlife Commission were developed for the purchase of a conservation easement. Fee acquisition is not being considered in this proposal because FWP does not have the funding or approvals to pursue that approach. Changing the conservation approach at this point would delay a conservation outcome for a year or more and thus threaten the potential to secure habitat values and public access on this property for the future.

3.0 AFFECTED RESOURCES AND PREDICTED ENVIRONMENTAL CONSEQUENCES

3.1 WILDLIFE AND AQUATIC RESOURCES

The Lost Trail Conservation Easement area supports populations of mule and white-tailed deer, elk, moose, black bear, mountain lion, wolf, forest grouse, and turkeys. It is also key winter range for elk. This property is home to at least two large elk herds. The resident herd, of approximately 300 animals, uses this area year-round. Another herd of migratory elk move up to 80 miles from winter range on the Flathead Indian Reservation to the project area during the summer, with some continuing north to the Flathead National Forest just west of Whitefish.

The largest population of breeding western toads in western Montana exists on the project area and the adjoining Lost Trail NWR, which provide crucial habitat for this state species of concern and USFS sensitive species. Thirty percent of the project is potential fisher habitat. The entire property is dispersal habitat for male wolverines and 50% is dispersal habitat for female wolverines. The project lands are home to grizzly bear and Canada lynx, which are listed as threatened under the Endangered Species Act (ESA). Sixty percent of the project area is critical habitat for Canada lynx (USFWS 2009 Canada Lynx Recovery Plan). The project includes 22 acres of important old-growth forest, a unique forest community type, which is used by species such as brown creepers, Townsend's and MacGillivray's warblers, olive-sided flycatchers, Townsend's solitaire, great gray and great horned owls, and Cooper's and red-tailed hawks.

There are 60 Montana species of concern (SOC) that have documented occurrences or the potential to occur on the property and the immediately adjacent land (Table 1). Many of these SOC are found on the Lost Trail NWR and use the lake and surrounding riparian areas and wetlands of the refuge. The project area consists of a seven-mile-long hillslope which drains directly toward the sensitive riparian and wetland areas of the refuge.

Table 1. Montana species of concern that could potentially occur on, or in the vicinity of, the proposed conservation easement.

Common name	Scientific name	Common name	Scientific name
Westslope Cutthroat Trout	<i>Oncorhynchus clarkii lewisi</i>	Northern Bog Lemming	<i>Synaptomys borealis</i>
Horned Grebe	<i>Podiceps auritus</i>	Black Swift	<i>Cypseloides niger</i>
Canada Lynx	<i>Lynx canadensis</i>	Little Brown Myotis	<i>Myotis lucifugus</i>
Grizzly Bear	<i>Ursus arctos</i>	Hoary Bat	<i>Lasiurus cinereus</i>
Pileated Woodpecker	<i>Dryocopus pileatus</i>	Black-backed Woodpecker	<i>Picoides arcticus</i>
Western Toad	<i>Anaxyrus boreas</i>	Yuma Myotis	<i>Myotis yumanensis</i>
Black Tern	<i>Chlidonias niger</i>	Wolverine	<i>Gulo gulo</i>
Clark's Nutcracker	<i>Nucifraga columbiana</i>	Veery	<i>Catharus fuscescens</i>
Townsend's Big-eared Bat	<i>Corynorhinus townsendii</i>	Western Skink	<i>Plestiodon skiltonianus</i>
Fisher	<i>Pekania pennanti</i>	Boreal Chickadee	<i>Poecile hudsonicus</i>
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Yellow-billed Cuckoo	<i>Coccyzus americanus</i>
Golden Eagle	<i>Aquila chrysaetos</i>	Northern Alligator Lizard	<i>Elgaria coerulea</i>
Great Gray Owl	<i>Strix nebulosa</i>	Bobolink	<i>Dolichonyx oryzivorus</i>
Northern Goshawk	<i>Accipiter gentilis</i>	Long-billed Curlew	<i>Numenius americanus</i>
American Bittern	<i>Botaurus lentiginosus</i>	Brewer's Sparrow	<i>Spizella breweri</i>
Great Blue Heron	<i>Ardea herodias</i>	Peregrine Falcon	<i>Falco peregrinus</i>
Loggerhead Shrike	<i>Lanius ludovicianus</i>	Northern Hawk Owl	<i>Surnia ulula</i>
Trumpeter Swan	<i>Cygnus buccinator</i>	Ferruginous Hawk	<i>Buteo regalis</i>
Pygmy Whitefish	<i>Prosopium coulteri</i>	Franklin's Gull	<i>Leucophaeus pipixcan</i>
Pygmy Shrew	<i>Sorex hoyi</i>	Gray-crowned Rosy-Finch	<i>Leucosticte tephrocotis</i>
Evening Grosbeak	<i>Coccothraustes vespertinus</i>	Black-crowned Night-Heron	<i>Nycticorax nycticorax</i>
Flammulated Owl	<i>Psiloscops flammeolus</i>	White-faced Ibis	<i>Plegadis chihi</i>

Cassin's Finch	<i>Haemorhous cassinii</i>		Northern Leopard Frog	<i>Lithobates pipiens</i>
Fringed Myotis	<i>Myotis thysanodes</i>		Black-necked Stilt	<i>Himantopus mexicanus</i>
Brown Creeper	<i>Certhia americana</i>		Harlequin Duck	<i>Histrionicus histrionicus</i>
Varied Thrush	<i>Ixoreus naevius</i>		Caspian Tern	<i>Hydroprogne caspia</i>
Lewis's Woodpecker	<i>Melanerpes lewis</i>		Forster's Tern	<i>Sterna forsteri</i>
Pacific Wren	<i>Troglodytes pacificus</i>		Common Loon	<i>Gavia immer</i>
Clark's Grebe	<i>Aechmophorus clarkii</i>		Alder Flycatcher	<i>Empidonax alnorum</i>
Common Tern	<i>Sterna hirundo</i>		American White Pelican	<i>Pelecanus erythrorhynchos</i>

Proposed Action Alternative:

The Proposed Action would protect wildlife habitat on the property in perpetuity while allowing continued sustainable forest management. The conservation easement and associated MRMP would secure existing wildlife habitat values on the property. This alternative also ensures that the land would never be subdivided for residential development or other uses that could possibly harm wildlife resources.

No Action Alternative:

No immediate impacts would be likely to occur under the No Action Alternative. SPP would retain ownership and could decide to manage the property differently in the future or sell it out right. Depending on the type of future use of the property, it could result in the loss or degradation of the property's habitat values.

3.2 VEGETATION

Forestland dominates the project area. It is a mixed conifer forest with dominant species of Douglas-fir, western larch, ponderosa pine, lodgepole pine, true firs, and spruce. There are some cottonwood and aspen along intermittent streams and near wetland areas. The stands vary in age from young regeneration to mature. The forested hill slopes have been managed for timber production for over 100 years. Elevations vary from 3,500 to 4,600 feet.

The project area has nearly 1,000 acres of montane grassland which is a rare, native habitat type found in very few places in northwestern Montana. As mentioned previously, the project includes 22 acres of old-growth forest, which is not common for this area of northwest Montana. Spalding's catchfly (*Silene spaldingii*), an ESA-listed threatened plant, has been documented on the adjoining refuge lands, but not specifically on the project area. It is possible that this plant occurs on the project lands and its occurrence has not been confirmed. Prostrate hutchinsia (*Hornungia procumbens*), a native herb that is a Montana species of concern, also has the potential to exist on this property. It is associated with sagebrush steppe habitat that exists in portions of this property.

Because of past and ongoing weed management activities by Weyerhaeuser there are only limited areas where noxious weeds are present; mostly occurring along existing roads on the project lands. Some of the noxious plant species that are present include knapweed, Canada thistle, and houndstongue.

Proposed Action Alternative:

The proposed conservation easement and associated MRMP would allow SPP to practice sustainable forestry on the property into the future while protecting the rare vegetation communities currently existing on the property. Noxious weed control would remain the legal responsibility of current and future owners of this property.

Under the proposed conservation easement, livestock grazing would be permitted during the summer grazing season of May 1 through October 31 as long as it is conducted in accordance with grazing standards detailed in the conservation easement and the MRMP.

No Action Alternative:

Under the No Action Alternative, timber management and livestock grazing would continue for the immediate future, but property could be sold for development or some other non-forest management use. Depending on the future use, the current forest and riparian habitats, including the native grassland and old growth forest areas, could be severely reduced or eliminated in places to facilitate potential future development.

3.3 SOILS

The topography of Flathead County was formed during the ice ages when the enormous glacier that filled the Rocky Mountain Trench of British Columbia thinned as it spread southward through the Flathead Valley and into the Mission Valley. The Mission Range split the glacier sending one branch of ice down the Swan Valley and another to the southern end of Flathead Lake. When the glacier melted it left a deep fill of sediment in the floor of the Flathead Valley (Alt & Hyndman 2003).

The valley bottom is generally level to moderately sloping. Most steep slopes occur along the fringe, in the public and private timberlands surrounding the valley bottom, as well as in Glacier National Park. Approximately 75% of Flathead County has slopes over 25%, most of which occur in the mountainous areas within the National Forest or National Park (Flathead County Growth Policy 2012).

Soil types, as identified by the Natural Resources Conservation Service, that are represented throughout the project lands at greater than 5% occurrence include: Courville-Pleasant Valley complex, 8 to 30 percent slopes (40%); Rockhill-Rock outcrop Courville complex, 15 to 50 percent slopes (14%); Rockhill-Rock outcrop Pleasant Valley complex, 15 to 50 percent slopes (13.6%); Courville-Stevie-Winfall complex, 30 to 50 percent slopes (11.6%); and Sharrott-Rock outcrop-

Winkler complex, 15 to 60 percent slopes (6.4%) (USDA 2020). Other soil types exist on the project land, but at less than 5% of overall soil type.

Proposed Action Alternative:

There would likely be no changes to the existing soil conditions on the project lands under the Proposed Action Alternative. If anything, the soil resources would be more likely to be protected and preserved under these alternatives that limit future use of the property and ensure continued sustainable forest management practices.

No Action Alternative:

Under the No Action Alternative, there could be soil disturbance and impacts especially if the property were subdivided for housing or other commercial development such as gravel pits or rock quarries.

3.4 LAND USE

The project area is currently managed as commercial forest land and has been managed in a similar fashion for over 100 years. Non-motorized public use of the property, including as a walk-in hunting area, was allowed by the previous landowner, Weyerhaeuser. The proposed conservation easement property is adjacent to the USFWS Lost Trail NWR.

Proposed Action Alternative:

Land use is not expected to change on the project area. Timber management, livestock grazing, and public recreation would continue on the property. The proposed conservation easement would keep impacts from use of this property to the adjacent USFWS refuge lands at their current level, which is quite low.

No Action Alternative:

Depending on changing landowner priorities or desires of the future landowner, the property may no longer be managed for commercial timber use and public access could be denied. Without a conservation easement on this property, future uses could potentially have negative impacts for the adjacent refuge, depending on how the property is managed or developed.

3.5 SOCIOECONOMICS

Flathead County (County) encompasses 5,256 square miles and is the fourth most populous county in Montana with 103,806 people as estimated by Census Bureau (CEIC 2020). Between 2010 and 2019, the County's population grew by 14.2% which makes it the second fastest growing county in the state (CEIC 2020). Since January 2015, there have been 5,820 acres sold throughout Flathead County for new residential development. As of 2019, 3 out of 10 of the fastest growing cities in Montana are located in Flathead County: Columbia Falls, Whitefish, and Kalispell. This project is near Marion which for now remains quite rural. But as the Flathead Valley, and the cities within it, continue to grow people will look to these more rural locations for affordable housing the respite from the busyness of valley homesites.

A summary of the county's economy and its recent changes are stated clearly in the 2012 Flathead County Growth Policy:

The Flathead Valley was historically a natural resource-based economy. Logging, mining and commodities production have decreased over the past decade, and as a result the Flathead economy has had to diversify in order to accommodate this change. The County's economy has experienced significant restructuring over the past thirty years, with significant growth in the retail trade and service industries during the late 1990's and early 2000's. However, the natural amenities and quality of life that contribute to the character of Flathead County continue to attract small businesses and technology companies that are becoming more prevalent in light of the new knowledge based, globalized economy. The city of Kalispell's evolution as a regional trade and service center has also contributed to the growth of the County's economic base.

The project lands can produce 1 MMBF of merchantable timber per year, supporting 7 full-time workers in the wood products industry and another 23 workers in other related business sectors. The wood is processed at local mills and annually generates \$1.75 million in economic activity for the area. Recreation-based businesses in Flathead County generate \$49.3M annually (Institute for Tourism and Recreation Research 2016). The project lands, which currently provide free public access, generate \$43,000/year in direct expenditures from big game hunting alone.

Proposed Action Alternative:

The proposed project would help maintain timber industry jobs for local residents and support those associated businesses. Additionally, the proposed conservation easement would support the area's outdoor recreation industry by continuing to provide public access for hunting, fishing, hiking, mountain biking, and other recreational pursuits, which in turn, would positively impact the local outdoor recreation industry and associated businesses.

The conservation easement would not change the ownership of the property nor would it change the type of use on the property. Therefore, the purchase of a conservation easement on this land would not impact the current level of taxes paid to Flathead County. However, it may preclude future increases in gross tax revenues if the land were to eventually be developed for residential or industrial uses precluded by the conservation easement.

An increasing number of homes and developments in the county have occurred in Wildland-Urban Interface areas, which increase the challenges faced by local services when wildfires occur or when wildlife-human conflicts occur. The proposed action would decrease the demand for those services in the future and the public costs associated with those services. It would also reduce human-wildlife conflicts that come with residential development of properties within wildlife habitat, especially those with grizzly bears, black bears, and mountain lions. Other services provided by local and state governments such as schools, sanitation, and safety would not be affected by this project since the land would remain a working forest and no residential development would occur. Nor would it result in the need for new facilities to provide utilities or an increased use of any energy source.

No Action Alternative:

Under the No Action Alternative, there would be no immediate change in property tax revenue for Flathead County, demand for public services or economic benefits since the land uses may not change in the short term. However, if the property were to be sold and developed, property tax revenue to the county could increase, but a change to residential use could also result in additional costs for county services for such things as wildfire suppression, transportation upgrades and maintenance and emergency services for new residences. Also, the land may no longer be managed for commercial timber harvest and the associated revenue and timber industry jobs may be lost. Opportunities for public recreation access would also likely be lost, potentially decreasing activity associated with that segment of the economy. If some or all of the land were to be sold for residential development, an increase in demand for local services, including schools, may occur. It is also possible that if the property were used for something other than a working forest, that either an increase or decrease in demand for certain private businesses supplying goods and services to the community could occur depending on future use of the property. The same would be true for future employment opportunities within the county, they could increase or decrease depending on a change in future management of the property.

3.6 AESTHETICS AND RECREATION

This 7-mile long project is the primary scenic backdrop to Dahl Lake for more than 75,000 visitors each year who tour the Lost Trail NWR visitor center. This area is currently closed to motorized vehicles in order to protect wildlife and watershed values, instead offering recreational opportunities for non-motorized activities like hiking, wildlife viewing, berry picking, horseback riding, and mountain biking. Hunting is a favorite local pursuit in this area, with the project lands offering hunting opportunities for elk, mule deer, white-tailed deer, moose, black bear, mountain lion, gray wolf, and upland game birds.

The project lands have been open for hunting under the FWP Block Management program. Weyerhaeuser had an open lands policy that allowed general public recreation throughout the year in addition to seasonal hunting and trapping which SPP has committed to continuing. FWP is working with SPP to enroll most of their land in Block Management for the upcoming fall hunting season. The area has been managed as a walk-in hunting opportunity for more than 25 years. The lack of motorized access increases the likelihood of the property retaining elk and increases chances for public harvest. Under the terms of the conservation easement, free public access to the project lands would be permanently secured. This project protects the north slope of Dredger Ridge, part of Hunting District 103, which is the most used and successful elk hunting area in Region 1. Though the project area only represents 1% of the acreage in HD 103, it provides an average of more than 400 hunter days each year. The project area is easily accessed on the western boundary by open county roads and around the rest of the property for nonmotorized travel through adjoining NWR or SPP property.

Proposed Action Alternative:

The proposed conservation easement would maintain and enhance aesthetic and recreation values by protecting wildlife habitat and maintaining public access. Although timber harvest and other resource extraction activities could continue as specified in MRMP, no residential or commercial development could occur. The conservation easement would help prevent the conversion of current working forestlands to non-forest uses and preserve the current scenic qualities and recreational opportunities.

The proposed easement would give the public the general right of access to the property in perpetuity for noncommercial dispersed recreation, including but not limited to hunting, trapping, hiking, and wildlife viewing. Motorized road access for public use would be prohibited by the MRMP and only walk-in, non-motorized bike, or horseback access would be permitted. As mandated by MCA 23-1-110 and the Montana Environmental Policy Act (MEPA), the Montana Office of Tourism and Business Development produced a Tourism Report for this project which determined that this conservation project would positively impact the tourism and recreation economy and would improve the quality and quantity of recreation opportunities (Appendix A). As this report notes, "recreation and access to public lands are primary reasons both first-time and repeat visitors come to Montana."

In the event of sale of the property to another landowner, the terms of the conservation easement would continue to apply. The MRMP could be revised but must provide at least equivalent recreation opportunity and conservation values, and these changes would have to be approved by FWP.

No Action Alternative:

Under the No Action Alternative, the aesthetics and recreation values of the property would not immediately change but could be altered significantly in the future. The public may not be able to access any of this property in the future depending on the new landowner's priorities, especially if some or all of the property was sold for development. Development could also negatively impact the property's current viewshed qualities.

3.7 HISTORICAL AND CULTURAL

According to the Confederated Salish and Kootenai Tribe's Historical Preservation Office, the Kootenai people occupied this area for 8,000 years before European exploration. The project lands were part of a major travel route through this region. The area has an abundance of historic food for Native Americans. Grave sites, teepee rings, and petroglyphs have all been documented on the adjacent refuge and likely on the project area.

Proposed Action Alternative:

No impacts to existing cultural or historic resources on the property are likely under the Proposed Action Alternative. An assessment of the project area by the Montana State Historic Preservation Office determined that "as long as there will be no disturbance or alteration to structures over fifty years of age, we feel that there is a low likelihood

cultural properties will be impacted” by this proposed project (Appendix B). There are currently no structures existing on this property.

The project area would be permanently open and accessible to tribe members under the public access stipulations of the proposed conservation easements and would continue to support fish and wildlife populations that tribal members could enjoy under the terms of each tribe’s specific treaty rights. No activities would be allowed that might impact cultural or historic resources on the property.

No Action Alternative:

Under the No Action Alternative, depending on future ownership, use, and potential development of the property, it is possible that any existing culture or historic resources could be impacted.

3.8 AIR, NOISE, AND ELECTRICAL

Existing noise levels are low and air quality is relatively good in the project area most of the time, depending upon weather conditions and wildfire events. Timber harvest activities can periodically affect ambient noise levels and burning of logging slash can occasionally impact air quality.

Proposed Action Alternative:

There would be no expected changes to existing air quality or noise levels within the project area under the Proposed Action Alternative.

No Action Alternative:

Under the No Action Alternative, depending on future use and development of the property, it is possible that air quality and noise levels increase or decrease depending on what type of use ultimately occurs on the property.

3.9 RISKS TO HUMAN HEALTH AND SAFETY

The project area is currently managed as a commercial forest that carries inherent risks to human health and safety associated with wildfire, logging, and commercial transportation. In addition, the entire area is currently used by the public for non-motorized recreation such as hunting, trapping, wildlife viewing, and hiking. All these activities have some degree of risk associated with outdoor use and the use of various types of outdoor equipment.

Proposed Action Alternative:

There would be no expected increased risk to human health or safety on the project area under the Proposed Action Alternative.

No Action Alternative:

Under the No Action Alternative, depending on future use and development of the property, it is possible that risks to human health and safety could decrease due to less use by the public or risks

could increase under some different future use such as expanded residential development in the forest.

3.10 CUMULATIVE IMPACTS

Proposed Action Alternative:

Completion of this project would contribute to ongoing habitat and species conservation efforts in western Montana. In the last 20 years, FWP has helped conserve over 200,000 acres of commercial forestland through conservation easements or outright purchases in partnership with a variety of government agencies, private conservation groups and timber corporations. The proposed project area is situated in a landscape that connects Glacier National Park to the Cabinet Mountains Wilderness and beyond. Public agencies, non-governmental organizations, and private landowners have been, and continue to, collaborate on land conservation in this area. The USFWS is currently evaluating the possibility of establishing a new conservation area to be part of the National Wildlife Refuge System. The proposed conservation area surrounds the Lost Trail NWR in Flathead and Lincoln counties (Fig. 1). This new conservation area would authorize the USFWS to potentially acquire up to 100,000 acres of conservation easements from willing sellers within the designated boundary.

The proposed project would help provide wildlife connectivity for wide ranging species such as elk, wolverine and grizzly bears, as well as the threatened Canada lynx and numerous other game and nongame species.

Additionally, the Project would complement millions of dollars invested in landscape conservation by the Forest Legacy Program, the U.S. Fish and Wildlife Service, and the Bonneville Power Administration in northwest Montana to conserve important fish and wildlife habitats, provide for continued public enjoyment of the associated outdoor recreational opportunities, and maintain working forest landscapes.

The decision to place a conservation easement on approximately 7,256 acres of SPP forestland is basically a decision to permanently utilize this land for commercial harvest of forest products, livestock grazing, fish and wildlife habitat, watershed values, and public recreational opportunities. Alternative economic uses of this land would be precluded by the conservation easement. Though this property has a high potential for development and conversion to other uses which would permanently precluded by this conservation easement, the conservation values in the area are also very high, which serve many social and ecological benefits, as described earlier. The cumulative impact of permanently protecting this property, in combination with the protections on the adjoining federal land, would be positive for fish and wildlife populations and public recreation opportunities in the area, as well as a benefit to the economic health of the area, namely the timber and outdoor recreation industries.

No Action Alternative:

In the short term, little change would be likely under the No Action Alternative. SPP would continue their ownership and current land uses. However, without the conservation easement,

future uses of the land would depend on the motivations of the current owners and economic conditions at the time of the sale.

4.0 ENVIRONMENTAL IMPACT STATEMENT DETERMINATION

Based on the significance criteria evaluated in this EA, is an EIS required? No.

Although the proposed Lost Trail Conservation Easement would affect approximately 7,256 acres in perpetuity, the proposed conservation easement would retain the timber management activities and public access on the property. Important wildlife habitat that supports local revenues generated from hunting and other recreational activities would also be preserved across the project area.

A limited number of minor impacts from the proposed action were identified in this assessment, as described previously. However, these impacts are considered to be minor. Based upon the above assessment, an EIS is not required and an environmental assessment is the appropriate level of review.

5.0 PUBLIC PARTICIPATION AND CONTRIBUTORS

5.1 PUBLIC INVOLVEMENT

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

- Two legal notices in each of these newspapers: *Flathead Beacon*, *Daily Inter Lake*, *The Western News*, and *Helena Independent Record*;
- Direct mailing to adjoining landowners, interested parties, and those who provided input during scoping;
- Public notice on the Fish, Wildlife & Parks website: <http://fwp.mt.gov>.

The public comment period will extend for (30) thirty days beginning October 9, 2020. Written comments will be accepted until **5:00 p.m.** on **November 8**, 2020. Comments can be sent to:

Lost Trail Conservation Easement Or ktempel@mt.gov
Montana Fish, Wildlife & Parks
Attn: Kris Tempel
490 N. Meridian Rd
Kalispell, MT 59901

Copies of this EA will be available for public review at FWP Region One Headquarters in Kalispell and will be available on the FWP website:

<http://fwp.mt.gov/news/publicNotices/conservationEasements/>

FWP has scheduled a virtual public hearing for **October 28, 2020 at 7:00 pm** to provide interested organizations and private individuals an opportunity to ask questions about the proposed project and submit public comment. The online meeting will be livestreamed on the FWP website (fwp.mt.gov/regions/r1) and the FWP YouTube channel. Instructions for participating in the virtual meeting will be posted online beforehand.

5.2 CONTRIBUTORS

Montana Fish, Wildlife and Parks
Wildlife Division, Kalispell
Lands Unit, Helena
Habitat Bureau, Helena
The Trust for Public Land, Bozeman

6.0 ANTICIPATED TIMELINE OF EVENTS

Public Comment Period:	October 9 – November 8, 2020
Recommended decision to Fish and Wildlife Commission:	November 13, 2020
FWP Commission Review of Project & Decision:	December 10, 2020

7.0 PREPARERS

Kris Tempel, FWP Habitat Conservation Biologist, Kalispell, MT
Alan Wood, FWP Wildlife Science Program Supervisor, Kalispell, MT

REFERENCES

Alt, D. and Hyndman, D. 2003. *Roadside Geology of Montana*. Mountain Press Publishing Company, pp. 50.

Flathead County. 2012. *Flathead County Growth Policy*. Flathead County Planning Board. Retrieved from: https://flathead.mt.gov/planning_zoning/growthpolicy2012.php

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U.S. Department of Agriculture, Natural Resources Conservation Service. 2020. *Web Soil Survey*. Retrieved from: <http://websoilsurvey.nrcs.usda.gov/app>

APPENDIX A: TOURISM REPORT

TOURISM REPORT

MONTANA ENVIRONMENTAL POLICY ACT (MEPA) & MCA 23-1-110

The Montana Department of Fish, Wildlife and Parks has initiated the review process as mandated by MCA 23-1-110 and the Montana Environmental Policy Act in its consideration of the project described below. As part of the review process, input and comments are being solicited. Please complete the project name and project description portions and submit this form to:

Jan Stoddard, Bureau Chief, Industry Services and Outreach
Montana Office of Tourism & Business Development
301 S. Park Ave, Helena, MT 59601

Project Name: Lost Trail Conservation Easement

Project Description: Montana Fish, Wildlife and Parks (FWP) is working with The Trust for Public Land and SPP Montana, LLC on a proposed conservation easement (CE) involving 7,274 acres of highly productive timberland in northwest Montana (see attached map). This property is part of the 630,000 acres that SPP Montana, LLC (SPP) purchased from Weyerhaeuser on March 26, 2020. The project lands run along the southern border of the US Fish and Wildlife Service Lost Trail National Wildlife Refuge. The proposed CE would allow SPP to sustainably manage the forest, preclude development, sustain wood-product jobs, protect valuable wildlife habitat and a key migratory corridor, and provide permanent, year-round public access to popular recreation lands. This project would protect the north slope of Dredger Ridge, a favorite walk-in elk hunting area which provides over 400 hunter days annually. The property also supports grizzly bear and Canada lynx. The US Forest Service Forest Legacy Program and Habitat Montana would fund the purchase of this CE if it moves to completion.

Would this site development project have an impact on the tourism economy?

NO

YES

If YES, briefly describe:

Yes, as described, the project has the potential to positively impact the tourism and recreation industry economy if properly maintained. Montana's 12.4 million non-resident visitors (2018) who spent nearly \$3.6 billion in the state in 2018 (University of Montana's Institute for Tourism and Recreation Research, 2019). Recreation and access to public lands are primary reasons both

first-time and repeat visitors come to Montana. *“In the past 10 years, repeat visitors to Montana have represented between 71% and 87% of all nonresident visitors. Repeat visitors to Montana love the mountains and feel that Montana has unique characteristics they can’t find at other destinations such as the scenery, access to public lands and waterways, and the ability to easily view wildlife”* (Institute for Tourism & Recreation Research, September 2019).

This project allows sustainable forest management, protects valuable wildlife habitat and a key migratory corridor, and provides permanent, year-round public access to popular recreation lands, protects a walk-in elk hunting area, and supports grizzly bear and Canada lynx populations. These are all critical components of maintaining recreational assets for both resident and non-resident recreationalists.

Does this impending improvement alter the quality or quantity of recreation/tourism opportunities and settings?

NO

YES

If YES, briefly describe:

This project would improve the quality and quantity of recreation opportunities with permanent, year-round public access to popular recreation lands and protecting the north slope of Dredger Ridge, a favorite walk-in elk hunting area which provides over 400 hunter days annually. We are assuming the agency has determined it has necessary funding for the on-going operations and maintenance once this project is complete.

Signature Jan Stoddard

Date: 4/30/20

2/937/98sed

APPENDIX B: STATE HISTORIC PRESERVATION OFFICE CULTURAL REVIEW



April 24, 2020

Kris Tempel
MT FWP
490 N. Meridian Rd.
Kalispell MT 59901

RE: LOST TRAIL CONSERVATION EASEMENT PROJECT. SHPO Project #: 2020042401

Dear Kris:

I have conducted a cultural resource file search for the above-cited. According to our records there have been a few previously recorded sites within the designated search locales. In addition to the sites there have been a few previously conducted cultural resource inventories done in the areas. I've attached a list of these sites and reports. If you would like any further information regarding these sites or reports, you may contact me at the number listed below.

It is SHPO's position that any structure over fifty years of age is considered historic and is potentially eligible for listing on the National Register of Historic Places. If any structures are to be altered and are over fifty years old, we would recommend that they be recorded, and a determination of their eligibility be made prior to any disturbance taking place.

As long as there will be no disturbance or alteration to structures over fifty years of age, we feel that there is a low likelihood cultural properties will be impacted. We, therefore, feel that a recommendation for a cultural resource inventory is unwarranted at this time. However, should structures need to be altered or if cultural materials be inadvertently discovered during this project, we would ask that our office be contacted, and the site investigated.

If you have any further questions or comments, you may contact me at (406) 444-7767 or by e-mail at dmurdo@mt.gov. I have attached a paid invoice for the file search. Thank you for consulting with us.

Sincerely,

Damon Murdo
Cultural Records Manager
State Historic Preservation Office

APPENDIX C: DRAFT LOST TRAIL CONSERVATION EASEMENT

LOST TRAIL DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT ("Easement") is granted this___ day of_____, 20 by **SPP MONTANA, LLC.** whose address is 6304 Peake Road, Macon, Georgia 31210 ("Landowner"), to the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Department"). In this Deed of Conservation Easement, the Landowner and Department may be referred to collectively as "Parties", or individually as a 'Party'.

Exhibits to this Deed of Conservation Easement include the following, and are incorporated herein by this reference:

Exhibit A - Legal Description

Exhibit B - Map of the Land

Exhibit C - FWP Minimum Standards for Grazing Livestock

I. RECITALS

A. The people of the State of Montana recognize the benefits of protecting forest land, watersheds, riparian corridors and conserving open space that provides clean water and habitat for native fish, wildlife and plant communities, while simultaneously managing commercial forests and providing grazing opportunities on the land, and have authorized the Department to acquire conservation easements by voluntary, cooperative means to conserve important lands and habitat.

B. The Landowner is the sole owner of certain real property in Flathead County, Montana (the "Land"), comprising approximately 7,255.7 acres, legally described in Exhibit A and depicted in Exhibit B.

C. The Land has significant natural habitat, scenic and open space values as recognized in the Montana Open Space Land and Voluntary Conservation Easement Act, MCA §§ 76-6-101, *et seq.* The Land provides significant benefit to the people of the State of Montana, Flathead County, and the United States by preserving and providing important resources, in perpetuity, in compliance with §170(h)(4)(A) of the Internal Revenue Code and §§ 76-6-101, *et seq.*, MCA. , including but not limited to open-space land which maintains the rural, natural scenic and agricultural qualities of the area and provides opportunities to continue recreation opportunities in perpetuity, as encouraged and supported by the State of Montana and local land conservation policies adopted in Flathead County, Montana.

D. The Land provides important wildlife habitat for a variety of species important to the State of Montana and the United States, many of which are listed as species of Greatest Conservation Need in Montana's State Wildlife Action Plan (2015).

E. The Land has a history of forest management and grazing. Maintaining the opportunity for a productive forest management program and grazing management program that sustains and enhances the wildlife habitat is of statewide and local importance.

F. The Land provides important public recreational opportunities, including, but not limited to, hunting, trapping, mountain biking, hiking, cross country skiing, and wildlife viewing.

G. The uses and benefits described in Recitals C through F above are collectively referred to as the Land's "Conservation Values."

H. The Forest Legacy Program, administered by the U.S. Department of Agriculture, Forest Service ("Forest Service") pursuant to §1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC §2103C) and created "to protect environmentally important private forest lands threatened with conversion to non-forest uses", has awarded a Forest Legacy grant to the Department for a portion of the purchase price of this Easement.

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, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, consisting of certain rights and restrictions expressly set forth below over and across the Land.

A. PURPOSES

The Department is acquiring this Easement to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity, the Conservation Values of the Land. In the interest of protecting such Conservation Values, Landowner and Department agree that the purposes of this Easement set forth in 1 through 5 below (collectively, the "Purposes", or individually a "Purpose") are as follows:

1. To further the goals of the Forest Legacy Program, in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. § 2103c) as amended, protecting environmentally important forest areas that are threatened by conversion to non-forest uses and therefore also protecting important scenic, cultural, wildlife and recreational resources.

2. To protect the Land's capacity to produce economically valuable forestry products, including but not limited to units of carbon sequestered on the Land and recognized as marketable credits or offsets, and to provide for economically valuable grazing and cattle management opportunities. To allow the Landowner and its successors and assigns to continue to conduct commercial timber and resource management activities and grazing and cattle management activities in a sustainable manner.

3. To perpetuate the use of the Land as working forestland and grazing land to ensure the opportunity for long-term, professional management of the forest resources through sustainable forestry activities and grazing activities permitted hereunder; to provide that commercial production of forest products is conducted in a manner compatible with the conservation of water quality and wildlife habitat, recreation, and the Conservation Values.

4. To provide habitat for a variety of wildlife species and to prevent uses that will interfere with the Conservation Values of the Land and which are not permitted under this Easement. The Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the Conservation Values and the purposes of the Easement.

5. To provide to the Department pursuant to its authority to acquire interests in land per § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational use, in accordance with the terms and conditions set forth in Section II.B.4. below.

If one or more of the Purposes of this Easement may no longer be accomplished, such failure of a Purpose shall not be deemed a sufficient cause to terminate the entire Easement, as long as any of the other Purposes of the Easement may still be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted grazing and forest management practices, and in the situation of the Landowner may result in an evolution of agricultural, grazing, silvicultural, and other uses of the Land, and such uses are permitted provided such uses are and remain consistent with the Purposes of this Easement.

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. DEPARTMENT'S RIGHTS

The Landowner conveys the rights as set forth below in this Section II.B. to the Department:

1. **Preservation and Protection.** To preserve and to protect, and by mutual agreement with the Landowner to enhance, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the 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. **Inspection and Access.** Upon three days prior notice to Landowner, to access the Land in order to inspect the Land in connection with the Department's preservation and protection rights set forth above in Section II.B.1. above. 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 reasonable judgment, such entry is necessary to prevent immediate damage to or destruction of the Conservation Values protected by this Easement.
3. **Scientific Observations and Markers.** Upon three days prior notice to Landowner, to access the Land to conduct scientific observations and studies of the Land's wildlife, wildlife habitat and ecosystems including, but not be limited to: (i) establishing and maintaining reasonable vegetation monitoring transects and enclosures, and (ii) placing and replacing small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without Prior Approval, as defined in Section II.H.2. below, of the Department which shall not be unreasonably denied.
4. **Public Recreational Access.** On behalf of the general public, the right to access the Land without charge for admission for the purpose of noncommercial dispersed recreation on the Land including but not limited to hunting, trapping, hiking, and wildlife viewing and as further described in the Multi-Resource Management Plan ("MRMP"), as defined in Section II.E. below, and in accordance with the following terms and conditions:
 - a. The public may hunt game animals, unregulated non-game animals and game birds of all sex and age classes in accordance with hunting regulations adopted by the State of Montana.
 - b. The hunting seasons shall be set and may be changed from time to time by the State of Montana in accordance with applicable laws, regulations, and policies.
 - c. The grant of hunting rights 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 this grant 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.
 - d. The public may not drive off roads, routes, and trails for any purpose, except with the express permission of the Landowner or the Landowner's agent. The public

may travel on foot or by other methods expressly approved by Landowner and as set forth in the MRMP (i) for the purposes prescribed in this Paragraph II.B.4. and (ii) to access the adjacent publicly accessible land that allows public use.

- e. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.
- f. 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.
- g. The Landowner may participate in programs offered by the Department or other entities intended to reimburse or compensate the Landowner for the impacts of hunter use of the Land. However, the 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 the Landowner's participation; and that nothing in this Easement provides any assurance that the Landowner will be offered the opportunity for or be accepted into any such program.
- h. Aside from the rights of access granted in this Section II.B., this Easement does not grant the public any rights to enter upon the Land and does not constitute a dedication to the public.

C. LANDOWNER'S RIGHTS

The 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:

- (i) Are not expressly conveyed to the Department;
- (ii) Are not prohibited or restricted by this Easement;
- (iii) Are consistent with the Purposes of this Easement; and,
- (iv) Do not harm the Conservation Values of the Land.

The Landowner expressly reserves the following rights, in addition to those rights reserved by the Landowner elsewhere in this Easement:

1. Forest Management. The right to harvest and sell timber, timber products and other forest products or resources and to manage the Land including all aspects of commercial forestry in accordance with Applicable Law (as defined below) and good and sound silvicultural practices consistent with the 2015-2019 Edition of the Standards and Rules for the Sustainable

Forestry Initiative Standards dated January 2015 (the "2015 Standards") or similar independently verified sustainable forest management certifications such as Forest Stewardship Council ("FSC Standards") or the American Tree Farm System (the "ATF Standards"); each of the 2015 Standards, FSC Standards and ATF Standards being the "Approved Standards". If the Approved Standards are revised, then, with the mutual reasonable consent of the Landowner and the Department, such revised Approved Standards shall be the standard under which the timber and timber products are harvested from the Land. For purposes of this Easement, the term "Applicable Law" shall mean any federal or state regulation, rule or law which may be in effect from time to time which regulates the harvest of timber or land management with respect to the Land, including, but not limited to, the Montana Streamside Management Zone ("SMZ") Law and Administrative Rules dated March 15, 2006 ("SMZ Law") as the same may be revised or amended from time to time, and shall include "Best Management Practices for Forestry in Montana, March 2011" (the "BMPs"). If the BMPs are revised and improved from time to time, then with the mutual consent of the Landowner and the Department, such revised BMPs shall be the standard under which timber and timber products are harvested from the Land. In addition, Landowner will harvest the timber and manage the Land and its resources in accordance with the MRMP required pursuant to the Forest Legacy Program and further described in Paragraph II.E of this Easement. With Prior Approval, Landowner may use a standard other than the Approved Standards.

2. Regulation of Public Use. The right to regulate public use of the Land at all times, subject to the public's recreational access described under the Department's Rights in this Easement. The Land is used for logging, forestry and industrial operations and maintained only to standards required for such use.

a. Landowner makes no representations as to the present or future condition of the Land or the nature or condition of, or traffic on, any roads or trails, and the Department and any members of the public exercising rights under this Easement assumes all risks of personal injury or property damage in connection with the exercise of rights hereunder.

b. The Landowner retains the right to temporarily restrict public use, including the public's recreational access, under special circumstances as required to protect and restore environmentally sensitive areas, sites damaged by public use or natural processes, or areas undergoing timber harvest or timber management activities such as reseeding or replanting; in emergency situations; for public safety reasons; and in other areas or circumstances where the Conservation Values could be adversely impacted by public use. The public's overnight use of the Land is prohibited.

c. Landowner must give Department written notice of areas closed to public use as soon as practical after such closure. Restrictions to protect and restore environmentally sensitive areas or to address circumstances where the Conservation Values could be adversely impacted by public use require mutual consent of the Landowner and

Department. Consent of the Department is not required to restrict motorized use of roads, provided that non-motorized use is allowed.

d. Notwithstanding that the right to own and manage the Land is reserved to Landowner under this Section C of the Easement, Landowner and the Department acknowledge and agree that it is their shared desire and intent to work together cooperatively and in good faith to ensure that: (i) the Purposes of this Easement are realized, (ii) the Conservation Values of this Easement are protected and preserved in perpetuity, and (iii) the terms and restrictions of allowable public access on the Land are efficiently and effectively enforced. The Department will cooperate with the Landowner in requests to law enforcement agencies to deal with the public failing to comply with applicable laws, and will provide educational and outreach activities to advise the public of applicable restrictions on public use and access. However, nothing in the subsection shall require the Department to take any action that is beyond its legal power or authority. The Department's cooperation may be subject to reasonable delays caused by temporary shortages in Department staff or resources, but the Department will make a concerted, good faith effort to keep such delays in response to a minimum and to be available to deal with matters of an urgent or time-sensitive nature.

3. **Use of Motorized Vehicles and Equipment.** The right to use motor vehicles, forestry machinery and equipment, and to maintain log yards, in the ordinary course of Landowner's timber and resource management activities and in a manner consistent with Paragraph II.C.1.

4. **Structures and Improvements.** Landowner may:

a. Repair, renovate, remove, maintain, or replace existing nonresidential improvements existing at the time of the grant of this Easement, which nonresidential improvements are extensively, but not necessarily exhaustively, identified in the Baseline Report (Paragraph II.G.), provided that such repair, renovation, maintenance, or replacement does not expand the size or materially change the use of such nonresidential improvements;

b. Construct, remove, maintain, renovate, repair, or replace timber platforms, bridges, culverts, road ditches, and other structures and non-residential improvements necessary for land management purposes not specifically disallowed in this Easement;

c. With Prior Notice, construct or place on the Land for temporary use one or more buildings and structures for resource-management purposes. The temporary placement of equipment and machinery for: log chipping, tree limbing or scaling, or otherwise preparing logs for loading or shipment from the Land is permitted and not deemed to be a "timber processing mill". Such equipment or machinery may not be placed within the SMZ. except as permitted under Applicable Laws. Any buildings and structures

allowed by this Paragraph II.C.4.c. must be removed from the Land upon conclusion of the use for which the buildings were erected and the site reclaimed.

5. Roads, Road Maintenance, Road Easements, Trails and Bridges. The Landowner:

a. May utilize, maintain, and improve, or replace, existing roads, bridges, and culverts, and utilize and maintain new roads constructed under Section II.C.4.a. and II.C.4.b., consistent with conditions and restrictions in the MRMP. This right includes the right to abandon or reclaim roads that are no longer used;

b. With Prior Notice to the Department, may construct new roads necessary for exercising rights retained by Landowner under this Easement that are consistent with the MRMP. Any proposed new roads not in accordance with the MRMP require Prior Approval by the Department;

c. With Prior Notice to the Department, may construct and maintain new roads and bridges within the SMZ, as permitted under Applicable Laws;

d. Shall control and be responsible for road access, maintenance, management, and use regulation, subject to BMPs, any maintenance, management and access provisions governing all roads on Land. Nothing construed herein shall require the Landowner to provide road standards above those required for Landowners purposes, or above the standards set forth in the Road Agreements;

e. May grant to third parties, including purchasers of Landowners real property in Flathead County ("Purchasers") permanent or temporary, non-exclusive access rights to cross the Land on roads or trails existing at the time of the grant of this Easement and identified in Exhibit B as "Critical Road." Prior to issuing any such access rights, Landowner must provide the Department with a copy of any access easement or agreement to be granted to such third party. Documentation of roads or trails existing at the time of the grant of this Easement may be established through the Easement Baseline Report provided for in Paragraph II.G. Nothing in this Easement may interfere with a third party exercising any right of legal access across the Land that was in effect at the time of the grant of this Easement;

f. With Prior Approval, may grant to third parties, including Purchasers, permanent or temporary, non-exclusive access rights to cross the Land, on roads that are not Critical Roads, but are new roads to be constructed. Prior to issuing any such access rights, Landowner must provide the Department with a copy of any access easement or agreement to be granted to such third party. Documentation of roads or trails existing at the time of the grant of this Easement may be established through the Easement Baseline Report provided for in Section II.G. Nothing in this Easement may interfere with a third party exercising any right of legal access across the Land that was in effect at the time of the grant of this Easement.

g. With Prior Notice to the Department, may construct new roads for all lawful purposes across the Land in order to access other nearby or adjoining land owned by Landowner; and,

h. With Prior Approval, may grant to third parties permanent or temporary non-exclusive access rights for recreational purposes across the Land on new trails to be constructed. Prior to issuing any such access rights, Landowner must provide the Department with a copy of any access easement or agreement to be granted to such third party.

6. **Habitat Enhancement and Restoration.** The Landowner reserves the right to manipulate vegetation, conduct stream restoration projects, or engage in other habitat enhancement or restoration activities, provided that any such activity must be for the primary purpose of enhancing or maintaining fish and wildlife habitat, and such activity must be in accordance with the MRMP. If any such activity is not contained in the MRMP or otherwise specifically allowed herein, Prior Approval is required.

7. **Subdivision and Real Property Conveyance.** The Landowner and the Department agree for the purposes of this Easement that subdivisions of and conveyances of the Land shall specifically meet the following requirements:

a. The Land may be sold, conveyed, exchanged, mortgaged, quit-claimed, devised, gifted or otherwise transferred in its entirety or in up to 2 separate parcels of at least 3,500 acres each, provided that such parcels be conveyed expressly subject to all the terms, conditions, rights, restrictions, and obligations contained in this Easement. At no time in the future shall the Land be held by more than two landowners with no more than one MRMP per parcel.

b. The Landowner shall provide Prior Notice to Department of any pending real property sale. The notice to the Department shall be in the form of letter informing the Department of the name of the proposed transferee, the acreage and footprint of the proposed conveyance and the remaining parcel, if any, and such transfer must be affected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Department may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

c. Subsurface mineral rights severed prior to the grant of this Easement do not constitute a prohibited or restricted division or subdivision for purposes of this Paragraph.

d. The restrictions on land division and subdivision contained in this Paragraph do not apply to the right to sell stumpage, as long as the timber rights are not permanently severed.

e. The Land may not be used as open or natural space or park land for any subdivision or development purposes or requirements on land not covered by this Easement, nor may Landowner transfer any development rights on or to the Land separate from the Land. For purposes of this Easement, development rights include, without limitation, any and all rights, however designated, now or hereafter associated with the Land or any other property that may be used to compute development density, lot yield, or any other development variable of or pertaining to the Land or any other property.

f. The restrictions contained in this Paragraph do not prohibit the Landowner from entering into a de minimis boundary line adjustment with a neighboring landowner to address encroachments.

8. Pesticide Application and Weed Management.

a. Pesticide Application. Landowner shall have the right to use legally authorized pesticides (as defined by MCA 80-8-102), agrichemicals, and fertilizers for silvicultural purposes. Any pesticide use should be only in the amount and frequency constituting the minimum necessary based on pesticide label use instructions and all applicable state and federal regulations concerning use to accomplish reasonable control of the targeted pest species.

b. Weed Management. Landowner shall have the right to use herbicides for control of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of weeds, and in a manner that will minimize damage to native plants. The Landowner shall have the right to use biological control agents for 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 and the MRMP unless otherwise authorized by Prior Approval.

c. Prior Approval is not required for aerial application of any pesticide, agrichemical, fertilizer, or biological control agent on the Land so long as such application is pursuant to Applicable Laws.

9. 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 during the

summer grazing season of May 1 through October 31 in accordance with grazing standards as detailed in Exhibit C and further described in the MRMP. For the purposes of this Easement, livestock is defined as cattle; provided, however, that other species of grazing animal may be substituted for cattle with Prior Notice.

10. Water Rights. With Prior Approval, Landowner may transfer, lease, donate, sell, or otherwise dispose of water rights appurtenant to the Land for the express purpose of protecting or enhancing in-stream flows intended to benefit fisheries in waterways. At the time of the execution of this Easement there are no known water rights associated with the Land.

11. Fences. The right to construct, remove, maintain, renovate, repair, or replace fences (including corrals and other livestock containment structures) necessary for generally accepted 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 described in the MRMP.

12. Oil, Gas, or Mineral Exploration and Extraction. Subject to, and without limiting any obligations of Landowner under, Montana Code Annotated § 82-11-202, Landowner shall not mine or extract soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method; provided however, Landowner may conduct limited mining activity for materials (e.g., sand, gravel, rock) used for forestry operations on the Land.

With Prior Notice, the Landowner has the right to extract and crush sand, gravel, and rock for on-site use through surface mining techniques in accordance with Applicable Law in no more than two unreclaimed locations on the Land not to exceed a combined total of fifteen (15) unreclaimed acres cumulative in size at any one time, provided that:

- a. Each excavation site is not within a 100-year flood plain area or less than eighty (80) feet from the boundary of any SMZ, except as permitted under Applicable Law.
- b. Any material extracted may only be used on the Land for purposes consistent with Landowner’s reserved rights.
- c. Landowner shall control noxious weeds at the site.
- d. Landowner shall provide mulch or vegetative cover on all soil stockpiles each year to reduce soil erosion and infestation of noxious weeds.
- e. Landowner shall post a reclamation bond as required under Applicable Law.

f. For reclamation purposes, Landowner shall seed and reestablish cover vegetation which is native or is representative of adjacent perennial plant species.

g. Landowner shall reclaim and revegetate roads no longer needed in forest or resource management using native species to the extent practicable and in a manner compatible with adjoining land uses. Determination of which roads are no longer needed is at the Landowner's sole discretion.

h. 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, the 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 and the Conservation Values of the proposed activities. 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. Nothing in this Section II.C.12.h. dealing with third-party mitigation measures shall be deemed to obligate Landowner to bear the costs of mitigation measures. Landowner's only responsibilities for mitigation on the Property are those already imposed on Landowner by Applicable Law, if any.

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 the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

13. 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. With Prior Notice, Landowner retains the right install and construct new underground Utilities upon, under, within, or beneath the Land so long as such new Utilities are within road prisms of existing ROW. Subject to Prior Approval, Landowner retains the right to install and construct new Utilities upon, over, under, within, or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The

Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.13.d. below (“Utility Plan”).

c. **New Utilities Serving Adjacent Properties.** Subject to Prior Approval, the Landowner retains the right to construct new Utilities and grant any associated Utility right-of-way easement serving adjacent properties. The Department will require the Landowner to submit a Utility Plan.

d. **Utility Plan.** Prior to preparation of the Utility Plan, the Landowner shall contact the Department 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 intentions 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 the Landowner, the Department, and the utility service provider prior to construction.

14. Telecommunications Sites. Subject to Prior Notice the right to lease not more than two (2) total sites no larger than 5 cumulative acres, on the Land for the purpose of the construction and use of radio, television, cell phone or other communication signal transmission or relay facilities. Access roads to these sites must be gated and the sites must be fenced to exclude deer, elk, and bear. Any road construction necessary for installation and maintenance of the telecommunication facility must be consistent with conditions and restrictions in the MRMP.

D. RESTRICTIONS ON LANDOWNER’S ACTIVITIES

The following activities and uses are expressly prohibited or restricted. For the avoidance of doubt, nothing set forth in this section shall be deemed to limit Landowner’s rights which are set forth in Section II.C. and otherwise in this Easement.

1. Timber Harvest in SMZ. All timber harvest, use of mechanical equipment off of established roads, or conducting timber-management activities within the SMZ will be conducted in compliance with the Montana SMZ law.

2. Wetland Areas. The draining, filling, dredging, or destruction of any wetland area or any other activity that has significant adverse impacts on a wetland is prohibited. For the purposes of this Easement, a “wetland” is defined as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas.

3. Subdivision. The partition, division, subdivision or de facto subdivision of the Land is prohibited, except as specifically provided for in Paragraph II.C.7.

4. **Residential Use.** Residential use of the Land and the construction or placement of any residential building or structure on the Land is prohibited.

5. **Water Use and Water Rights.** The use or withdrawal of surface or ground water in any manner that would adversely affect the Conservation Values is prohibited. The transfer, encumbrance, sale, lease, or other separation of water rights from the Land is prohibited.

6. **Soil Cultivation.** Cultivation of the Land for non-forestry purposes is prohibited.

7. **Lease or Sale of Access.** The rent, lease, sale, or charging of fees for exclusive access to the Land to others for hunting, fishing, skiing, snowmobiling, or other recreational or educational purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. The Landowner may not sell, assign, convey, or otherwise transfer any interest in the Land or in itself for the purpose of providing exclusive access to the Land in contravention of this Easement.

8. **Utility Installation and Pipelines.** Subject to existing utility and pipeline easements, and subject to II.C.13. the installation of utility lines upon or under the Land is prohibited.

9. **Structures and Improvements.**

a. The construction or placement of a structure or improvement of any kind is prohibited.

b. The Landowner may not construct or place any permanent building on the Land.

c. The Landowner may not construct or place a timber processing mill on the Land.

10. **Grazing.** Livestock grazing is restricted as per Paragraph II.C.9.

11. **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. This prohibition does not apply to common domestic livestock, or to the introduction, transplantation or release of wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release on the Land.

12. Industrial or Commercial Uses. The establishment or operation of any commercial or industrial uses of or activities on the Land, including, but not limited to, outfitting, restaurant, campground, trailer park, motel, 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 forestry or grazing purposes is prohibited.

13. Waste Disposal. The processing, dumping, storage or other disposal of waste, refuse and debris on the Land is prohibited, except for wood waste products generated through forest management activities on the Land, which may be disposed of on the Land in a manner consistent with forestry BMPs and the Montana SMZ law.

14. Mineral Development. The Landowner is prohibited from exploring for, developing, mining, producing or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources on or under the surface of the Land. Landowner is also prohibited from conveying any interest in mineral rights to another party for purposes of mineral exploration, development, production or extraction. If Landowner owns a minority interest in the oil, natural gas or any other mineral substances under the Land, Landowner may not initiate or participate in any attempt by other minority interest owners to initiate a pooling of interests to reach majority status for the purpose of proposing or pursuing exploration or extraction activity.

15. Telecommunications Sites. More than 2 telecommunications sites on the Land is prohibited.

16. Ecosystem Services. The Landowner may engage in ecosystem services markets under other programs, but such action must not adversely affect the interest granted under the Easement to the Department or the Department's right of enforcement or be inconsistent with or defeat the conservation purpose for which the Easement was acquired. The sequestration of carbon through afforestation or improved forest management on the Land and resulting in the verification and issuance of marketable carbon offset credits is deemed to be consistent with the Purposes and Conservation Values of this Easement.

Except as explicitly provided for herein, no agreements relating to ecosystem service markets shall be made regarding the Land that is or is likely to become inconsistent with the Forest Legacy Program purposes, terms of the Easement, or other documents incorporated by reference. If the Landowner wishes to enter into such an agreement, they must notify the Department of any proposed participation in ecosystem service markets the owner deems compatible with the Purposes and Terms of the Easement and related documents and explain why they believe market participation is compatible. The Department will determine the compatibility of the market participation. As needed and appropriate to make the determination, the Department will consult with the USDA Forest Service. If it is determined to be compatible, the Department will provide an approval and authorization letter to the Landowner and include the letter and ecosystem service market participation documentation as an attachment to the

current MRMP. The Department may review and monitor all ecosystem service market participation for compatibility with FLP purposes and requirements.

E. MULTI-RESOURCE MANAGEMENT PLAN

1. Concurrently with the execution of this Easement, the Landowner and the Department shall enter into a MRMP that, among other things, identifies Landowner's objectives and actions the Landowner will take to protect and manage water, soil, range, aesthetic quality, recreation and public access, timber, and wildlife habitat and resources. The MRMP is not incorporated into this Easement but must be in writing and signed and acknowledged by representatives of Landowner and the Department who have authority to commit the respective Parties to compliance with the plan. The Landowner and Department will comply with the MRMP.

2. The Landowner's resource management and timber harvesting practices that comply with the MRMP are deemed consistent with the terms, conditions, Conservation Values, and Purposes of this Easement.

3. The Department and Landowner shall review and, when appropriate, may amend the MRMP. Any amendment to the MRMP must be in writing and must have the signed consent and acknowledgment of the Parties. If there is any conflict or inconsistency between the terms of the MRMP and the terms of this Easement, the terms of this Easement control.

4. The Landowner may not convey the Land or any portion thereof unless the successor in interest has either: (i) executed with the Department a MRMP that will come into effect upon the conveyance or (ii) has agreed to be subject to the Landowner's current MRMP until the new landowner develops its own MRMP approved by the Department.

F. LIAISON TEAM

Landowner and the Department shall form a joint liaison team (the "Liaison Team") consisting of four total members comprised of two representatives of Landowner and two representatives of the Department. The Liaison Team will provide a forum to review issues related to this Easement. The Liaison Team shall meet not less than once a year as the members shall determine. Liaison Team meetings shall include the Landowner's and the Department's respective representatives, unless other arrangements are mutually agreed upon. If the Land is held in two ownerships as provided for in Paragraph II.C.7.a., each Landowner shall appoint its own Liaison Team member. Liaison Team meetings shall include the Department and all Landowners, unless other arrangements are mutually agreed upon.

G. EASEMENT BASELINE REPORT

The Parties agree that an Easement Baseline Report (the "Report") will be completed by a natural resource professional familiar with the area and mutually acceptable to the Department

and the Landowner, reviewed by the Department, and Landowner, and acknowledged by them to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance 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.

H. NOTICES 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 not less than thirty (30) days prior to the date the 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 the 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 sixty (60) days prior to the date the Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or by personal delivery, or electronic mail with confirmation, 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 "Initial Notice"). Upon receipt of the Notices, defined in Section II.H.3. below, the Department shall notify Landowner of receipt of the Notices. The Department has sixty (60) days from its receipt of such notice to review the proposed activity and to notify the Landowner of any reasonable 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 the 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 the Landowner's proposed activity, the Department shall provide a written determination with analysis of why such activity would significantly impact the Conservation Values of the Land. In the event the Landowner and the Department disagree, then either Party may follow the dispute resolution process set forth in Sections I and J. below.

3. If the Department fails to respond to Landowner's notice of Prior Approval within 30 days, the Landowner shall send a second notice of Prior Approval to the Department Director (the "Director Notice", together with the Initial Notice, the "Notices"). If the Department fails to respond within thirty (30) days of the second notice of Prior Approval, the proposed activity shall

be deemed to be consistent with the terms of this Easement and thereby approved. In the alternative to sending two staggered notices at thirty-day increments, Landowner may also elect to send the Director Notice with the Initial Notice in which case the Department shall have sixty (60) days total to review the Notices. If the Department fails to respond to Landowner's notice of Prior Approval within sixty (60) days of receipt of the Notices if sent together, or thirty (30) days after the Director Notice if sent consecutively, the proposed activity shall be deemed to be consistent with the terms of this Easement and thereby approved.

4. The 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, the 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, electronic mail with confirmation, or delivered by courier, or personal delivery service, or email, addressed as follows:

To Landowner: SPP Montana, LLC.
Pat Patton
Eric Moody 6304
Peake Road
Macon, Georgia 31210

With a copy to: Eversheds Sutherland (US) LLP
999 Peachtree Street, N.E., Suite 2300
Atlanta, Georgia 30309-3996
Attention: Kevin Thomas

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

With a copy to: Department of Fish, Wildlife & Parks
Attention: Regional Supervisor
490 North Meridian Road
Kalispell, Montana 59901

or to such other address as the Parties from time to time shall designate by written notice to the others. All notices which are so addressed and paid for shall be deemed effective when personally

delivered, or, if sent by courier or mailed, electronic mail, on the earlier of receipt or five (5) business days after deposit thereof with a courier or mail service, return receipt requested.

I. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

1. Notice After Violation. If the Department determines that the Landowner has violated the terms of this Easement, the Department shall give written notice to the Landowner of the specifics 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.

2. Cure Provisions and Remedies. If the Landowner (i) fails to cure the violation within thirty (30) days after receipt of notice from the Department, (ii) 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 (iii) fails to continue diligently to cure such violation until finally corrected, the Department may bring an action in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and if applicable, to require the restoration of the Land to the condition that existed prior to the injury or to a condition that will allow over time the Land to exist as it did prior to the injury. Nothing set forth herein shall require restoration the cost of which exceeds the monetary consideration paid for this Easement.

3. Threatened Violation. If the Department determines that a violation of the terms of this Easement is threatened, the Department shall give written notice to the Landowner of the specifics of such threatened violation. Landowner shall have thirty (30) days to respond to such notice of threatened violation. If the Landowner fails to respond to such notice within thirty (30) days after its receipt of such notice, and the Department determines that such threatened violation still exists, the Department may bring an action in a court of competent jurisdiction to enforce the terms of this Easement and to enjoin the threatened violation, by temporary or permanent injunction. 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 seek an injunction in a court of competent jurisdiction without waiting for the period provided for cure to expire.

4. Limitations. Nothing contained in this Easement shall be construed to entitle the Department to bring any action against Landowner for any injury to or change in the Land resulting from the actions of third parties, the public, or other 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. No party is entitled to punitive, consequential or incidental damages.

5. No Waiver. 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 shall 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 shall impair the right or remedy or be construed as a waiver, nor shall any forbearance or delay give rise to a claim of laches or prescription.

6. Restoration Costs. 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. Nothing set forth herein shall require restoration the cost of which exceeds the monetary consideration paid for this Easement.

7. Mediation. 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 Section II.I.7 or under Section II.J.

8. Cumulative Remedies. The Parties' remedies described in this Section I shall be cumulative.

9. Attorney's Fees. In the event of such litigation to enforce the terms of this Conservation Easement, each side shall bear its own costs and attorneys' fees.

J. MUTUALITY OF REMEDIES.

The remedies available to the Department by the terms of Section I above shall be equally available to the Landowner in the event of any violation of the terms of this Easement by the Department. Notwithstanding any other provision of Section I, however, the Landowner's right to seek enforcement against the Department are limited to instances in which the Department has violated or breached or failed to perform, or allegedly violated, breached or failed to perform, its duties and responsibilities to Landowner under the terms of this Easement.

K. HOLD HARMLESS AND INDEMNITY

1. The Landowner shall hold harmless, indemnify, and defend 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 Landowner's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Department or its agents, employees or contractors.

2. The Department similarly agrees to hold harmless, indemnify and defend the 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 the Landowner or its agents, employees or contractors.

L. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

1. The Parties agree that the Land includes important species, habitat, and other important ecosystem attributes. Conservation Values and the public benefits that are provided by this Easement may periodically fluctuate or trend toward long-term change, due to natural events such as wildfire, floods, interdecadal climate events, and long-term climate change, as well as human-initiated enhancement or restoration actions. In response to such changes, one or more of the Purposes of this Easement may not be able to be fully accomplished, or one or more of the Conservation Values of this Easement may not be able to be fully protected or achieved. If one or more of the purposes of this Easement can no longer be fully accomplished, or if one or more of the Conservation Values of the Land cannot be fully achieved, such failure shall not be deemed sufficient cause to terminate this Easement so long as any of the other purposes of the Easement may be accomplished and any of the Conservation Values may be achieved.

2. This Easement constitutes a real property interest immediately vested in Department. It is the unequivocal intention of Department and the Landowner that the conservation purpose of this Easement be carried out in perpetuity. If circumstances arise in the future that render all purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, with the approval of the by judicial proceedings in a court of competent jurisdiction. Department and the Landowner 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 of the Department, the Department is entitled to a proportionate share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and 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 this Easement to the value of the Land unencumbered by this Easement remains constant as determined as of the date of this grant. Department and the Landowner agree that the Department's proportionate interest in the value of the Easement is___(%) percent, the Landowner's proportionate interest is_____(%) percent, and as set forth below, the United States proportionate interest in the value of the Easement is____(%) percent. The value of any future interest will not include any value attributable to authorized improvements to the Land made after the date of this grant, except as to improvements made by or at the expense of Department, unless evidence at any condemnation hearing or proceeding demonstrates actual damages to the Landowner and Department which vary in favor of Department from the proportionate interest established above.

3. The provisions of this Section L shall apply notwithstanding, and in addition to, any other conditions or limitations that may be imposed on the transfer, amendment, or extinguishment of this Easement.

Notice is hereby given that the Easement on the Land as described in Exhibit A is being acquired all or in part using funds provided by a grant from the Montana Fish and Wildlife Conservation Trust (the "Trust") established in accordance with the provisions of the Canyon Ferry Reservoir, Montana, Act (Title X of Public Law 105-277 - October 21, 1998). This Easement acquisition is intended to be used for the purposes of the Montana Fish and Wildlife Conservation Trust, which was created to acquire publicly accessible land and interests in land and this Easement was approved to:

- (A) Restore and conserve fisheries habitat, including riparian habitat;
- (B) Restore and conserve wildlife habitat;
- (C) Enhance public hunting, fishing and recreational opportunities; and
- (D) Improve public access to public land.

Accordingly, this conservation easement provides for outdoor public recreational use, including free recreational hunting access, wildlife viewing and habitat improvements.

The Department acknowledges that, under the requirements of the Trust grant, the Land may not be encumbered, developed, or disposed of in any manner not provided for above or used for purposes inconsistent with public outdoor recreational use without the prior written approval of the Montana Fish and Wildlife Conservation Trust. The Department shall conduct

reasonable monitoring of the Easement with the Trust to ensure compliance with the provisions above.

Further, the Easement cannot be terminated unless the Trust is reimbursed for its proportionate share of the market value of the Land at the time of its termination; provided, however, that the Trust may exercise discretion to consent to such termination upon the State's tender of equal valued consideration acceptable to the Trust.

The Trust's proportionate share is % of the market value of the Easement, which was determined by dividing the Trust's contribution to the acquisition of the Easement by the value of the acquisition of the Easement, at the time it was acquired, and expressing the result at a percentage. The market value of this interest in the Easement or the portion thereof that is terminated shall be the market value of such interest immediately before the disposal as determined by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) and is completed by a certified general appraiser.

4. Transfer. This Easement may be transferred or assigned only (i) to a government entity that (a) is eligible to hold this Easement under the Forest Legacy Program (FLP), (b) is willing and able to hold this Easement for the purpose for which it was created, and (c) expressly agrees to assume the responsibility imposed on the holder by the terms of this Easement and (ii) with the consent of the Department. If the Department ever ceases to exist, or is no longer willing and able to hold this Easement for the purpose for which it was created or carry out the responsibility imposed on the holder by the terms of this Easement, the Department must identify and select an appropriate entity to which this Easement must be transferred.

5. Amendment. This Easement may be amended only with the written approval of the Montana Department of Fish, Wildlife and Parks program manager, and they are under no obligation to agree to any amendment or consult or negotiate regarding any amendment. An amendment may be approved by the Montana Department of Fish, Wildlife and Parks and the USDA Forest Service FLP Northern Region program manager only if it will (i) serve the public interest and not diminish the benefits provided to the public, (ii) have a beneficial or neutral effect on the conservation values protected by this Easement, (iii) be consistent with the purpose of the FLP and the Purpose of this Easement, (iv) not confer an economic benefit on private persons (private inurement or private benefit in the case of a charitable organization holder), (v) be consistent with the intent of the original grantor of this Easement and any funding entities, (vi) not diminish the perpetual duration of this Easement or negatively affect the status or rights of the Department, or the United States with regard to this Easement, and (vii) otherwise comply with all applicable Federal, State, and local laws and regulations. Amendments to make boundary line adjustments are permitted only in the case of technical errors made in the survey or legal description, or to improve or maintain the integrity of the Easement. Any approved amendment must be recorded in the appropriate local land use records and a copy of the recorded amendment must be provided to the Montana Department of Fish, Wildlife and Parks and the USDA Forest Service FLP Northern Region program manager within 30 days of recordation. Any purported amendment that is recorded without the prior written approval of the Montana

Department of Fish, Wildlife and Parks and the USDA Forest Service FLP Northern Region program manager will be null and void.

6. Extinguishment. The Landowner and the Department acknowledge that USDA Forest Service Forest Legacy Program funding for the acquisition of this Easement is authorized by the Cooperative Forestry Assistance Act of 1978, P.L. 95-313 as amended (codified at 16 U.S.C. § 2101 et seq), and pursuant to the grant agreement Montana Lost Trail Legacy Project, Grant Number 20-DG-11010000-005 awarded by the United States Department of Agriculture (USDA) Forest Service on June 25, 2020 to the Department. The grant agreement is housed in the USDA Forest Service Regional/Area Office at State and Private Forestry, Regions 1 and 4, 324 25th St, Ogden, UT 84401, or in an archival facility per Agency policy. The Landowner and the Department acknowledge and agree that this Easement cannot be extinguished, in whole or in part (whether through release, termination, exchange, or otherwise) unless the USDA Secretary of Agriculture (Secretary), in the Secretary's sole and absolute discretion, consents in writing to the extinguishment and the United States is reimbursed its proportionate share of the value of this Easement or the portion thereof that is extinguished at the time of extinguishment. The form of the United States' reimbursement under this paragraph (whether it is received in cash or in kind) shall be in the sole and absolute discretion of the Secretary but shall in all events be used for FLP or similar conservation purposes. This Easement shall not be deemed extinguished in whole or in part until the United States receives reimbursement as provided in this paragraph.

a. The United States' "proportionate share" is [%], which was determined by dividing the FLP's contribution to the acquisition of this Easement by the value of this Easement at the time of its acquisition, and expressing the result as a percentage. The United States' proportionate share shall remain constant over time.

b. The "value of this Easement or the portion thereof that is extinguished" shall be the value of such interest immediately before the extinguishment as determined using the before and after or similar appraisal method in an appraisal that meets the Uniform Acquisition Standards of Federal Land Acquisition (UASFLA) and is completed by a certified general appraiser approved by the Department and the R/A/I.

7. No inaction or silence by the Secretary shall be construed as approval of an extinguishment or as an abandonment of this Easement in whole or in part. Any purported extinguishment executed without the prior written consent of the Secretary will be null and void. The provisions of this paragraph shall survive any partial extinguishment.

M. ASSIGNMENT

Section II.L.4. of the Easement allows transfer or assignment of the Easement subject to certain conditions and subject to the consent of the Department. Recognizing the Landowner's legitimate interest in the identity of any such transferee or assignee, before consenting to a proposed or contemplated assignment or transfer of this Easement, and unless prohibited by

applicable law from doing so, the Department shall first notify and consult with Landowner regarding the government agency or agencies being considered for such a transfer or assignment. Unless prohibited by law, the Department shall (i) withhold its consent to an assignment or transfer to any entity to which the Landowner has objected and (ii) only consent to assignment or transfer to any entity to which the Landowner has expressly consented. Landowner hereby consents to a transfer or assignment of this Easement to the Montana Department of Natural Resources and Conservation.

N. AMENDMENT

Subject to Section L.3. and if circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Landowner and Department are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable laws, including §§ 76-6-101, *et seq.*, MCA, and any amendment shall be consistent with the purposes of this Easement, and shall not affect its perpetual duration.

O. RECORDATION

Department shall record this Easement in the official records of Flathead County, Montana.

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 shall be construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of Mont. Code Ann. §§ 76-6-101, *et seq.* If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, the Parties to the Easement hereby acknowledge the rights retained by Landowner herein are consistent with the purposes of the Easement, the Conservation Values, and Mont. Code Ann. §§ 76-6-101, *et seq.*

3. **Entire Agreement.** Except with respect to matters set forth in the Baseline Report and the MRMP, this instrument sets forth the entire agreement of the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged into this Easement.

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 shall be binding upon, and inure to the benefit of the Parties, their heirs, administrators, successors and assigns, and shall continue 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 shall survive transfer.

7. **Severability.** If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected.

8. **Reasonableness.** The Parties agree that except where this Easement expressly provides a party the right to act in their sole discretion, all other actions the Parties shall act reasonably and under a standard of reasonableness.

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

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Landowner and Department have entered into this Easement on the day and year first above written.

LANDOWNER:

SPP Montana, LLC.

By: _____

Printed Name: _____

Title: _____

STATE OF GEORGIA)

: ss)

COUNTY OF MACON-BIBB)

On this ____ day of _____, 20__, before me personally appeared _____ to me known to be the _____, of **SPP Montana, LLC.** the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above mentioned.

Notary Public in and for the State of Georgia

Printed Name: _____

Residing at: _____

My appointment expires: _____

DEPARTMENT:

MONTANA DEPARTMENT OF FISH, WILDLIFE AND
PARKS

By:

Martha Williams, Director

ACKNOWLEDGMENT

STATE OF MONTANA

)

: ss.

COUNTY OF LEWIS AND CLARK)

This instrument was signed before me on _____ by Martha Williams,
Director, Montana Department of Fish, Wildlife & Parks.

(SEAL)

Notary Public

EXHIBIT A LEGAL DESCRIPTION

TRACT 1:

The East Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$) of Section 25, Township 28 North, Range 27 West, M.P.M., Flathead County, Montana.

TRACT 2:

That portion of the Southwest Quarter of Section 22, Township 28 North, Range 26 West, P.M.M., Flathead County, Montana, lying South of the center line of the South Pleasant Valley Road as shown and described on Certificate of Survey No. 13371, records of Flathead County, Montana.

TRACT 3:

The South Half and that portion of the $S1/2NW1/4$, $NW1/4NW1/4$ and Government Lots 2, 3 and 4, lying South of the centerline of South Pleasant Valley Road as described in Certificate of Survey No. 13371, all in Section 25, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 4:

The Northwest Quarter ($NW1/4$); the South Half ($S1/2$), and the South Half of the Northeast Quarter ($S1/2NE1/4$) of Section 26, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

EXCEPTING THEREFROM all those lands in the North Half ($N1/2$) of Section 26, Township 28 North, Range 26 West, P.M.M., Flathead County, Montana, lying North of the center line of the South Pleasant Valley Road, as shown on Certificate of Survey No. 13371, records of Flathead County, Montana.

TRACT 5:

The North Half of the Northeast Quarter ($N1/2NE1/4$) of Section 26, Township 28 North, Range 26 West, P.M.M., Flathead County, Montana, lying South of the South Pleasant Valley Road, records of Flathead County, Montana.

TRACT 6:

The Northeast Quarter ($NE1/4$); the East Half of the Northwest Quarter ($E1/2NW1/4$); the Southeast Quarter ($SE1/4$); and the East Half of the Southwest Quarter ($E1/2SW1/4$) of Section 27, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

EXCEPTING THEREFROM all those lands in the North Half ($N1/2$) of Section 27, Township 28 North, Range 26 West, P.M.M., Flathead County, Montana, lying North of the center line of the South Pleasant Valley Road, as shown on Certificate of Survey No. 13371, records of Flathead County, Montana.

TRACT 7: The West Half of the Northwest Quarter (W1/2NW1/4) and the West Half of the Southwest Quarter (W1/2SW1/4) of Section 27, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 8:

All of Section 28, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 9:

All of Section 29, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 10:

Government Lots 1, 2, 3 and 4; the East Half (E1/2); the East Half of the West Half (E1/2W1/2) (All Fractional) Section 30, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 11:

All of Section 33, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 12:

All of Section 34, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 13:

All of Section 35, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 14:

All of Section 36, Township 28 North, Range 26 West, M.P.M., Flathead County, Montana.

TRACT 15:

All of those lands in the Southwest Quarter of the Southwest Quarter (SW1/4SW1/4) of Section 29, lying South of the of the center line of the South Pleasant Valley Road as shown and described on Certificate of Survey No. 13371, records of Flathead County, Montana.

TRACTS 16 AND 18:

Government Lot 4 of Section 30, Township 28 North, Range 25 West, P.M.M., Flathead County, Montana, lying South of the of the center line of the South Pleasant Valley Road as shown and described on Certificate of Survey No. 13371, records of Flathead County, Montana.

AND

The South One-half of the Southwest Quarter (S1/2SW1/4) and that portion of the Southeast Quarter (SE1/4) of said Section 30, lying South of the center line of the South Pleasant Valley Road as shown and described on Certificate of Survey No. 13371, records of Flathead County, Montana.

TRACT 17:

Government Lot 7 and the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) of Section 30, Township 28 North, Range 25 West, M.P.M., Flathead County, Montana.

EXCEPTING THEREFROM all those lands in the North Half of the Southwest Quarter (N1/2SW1/4) of Section 30, Township 28 North, Range 25 West, P.M.M., Flathead County, Montana, lying North of the center line of South Pleasant Valley Road, as shown on Certificate of Survey No. 13371, records of Flathead County, Montana.

TRACT 19:

All of Section 31, Township 28 North, Range 25 West, M.P.M., Flathead County, Montana.

TRACT 20:

The Southeast Quarter (SE1/4), the North Half of the North Half (N1/2N1/2) and the Southeast Quarter of the Northeast Quarter (SE1/4NE1/4) of Section 32, Township 28 North, Range 25 West, M.P.M., Flathead County, Montana.

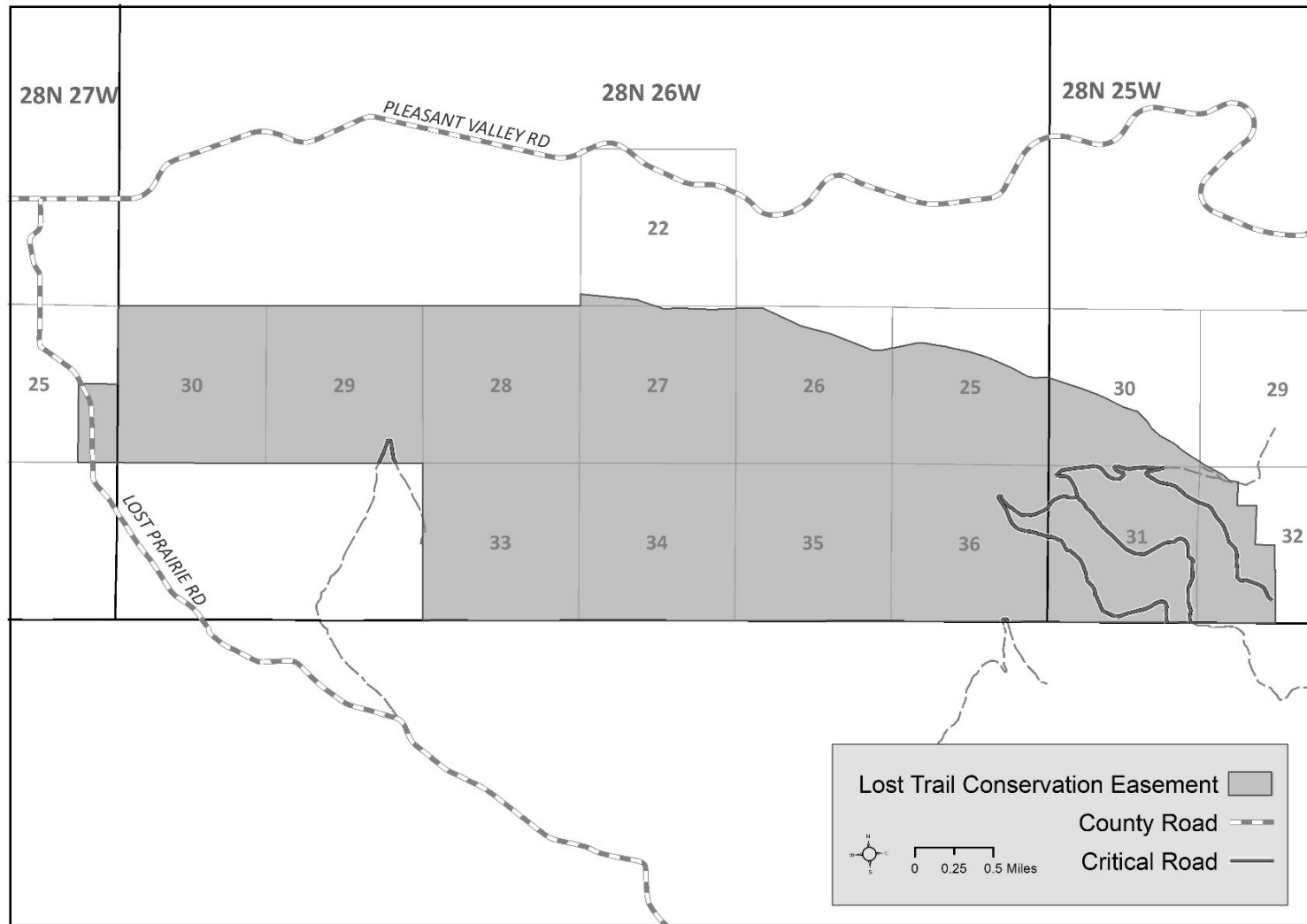
EXCEPTING THEREFROM all those lands in the Northwest Quarter (NW1/4) of said Section 32, lying North of the center line of the South Pleasant Valley Road, as shown on Certificate of Survey No. 13371 and also excepting the Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) and the West Half of the Northwest quarter of the Northeast Quarter (W1/2NW1/4NE1/4), all in said Section 32, Township 28 North, Range 25 West, P.M.M., Flathead County, Montana.

TRACT 21:

The Southwest Quarter (SW1/4), the Southwest Quarter of the Northwest Quarter (SW1/4NW1/4) and the West Half of the Southeast Quarter of the Northwest Quarter (W1/2SE1/4NW1/4) of Section 32, Township 28 North, Range 25 West, P.M.M., Flathead County, Montana.

END OF EXHIBIT A

EXHIBIT B MAP OF THE LAND



END OF EXHIBIT B

EXHIBIT C

FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Grazing standards are employed to support native plant health and wildlife habitat benefits. Three grazing options may be implemented, each of which provide for the minimum requirements of seasonal deferment and full rest from grazing. The conservation easement does not require grazing and more rest from grazing is allowed than what is prescribed below. Grazing may be conducted in one large pasture or split into smaller pastures. The management plan will include additional details. The most frequent annual grazing allowed on any one pasture may be conducted using one of three options. The three grazing options listed below are based on seed production by the dominant native bunchgrass on the property. With the mutual consent of the Landowner and the Department, the timing of grazing treatments can change in the future if the dominant grass species change in the future.

Option 1: Graze all season in Year 1. Graze after native perennial grass seed set in Year 2. Full rest from grazing in Year 3. The rotation then starts over with season-long grazing in Year 4.

Option 2: Graze early until native perennial grass seed set in Year 1. Graze after native perennial grass seed set in Year 2. Full rest from grazing in Year 3. The rotation then starts over with grazing early in Year 4.

Option 3: Graze after native perennial grass seed set in Year 1. Graze native perennial grass after seed set in Year 2. Full rest from grazing in Year 3. The rotation then starts over with grazing after native perennial grass seed set in Year 4.

END OF EXHIBIT C

APPENDIX D: DRAFT LOST TRAIL CONSERVATION EASEMENT MULTI-RESOURCE MANAGEMENT PLAN

MULTI-RESOURCE MANAGEMENT PLAN

Lost Trail Conservation Easement

This Multi-Resource Management Plan ("Plan"), dated as of _____, 20__ is entered into by **SPP Montana, LLC**, whose address is 6304 Peake Road, Macon, Georgia 31210 (hereinafter referred to as "Landowner") and the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (hereinafter referred to as "Department").

This Plan is being entered into pursuant to Section II.E. of that certain Deed of Conservation Easement (the "Easement") granted by The Landowner to the Department on _____, 20____.

The intent of Lost Trail conservation project (the "Project") is to effect the purpose of the Forest Legacy Program ("FLP"), in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. 2103c), to protect environmentally important forest areas that are threatened by conversion to non-forest uses and therefore also protect important scenic, cultural, fish, wildlife, recreational resources and riparian areas. A further purpose of the Forest Legacy Program and the Easement is to protect the capacity of the Land (as defined below) to produce economically valuable forestry products and to allow Landowner and its successors and assigns to continue to conduct commercial timber and resource management.

A further intent of the Project is to perpetuate the Land as forest land; to ensure the long term, professional management of the forest resources through forestry activities permitted hereunder; and to provide for commercial production of forest products in a manner compatible with the conservation of water quality, fish and wildlife habitat, recreation and other Conservation Values (as defined in the Easement).

The intent of this Plan is to meet the requirements of the FLP to protect environmentally important forest areas that are threatened by conversion to non-forest uses. The FLP requires this Plan to identify and describe objectives and actions that The Landowner will take to protect, manage, maintain, and enhance soil, water, range, aesthetic quality, recreation and public access, timber, fish, and wildlife resources in a manner compatible with Landowner objectives.

Exhibit A – Public Use Restrictions is part of the Plan and is incorporated herein by this reference.

I. GENERAL DESCRIPTION

The land (the “Land”) consists of approximately 7,255.7 acres in the Fisher River drainage in Northwest Montana owned by SPP Montana, LLC. The Land is adjacent to the USF&WS Lost Trail National Wildlife Refuge and in the vicinity of State Forest land managed by the Montana Department of Natural Resources and Conservation (DNRC) and National Forest land. The Land is located approximately 30 miles west of Kalispell, Montana. All the Land is within Flathead County.

The Land is forested hill slopes that have been managed for timber production over the last 100 years. Elevations vary from 3,500 to 4,600 feet. The Land includes numerous SMZ’s scattered throughout the footprint.

Forestland dominates the landscape. It is a mixed conifer forest with dominant species of Douglas-fir, western larch, ponderosa pine, lodgepole pine, true firs, and spruce. There are some cottonwood and aspen along SMZ’s and near wetland areas. The stands vary in age from young regeneration to mature, with one stand of old-growth conifer forest located south of the county road.

II. FOREST MANAGEMENT

The Landowner’s objective is to fully utilize its resources through innovative forestry management and harvest techniques. Wise stewardship and good business practices go hand in hand.

The management goal is to maximize the value of the timber resource while managing for other non-timber resources. The majority of the forest regenerates naturally, though reforestation may be achieved by artificial methods where appropriate.

The Landowner has committed to manage its Land in accordance with good and sound silvicultural practices consistent with the *Sustainable Forestry Initiative (SFI) 2015-2019 Standards and Rules* or similar independently verified sustainable forest management certificates as set forth in the Easement. As part of the commitments to SFI, the Landowner agrees to the following guidelines and metrics to measure its activities. These guidelines and metrics are not intended to restrict fiber production but to provide measures to ensure the Plan objectives are met. If forest practices are found to vary from these guidelines, the Liaison Committee will develop, and ensure that the Landowner implements, a plan to bring the practices into compliance. The SFI program is a comprehensive system of principles, objectives, and performance measures that integrates the perpetual growing and harvesting of trees with the protection of wildlife, plants, soil and water quality. An independent Expert Review Panel made up of representatives from the environmental, professional, conservation, academic, and public sectors manage the SFI program. The program includes a voluntary, independent third-

party verification process which the Landowner has incorporated into its management of the Land.

The Landowner's foresters and the independent contractors who work for the company are committed to good stewardship. In order to operate on company land, contractors must participate in formal Best Management Practices ("BMP") and Streamside Management Zone ("SMZ") training. The Landowner will continue to manage the Land in a responsible manner in compliance with SFI standards, or such other Approved Standard as set forth in the Easement.

III. OTHER RESOURCES

In accordance with the Forest Legacy Program, the following describes the Landowner's objectives and actions for various resources.

A. Soil

The Landowner will maintain soil and site productivity by minimizing soil disturbance to the extent practical and, when possible and practical, by recycling harvest residues for soil nutrient enhancement.

B. Water

The Landowner will continue to implement voluntary Montana Forestry BMP's. All commercial forest owners in Montana are required to comply with the Streamside Management Zone law.

C. Range (Grazing)

The Landowner will continue grazing the Land which has been a historical use and currently elects to use Option 1 as set forth in the Easement.

The Land will be used as one pasture with a 3-year rotation of:

- Year 1: Livestock grazing all during the growing season which is agreed to be May 15 to October 15.
- Year 2: Livestock grazing begins after seed set and continues to October 15.
- Year 3: Rest from livestock grazing yearlong.
- A maximum stocking rate will not be set.

D. Aesthetic Quality

The Landowner recognizes aesthetic values when the property is viewed from the Dahl Lake auto tour route on the Lost Trail National Wildlife Refuge. The Landowner will manage the Land by using appropriate design standards and harvest methods, it being understood that current standards and methods are appropriate.

E. Recreation

The Landowner will continue to allow for the responsible use of the Land for non-commercial recreation such as hunting and trapping as defined in Montana regulations, as well as wildlife viewing and hiking. The terms of the Easement provide for public use of the Land subject to certain restrictions as set forth in the Easement and in Exhibit A.

F. Habitat Conservation Objectives and Implementation.

An objective of the SFI Standard is to ensure that forest management practices will “manage the quality and distribution of wildlife habitats and contribute to the conservation of biological diversity by developing and implementing stand- and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals.” The SFI Standard provides general performance measures and indicators to meet this objective. The Landowner will manage the Land consistent with the SFI objective, performance measures and indicators.

G. Wildlife

The Landowner manages its resources while considering wildlife through judicious control of road access, timber harvest management, and cooperation with state and federal fish and wildlife agencies.

In addition, the Land is important for big game such as elk, deer, moose, black bear, and varieties of other native wildlife species. Consistent with the SFI objectives, performance measures and indicators, and in consideration of the particular wildlife habitat values of the Land,

The Landowner shall maintain an equivalent percentage of cottonwood and aspen trees on the Land as described in the Baseline Report, subject to the Landowner’s rights in the Easement and recognizing that conditions on the land may fluctuate over time due to natural events and actions taken by the Landowner to address emergency situations or for safety reasons. Any amount above the percentage set forth in the Baseline Report may be harvested, removed, or destroyed or as expressly set forth in the Easement. However, the commercial harvest of cottonwood and aspen trees within SMZs is prohibited, except as permitted under the Easement.

Landowner may not fell, remove, or destroy snags (dead standing trees) in a manner that reduces the densities and sizes below the snag retention and recruitment criteria provided for in Section IV of this Plan unless safety requirements call for it. Landowner is not responsible for the unauthorized felling, removal or destruction of snags conducted by the public on the Land.

Riparian zones and non-forested wetlands, including bogs, fens, and marshes shall be identified prior to implementing forest management activity in a harvest unit, and shall be protected in the manner provided for in this Plan.

H. Minerals

The Landowner owns limited mineral resources on the Land. The Easement does provide for the Landowner to have the right to extract sand, gravel, and rock in accordance with provisions to minimize impacts and ensure restoration of disturbed areas. The extraction of such rock will occur per the specific Montana Department of Environmental Quality permits, operating plans and specific terms and conditions outlined in the Easement. The material is to be used on the footprint of the Easement. The limitations to extraction are set forth in the Easement.

I. Outfitting

Commercial outfitting will not be allowed.

J. Weed Management

The Landowner will manage noxious weeds in compliance with State law and best management practices, implementing an integrated pest management philosophy to meet weed control goals. Control will include a combination of chemical, mechanical and biological controls as appropriate to meet conservation goals.

K. Carbon Sequestration

The Landowner's Forest Management activities naturally result in the sequestration of carbon in growing trees, wood products made from harvested timber, retained dead wood, and conservation of forest soils. Landowner may also modify its forest management activities to achieve independently verified additionality of carbon sequestration under improved forest management or forest restoration (e.g. afforestation after fire) protocols, which is beneficial to mitigate climate change and may be incented by marketable offsets or credits based on verified additionality.

IV. PLAN GUIDELINES AND METRICS

The Landowner agrees to the following guidelines and metrics to measure its activities under this Plan and to ensure the Plan objectives are met. It is understood that as circumstances change, and new knowledge is obtained, that these guidelines and metrics may need to be adapted and modified. Accordingly, the parties agree to work cooperatively to adjust these metrics over time to continue to meet the spirit and intent of this Plan.

1. Follow the 2015 Standards, as defined in Section II.C.1. of the Easement including an external SFI or other comparable audit of the Land on the scheduled outlined in the 2015 Standards. Review audit recommendations at the annual Liaison Team meeting and determine if changes should be implemented.
2. Perform at least one BMP audit each year that timber management occurs on the Land (internal or state). Results of the annual audits will be discussed at the annual Liaison Team meetings and the Landowner will take actions to correct any departures.
3. Prepare an annual report of the acres harvested by silvicultural method.
4. Reforest to appropriate levels within 5 years of harvest if needed.
5. Leave at least two snags per acre greater than 10-inch dbh on the Land where available

and not a safety hazard. Retain at least one of the largest live trees per acre for future snag recruitment ranging from individual trees to clumps, reasonably distributed over the Land. The implementation of the policies for green tree retention shall be reviewed annually by the Department and SPP and these measures may be adapted as additional scientific information is available, and the results of these measures are monitored and reviewed for effectiveness, provided that each party agrees to the adaptations.

6. Management shall strive to maintain downed woody debris to an average of 2 pieces/acre greater than 10 inches diameter and 6 feet or longer. Snags, trees, and logs should be concentrated near SMZ's, wet areas, or other sensitive sites or highly erosive landscapes when such sites exist, otherwise dispersed throughout the unit to maximize the beneficial effects of these resources to wildlife.
7. Whenever practical, preserve fruit, nut, and berry producing shrubs and trees.
8. Map roads annually showing compliance with BMP's with objective to demonstrate continual improvement.
9. Use only contractors who have been trained in Montana BMP's and SMZ's through completion of approved courses.

Catastrophic events such as fire, disease, and insect infestation may require permanent modifications of the above guidelines and such situations need to be addressed by the Liaison Committee.

V. EASEMENT AND MONITORING

The Easement is intended to maintain the "status quo" by providing for perpetual and responsible forest management in the Land. The Easement will restrict the development rights on the Land, which will preclude residential and commercial development that is not associated with resource management. It also provides for perpetual public access to these areas for non-commercial recreation.

The Department will monitor the terms of the Easement on at least an annual basis. A Liaison Team representing the Department and will be established to deal with management issues that may arise over time. It is expected that this Plan will be amended over time to better represent current knowledge and conditions on the ground.

In order to track compliance with the terms of the Easement and MRMP, the Landowner will annually provide a report to the Department that summarizes the following information.

- A. Acres harvest by silvicultural method.
- B. Silvicultural treatments
- C. Road Construction or road closure changes
- D. Current status of excavation sites in order to monitor re-vegetation and weed control.

In addition, the Landowner will include the following information in the annual report as these reports are completed by the Landowner.

- A. Copies of State or internal BMP audits and applicable SFI audit conclusions/closing report as they are periodically completed on the Land, including any actions taken to meet audit recommendations.

Any amendment to this Plan must have the consent of both parties and must be in writing and signed and acknowledged by the parties. If there is any inconsistency between the terms of this Plan and the Easement, the terms of the Easement control. The Department will keep a current Plan in its files and will make the then current Plan available to successors in interest to the Land.

LANDOWNER: SPP MONTANA, LLC

By: _____

Its: _____

DEPARTMENT: MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS

By: _____ Ken
McDonald, Administrator, Wildlife Division

EXHIBIT A

PUBLIC USE RESTRICTIONS

A. Road Use. In general, the public may use the roads located on the Land only in a non-motorized manner subject to the conditions contained herein. Road access for public use may be limited for a variety of reasons such as the protection of wildlife, security, prevention of sedimentation from logging roads, public safety and reducing the spread of noxious weeds. Extreme fire weather or other hazardous situations may also influence the extent of road access by the public. Road restrictions may involve cooperative agreements between other private landowners, or with state and federal government agencies. The Landowner may restrict road use with gates, barricades, earthen barriers, and signs. Landowner will enforce the following restrictions on all road systems crossing the Land:

- i. Walk in, non-motorized bike, or horseback access only.
- ii. Vehicles which block a gate or road may be towed at the vehicle owner's expense.
- iii. An unsigned earthen barrier is considered a closure to all motorized vehicles.
- iv. All off-road motorized vehicle use is prohibited. Motorized vehicles, including but not limited to electric bikes, motorcycles, 4 wheelers, ATVs, UTVs, and OHVs are not allowed on the Land.
- v. Hikers, horseback riders, and mountain bikers are allowed behind closed gates, barricades, and earthen barriers.

B. Hunting, Trapping and Fishing. Big game hunting, trapping and fishing on the Land is allowed only during legal seasons, and pursuant to applicable laws and regulations. These activities may be restricted on the Land if necessary for resource or wildlife management upon mutual consent.

C. Other Restrictions:

- i. Target and recreational shooting is prohibited. Discharge of firearms is limited to activities related to hunting only, pursuant to applicable game laws and regulations.
- ii. Overnight camping is prohibited.
- iii. Commercial activity on the Land by anyone other than Landowner is permitted only with a written permit or contract.
- iv. The public's right to recreate on the Land does not include the right to trespass on other private property to reach the Land.
- v. Violators may lose recreational privileges on the Land.
- vi. With the mutual consent of the Landowner and the Department, any recreational activity may be restricted if necessary for resource or wildlife management.